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BBA-118

Labour Relations and Legislation

Block-1 INDUSTRIAL JURISPRUDENCE LEGAL ASPECTS

Unit-1	Industrial Jurisprudence	3-8
Unit-2	Industrial Jurisprudence and Welfare Laws	9-13

Block-2 LAWS ON WORKING CONDITIONS-I

Unit-3	Trade Union Act, 1926	14-22
Unit-4	Industrial Dispute Act 1947	23-36

Block-3 LAWS ON WORKING CONDITIONS-II

Unit-5	The Factories Act, 1948	37-43
Unit-6	Minimum Wages Act, 1948	44-50
Unit-7	Payment of Wages Act, 1936	51-57
Unit-8	The Payment of Bonus Act, 1965	58-64
Unit-9	The Contract Labour (Regulation and Abolition Act, 1970)	65-69

Block-4 LABOUR RELATION II

Unit-10	The Industrial Employment (Standing Orders) Act, 1946	71-81
Unit-11	The Apprentices Act, 1961	82-89
Unit-12	Equal Remuneration Act, 1976	90-98
Unit-13	Payment of Gratuity Act 1972	99-108
Unit-14	Employee's Compensation Act, 1923	109-119

Block-5 LABOUR CODES

Unit-15	Labour Codes	120-126
Unit-16	Social Security 2020 ("Ss Code")	127-131
Unit-17	The Companies (Amendment) Bill, 2020 (the IR code)	132-144
Unit-18	Occupational Safety, Health and Working Conditions Code, 2020	145-160
Unit-19	Employees' State Insurance Act, 1948 (Esi Act)	161-167
Unit-20	The Shops and Establishments Act	168-172

Labour Relations and Legislation

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UNIT-1

INDUSTRIAL JURISPRUDENCE

Unit structure

- 1.1 Introduction
- 1.1 Meaning
- 1.2 Key concepts and principles
- 1.3 Scope:
- 1.4 Key aspects of industrial jurisprudence
- 1.5 Importance of industrial jurisprudence
- 1.6 Advantages of industrial jurisprudence
- 1.7 Disadvantages of industrial jurisprudence
- 1.8 Summary
- 1.9 Test your knowledge
- 1.10 Further readings

1.0 OBJECTIVES OF UNIT

After studying this unit you will be able to know about:

- The concept and scope of industrial jurisprudence
- Importance, advantages and disadvantages of industrial jurisprudence

1.1 INTRODUCTION

Labour jurisprudence, also known as industrial jurisprudence, is a body of law that focuses on the legal relationship between employers and employees, particularly within the context of industrial settings. It encompasses laws, regulations, and judicial interpretations aimed at protecting workers' rights, ensuring fair labour practices, and promoting social justice in the workplace. Its growth is closely tied to the evolution of industrialization and the recognition that workers are not simply commodities but human beings with inherent rights.

Industrial Jurisprudence is a branch of legal study focusing on the laws and principles governing the relationship between employers and employees within the industrial or labour context. It evolved in the 20th century, shifting away from the traditional master-servant relationship towards a more balanced approach that acknowledges workers' rights and provides legal protections.

Industrial jurisprudence, in simple terms, refers to the body of legal principles and rules governing the relationship between employers and employees, particularly within industrial settings. It encompasses the laws, customs, and judicial precedents that shape these relationships, aiming to balance the interests of both parties.

1.1 MEANING

Industrial jurisprudence goes beyond basic contract law, delving into the complexities of labour relations, workplace safety, and social justice in the context of industrial development. It acknowledges the power imbalance between employers and employees and seeks to establish fair and equitable rules for their interactions.

1.2 KEY CONCEPTS AND PRINCIPLES

Lets understand about the key concepts and principles of industrial jurisprudence

- **Social Justice:** A central tenet of labour jurisprudence is the promotion of social justice, aiming to correct power imbalances between employers and employees and prevent exploitation.
- **Minimum Standards:** Labour laws establish minimum standards for wages, working conditions, safety, and other aspects of employment, ensuring a basic level of protection for all workers.
- **Freedom of Association:** The right to form trade unions and engage in collective bargaining is a cornerstone of labour jurisprudence, enabling workers to collectively negotiate for better terms and conditions.
- **Welfare and Well-being:** Beyond basic rights, labour jurisprudence also considers the overall welfare and well-being of workers, including access to healthcare, social security, and other benefits.
- **Dynamic Nature:** Labour jurisprudence is not static; it evolves alongside societal changes and economic developments, adapting to new challenges and emerging issues in the workplace.
- **Growth and Development:**
- **Industrial Revolution:** The origins of labour jurisprudence are deeply rooted in the Industrial Revolution, which brought about significant changes in the nature of work and the emergence of large-scale industries.
- **Response to Exploitation:** The harsh working conditions and exploitation of workers during the early stages of industrialization led to the development of labour laws and regulations aimed at protecting workers' rights.
- **Influence of Social Movements:** Social movements and labour organizations played a crucial role in advocating for improved working conditions and the recognition of workers' rights, pushing for legislative changes.
- **Constitutionalization:** In many countries, including India, labour laws have been incorporated into constitutional frameworks, emphasizing the fundamental nature of workers' rights.
- **Judicial Interpretation:** Courts have played a significant role in shaping labour jurisprudence through their interpretations of labour laws, establishing precedents and clarifying the scope of workers' rights.

- **Globalization and Technology:** The increasing globalization of the economy and the rapid advancements in technology have presented new challenges and opportunities for labour jurisprudence, requiring ongoing adaptation and reform.

1.3 SCOPE

The scope of industrial jurisprudence is broad and multifaceted, covering various aspects of the employer-employee relationship, including:

- **Labour Laws:** This includes legislation related to minimum wages, working conditions, hours of work, leave entitlements, and other aspects of employment contracts.
- **Industrial Relations:** It addresses issues like collective bargaining, trade union rights, strikes, lockouts, and dispute resolution mechanisms.
- **Workplace Safety and Health:** Laws and regulations concerning workplace safety, accident prevention, and compensation for injuries are also part of industrial jurisprudence.
- **Social Security and Welfare:** It encompasses social security benefits, retirement plans, and other welfare measures for workers.
- **Equality and Non-Discrimination:** Industrial jurisprudence also addresses issues of equal pay, gender equality, and protection against discrimination in the workplace.
- **International Labour Standards:** It includes the application and implementation of international labour conventions and recommendations.
- **Judicial Precedents:** Court decisions and interpretations of labour laws and regulations also form part of industrial jurisprudence.

1.4 KEY ASPECTS OF INDUSTRIAL JURISPRUDENCE

- **Evolving from Traditional Concepts:** It moved away from the concept of a master-servant relationship, where the employer had absolute control over the employee, to a system where employees have certain rights and protections.
- **Emphasis on Worker Rights:** Industrial jurisprudence emphasizes the importance of worker rights, including fair wages, safe working conditions, and the right to organize and bargain collectively.
- **Balancing Employer and Employee Interests:** It aims to create a fair and equitable environment within industries by balancing the interests of employers and employees.
- **Role of Legislation and Judiciary:** It recognizes the crucial role of both labour legislation and judicial decisions in shaping and enforcing the legal framework for industrial relations.
- **Impact of Industrialization:** The development of industrial jurisprudence is closely tied to the rise of industrialization and the need to address the social and economic inequalities that arose from it.
- **Promoting Industrial Peace:** By establishing legal frameworks and procedures for resolving disputes, industrial jurisprudence aims to foster harmonious industrial relations.

- In essence, industrial jurisprudence provides the legal foundation for a more just and equitable industrial landscape, recognizing the contributions of both employers and employees and promoting a balanced relationship between them.

1.5 IMPORTANCE OF INDUSTRIAL JURISPRUDENCE

Industrial jurisprudence, a branch of law governing the workplace, is important for maintaining fair and harmonious relations between employers and employees. It offers advantages like promoting social justice, protecting workers' rights, and fostering a stable industrial environment. However, it can also present disadvantages such as potential limitations on employer flexibility and the possibility of disputes arising from differing interpretations of the law.

Importance:

- **Promotes Social Justice:** Industrial jurisprudence aims to ensure fair treatment for all workers, regardless of their position or background, by establishing minimum standards for wages, working conditions, and other employment terms.
- **Protects Workers' Rights:** It safeguards workers' rights, such as the right to organize, bargain collectively, and be free from discrimination, ensuring a more equitable and just workplace.
- **Fosters Industrial Peace:** By providing a framework for resolving disputes and promoting fair labour practices, it helps to create a more stable and peaceful industrial environment.
- **Balances Employer and Employee Interests:** It seeks to strike a balance between the needs of employers for productivity and profitability and the needs of employees for fair treatment and decent working conditions.
- **Guides Industrial Development:** It provides a framework for regulating the relationship between employers and employees, which is crucial for the growth and development of industries, especially in developing countries.
- **Evolving Concept:** Industrial jurisprudence is a dynamic concept, adapting to changing social, economic, and political contexts, making it relevant to contemporary industrial practices.

1.6 ADVANTAGES OF INDUSTRIAL JURISPRUDENCE

- **Reduced Exploitation:** It helps to prevent the exploitation of workers by establishing minimum standards and ensuring that employers adhere to them.
- **Improved Working Conditions:**
 - It leads to better working conditions, such as reduced working hours, improved safety measures, and access to basic amenities.
- **Increased Productivity:** By fostering a more harmonious and motivated workforce, it can contribute to increased productivity and efficiency.
- **Reduced Industrial Disputes:** It provides mechanisms for resolving disputes through negotiation, mediation, and arbitration, potentially reducing the number of strikes and lockouts.

- **Enhanced Social Security:** It often includes provisions for social security benefits, such as healthcare, pensions, and unemployment insurance, providing a safety net for workers.

1.7 DISADVANTAGES OF INDUSTRIAL JURISPRUDENCE

- **Potential for Rigidity:** Strict adherence to labour laws can sometimes make it difficult for employers to adapt to changing market conditions or business needs.
- **Costly Compliance:** Implementing and adhering to industrial jurisprudence can be expensive for businesses, particularly small and medium-sized enterprises.
- **Legal Complexity:** The laws and regulations governing industrial relations can be complex and difficult to understand, potentially leading to disputes and litigation.
- **Potential for Abuse:** Sometimes, workers or trade unions may misuse their rights or engage in disruptive actions that can harm the employer or the industry.
- **Uneven Application:** The application of industrial jurisprudence may vary across different industries or regions, leading to inconsistencies and unfairness.
- **Impact on Economic Growth:** Some argue that strict labour laws can hinder economic growth by making it more difficult for businesses to hire and fire workers or to invest in new technologies

1.8 SUMMARY

Industrial jurisprudence is a body of legal principles and interpretations focused on the relationship between employers and employees in industrial settings. It encompasses labour laws, constitutional frameworks, and judicial decisions that aim to balance the interests of both parties within the context of industrial relations. This field has evolved to address issues like wages, working conditions, social security, and dispute resolution, moving away from the traditional master-servant concept towards a more equitable employer-employee dynamic. Industrial jurisprudence has moved away from the traditional master-servant relationship, where employers had absolute power, to a system where employees have certain rights and protections under the law. It seeks to create a framework where both employers and employees can pursue their interests within a fair and just system. This includes ensuring reasonable working conditions, fair wages, and social security for employees, while also recognizing the needs of businesses. A core principle of industrial jurisprudence is the concept of social welfare and public policy, which recognizes the importance of a healthy and productive workforce for the overall well-being of society. Labour legislation, constitutional provisions, and judicial decisions play a crucial role in shaping industrial jurisprudence. Courts interpret laws, resolve disputes, and establish precedents that guide future actions.

Individual contracts are sometimes replaced by collective agreements, which are negotiated between employers and employee representatives (unions) to establish terms and conditions of employment. In essence, industrial jurisprudence aims to create a legal and social framework that fosters a fair, productive, and sustainable relationship between employers and employees in the industrial sector.

1.9 TEST YOUR KNOWLEDGE

1. Explain the meaning of industrial jurisprudence

2. What are the key concepts and principles of industrial jurisprudence
3. Discuss the scope industrial jurisprudence
4. What are the key aspects of industrial jurisprudence
5. Elucidate the importance of industrial jurisprudence
6. What are the advantages of industrial jurisprudence
7. Discuss the main disadvantages of industrial jurisprudence
8. Write an essay on industrial jurisprudence

1.10 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethnamohan, R., Phi Learning

UNIT-2

INDUSTRIAL JURISPRUDENCE AND WELFARE LAWS

Unit Structure

- 2.1 Introduction
- 2.2 Evolution of industrial jurisprudence
- 2.3 Industrial dispute act and welfare of labour
- 2.4 Important case laws
- 2.5 Summary
- 2.6 Test your knowledge
- 2.7 Further readings

2.0 OBJECTIVE OF UNIT

After studying this unit you will be able to understand about

- Evolution of industrial jurisprudence
- Industrial dispute act and welfare of labour
- Important case laws

2.1 INTRODUCTION

“Jurisprudence” is derived from the Latin word “Jurisprudentia” which is a combination of two words that is ‘Juris’ and ‘Prudence’ which derives the meaning as “knowledge of Law “. Jurisprudence is a method of study and not of law of one particular nation. It is a study of nature of law, nature of legal institution and its relationship with its society. Similarly the concept of industrial jurisprudence is comprised of two terms industrial and jurisprudence which together conveys the meaning that knowledge of law concerning the area of industrial development along with its attached objects. Industrial jurisprudence being not static and rigid allows the judiciary aside of laws to step in and provide social justice. The role played by judiciary in the industrial development is indeed important to grasp the overall picture of industrial jurisprudence. But firstly, it is important to understand the evolution of Industrial jurisprudence in our country.

2.2 EVOLUTION OF INDUSTRIAL JURISPRUDENCE

India was predominantly an agricultural nation before it gained its independence, hence industrial law was not well developed. The state adopted a laissez-faire policy and it was seen to be prevalent in the industries existed. In the unstable circumstances that existed prior to World War II, state action in the resolution of industrial conflicts became necessary. The Industrial Disputes Act of 1947 is a successor to the Bombay Industrial Disputes Act of 1938.

Overall, the pre-Independence labour legislation’s main objective was to –

- To improve the working conditions for factory
- Promote industrial peace

- Even if it existed in our nation in a rudimentary state prior to independence, its development can be seen in with the increase of industrial law cases that the Supreme Court and High Courts decided as well as through the expansion of labour and industrial In our nation, an entirely novel field of law called as Industrial Jurisprudence has emerged throughout the course of the 20th century. Despite having its roots in the industrial revolution, industrial law is mostly a product of the post-independence era. It right away impacts a sizeable portion of our nation’s population, which consists of industrialists, workers, and their families. And those who get impacted indirectly also comprised of a large amount of population. This branch of law basically changed the structure of traditional law concerned with master and servant and had basically cut down the old theory related to laissez faire theory. Similarly there is change in the concept of master and servant. One who invests capital is no more a master and one who puts in labour is no more a servant. They are employer and employees, the former may hire the latter but he can no more fire them at his will.
- The important aspect that comes with growth of industrial jurisprudence is the aspect of social justice and so does the role of This gained a backing after the commencement of our constitution as it injected within itself the provisions for social justice.
- The aspect of industrialisation in India was based on the program of planning and mainly accepted after thirties. To understand the prior picture it is important to take into account the plantation industry of Assam as it was the first to attract the industrial During that time, the situations that prevailed reflected only the sheer hard practices adopted by employer upon employees. For instance, employees were not allowed to leave the tea gardens. A number of Acts were passed from 1863 onward, but they only protected the interests of the employers. This in itself highlights that the role played by judiciary is of immense importance as it helped in the needed progress of the industrial jurisprudence by catering towards the needs of workers and by resolving the problems faced by such workers. It basically helped in stabilizing the situations of rights of workers and promoted social justice in the area of industrial jurisprudence.

2.3 INDUSTRIAL DISPUTE ACT AND WELFARE OF LABOUR

Labour Jurisprudence involves the struggles of classes and social stress prevalent within them and the role played by judiciary in resolving issues emerged in context of the same. Issues likes bonded labour system, recognition of right to strike, formation of trade union and others has been emerged before the courts time and again and the decision of court helped in overall growth of labour jurisprudence as a whole. Further, one such issue has been taken and the role played by judiciary is considered to understand the importance of judiciary in labour jurisprudence. The Industrial Disputes Act (IDA), 1947 is a central legislation in India that primarily deals with the investigation and settlement of industrial disputes between employers and employees. The act has played a crucial role in the development of labour jurisprudence in India by providing statutory recognition to the rights of workers to form unions and bargain collectively for better working conditions. The IDA also recognizes the right of workers to strike, subject to certain conditions and restrictions. This right is considered essential for workers to negotiate better working conditions and wages. Here further the aspect of collective bargaining and particularly the aspect of strike is considered to understand the role of judiciary in the same.

Right to Strike The right to strike is a right of workers recognized under the Industrial Dispute Act in India. Section 2(q) defines a strike as “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.” the right to strike is not only recognized but also is being regulated under the Industrial Dispute Act. The Act provides for specific procedures that need to be followed before a strike can be legally initiated. This includes giving notice of a strike to the employer, the appropriate government authority and any conciliation officer, who will then attempt to resolve the dispute through negotiation.

Role of Judiciary The role played by judiciary has been a crucial aspect in the development of labour jurisprudence as a whole. When the same is to be understood from one aspect particularly which in the present analysis is right to strike, various cases has been taken into account through which time and again the importance of judiciary is highlighted.

Legality of Strike: The judiciary has the power to determine the legality of strikes in India, courts have laid down certain conditions for a strike to be considered legal, such as giving notice to the employer, providing a reasonable cause for the strike and ensuring that the strike is peaceful. In addition, the judiciary has also recognized the right of employers to take disciplinary action against employees who go on an illegal strike.

Interpretation and Implementation: One of the primary roles of the judiciary is to interpret the Industrial Disputes Act and ensure that it is implemented in a fair and just manner. The courts have the power to hear cases related to strikes and issue orders regarding the legality of strikes, and the conditions and procedures that must be followed.

Essential Services: The aspect of Essential services maintenance act has been also covered by the judiciary as it has laid down guidelines for the imposition of essential services maintenance act (ESMA) during strikes. ESMA is a law that prohibits strikes in certain essential services like hospitals, transport, and electricity supply, to ensure that these services are not disrupted. The Supreme Court of India has held that ESMA can be invoked only as a last resort when all other measures to resolve the strike have failed.

Compensation: Furthermore, the judiciary has also acknowledged that strikes are a legitimate means of expressing the grievances of workers. The courts have recognized the importance of collective bargaining and have encouraged employers to negotiate with workers to resolve disputes. In cases where the strike is found to be illegal, the courts have ordered compensation for any loss suffered by the employer due to the strike. Additionally, the courts have also granted relief to workers who have suffered on account of participating in a lawful strike.

Appointment of Conciliation Officer: the judiciary can also appoint a conciliation officer or a board to resolve the dispute between the workers and employers. This officer or board can facilitate negotiations between the two parties, and if an agreement is reached, it can be enforceable under law. If the negotiations fail, the matter can then be referred to a labour court, industrial tribunal or a National Industrial Tribunal, depending on the nature of the dispute. These courts have the power to decide disputes related to wages, working hours, working conditions, and other employment-related issues.

2.4 IMPORTANT CASE LAWS

In order to understand the role of judiciary in more better sense with regard to the aspect of strike, the following case laws has been undertaken to be studied in lieu of the same:

- “In the case of Indian Petrochemicals Corporation v. Shramik Sena case, the Supreme Court of India held that a strike can be legal only if it meets the following conditions:

1. It must be in support of a demand made by workers in relation to employment or non-employment or the terms of
 2. The demands made by the workers must be
 3. The strike must be preceded by a notice of strike given in the prescribed manner to the
 4. The strike must take place after the expiration of the notice
 5. The strike must be peaceful and not involve any violence or damage to
 6. The workers participating in the strike must not engage in any coercive or intimidating conduct towards non-striking workers or the management.
 7. The strike must be in furtherance of a trade union's objectives and not motivated by personal
 8. The workers must exhaust all other remedies available to them, such as conciliation and arbitration, before resorting to a strike." The court also held that an illegal strike can lead to disciplinary action, including termination of employment. However, the workers can still approach the Labour Court or Industrial Tribunal for relief in case of wrongful termination. This case laid down the legal framework for strikes in India and emphasized the importance of peaceful and legitimate demands by workers, as well as the need for compliance with legal requirements. This case also highlights the significance of the role of trade unions in representing workers' interests and ensuring that their demands are met through lawful means.
- In *T.K. Rangarajan v Tamil Nadu* (2003) 6 sec 581, the Tamil Nadu government terminated the services of all employees who resorted to The two important issues raised in this case are-
 1. It is a fundamental right to go on strike?
 2. In this case does the employee have statutory right to go on strike.

With respect to first issue, the court referred to the judgment of *Kameswar Prasad and others Vs. State of Bihar* and another in which the Supreme Court held that there exists no fundamental right to strike. The Supreme Court of India observes that there is no statutory provision empowering the employees to go on strike. With respect to second issue, the court observes that there is prohibition to go on strikes under the *Tamil Nadu Government Servants Conduct Rules, 1973*. Rule 22 provides that "no government servant shall engage himself in strike on incitements there to or in similar activities" Though the Supreme Court of India did not impose a blanket ban on all strikes. The court further declares that the said strike to be illegal in view of Rule 22 which prohibits government servants from going on strike. Thus, The Apex Court held that Government staffs have no statutory, moral or fundamental right to strike.

- In *Harish Uppal (Ex-Capt) v. Union of India* (2003) 2 sec 45, "the Supreme Court reiterated that lawyers have no right to go on strike or give a call for boycott and not even a token strike to espouse their "
- In *Dharma Singh Rajput v. Bank of India*, "it was held that right to strike as a mode of redress of the legitimate grievance of the workers is recognized by the Industrial Disputes However, this right is to be exercised after complying with the conditions mentioned in the Act and also after exhausting the intermediate and salutary remedy for conciliation."

- In *B. R. Singh v Union of India* it was held that, “the strike is a form of demonstration. Though the right to strike or right to demonstrate is not a fundamental right, it is recognized as a mode of redress for resolving the grievances of the workers. Though this right has been recognized by almost all democratic countries but it is not an absolute.”

2.5 SUMMARY

Unit-2, focused on Industrial Jurisprudence and Welfare Laws, explores the legal framework governing the relationship between employers and employees, with a strong emphasis on worker protection and well-being. It examines how industrial jurisprudence, a body of law addressing labour relations, has evolved to move beyond the traditional master-servant concept and establish employee rights. This includes regulations on working conditions, wages, social security, and the right to organize. Industrial jurisprudence has shifted the focus from a hierarchical, master-servant relationship to one where employers and employees have defined rights and responsibilities, as outlined in legal frameworks. The goal of industrial jurisprudence is to foster harmonious industrial relations, ensuring a balance between the interests of employers and employees.

2.6 TEST YOUR KNOWLEDGE

1. Discuss the evolution of industrial jurisprudence
2. Highlight the main points of industrial dispute act and welfare of labour
3. Discuss any one important case law of industrial jurisprudence?

2.7 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra.
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons.
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethnamohan, R., Phi Learning.

UNIT-3

TRADE UNION ACT, 1926

Unit structure

- 3.1 Introduction
- 3.2 Trade Union Movement
- 3.3 Objective of trade unions
- 3.4 Role of trade union
- 3.5 Functions of trade union
- 3.6 Procedure of registration of trade union
- 3.7 Rights and responsibilities of trade union in India
- 3.8 Problems and challenges faced by trade unions
- 3.9 Summary
- 3.10 Test your knowledge
- 3.11 Further readings

3.0 OBJECTIVE OF UNIT

After reading this unit you will be able to know about the

- Trade union, its functioning and procedure
- Rights and responsibilities of trade union in india
- Problems faced by trade unions

3.1 INTRODUCTION

The Trade Unions Act, 1926, is a piece of Indian legislation that provides for the registration of trade unions and defines the law relating to registered trade unions. It aims to regulate the formation, functioning, and registration of trade unions, which are associations of workers formed to protect their rights and interests in relation to their employers.

The trade union movement in India has a rich history, evolving from early associations like the Bombay Millhands' Association in 1890 to the formation of the All India Trade Union Congress (AITUC) in 1920. The movement has been shaped by various factors, including the need to address workers' grievances, the influence of the nationalist movement, and the impact of broader political ideologies. Lets understand the history of trade union:

Early Beginnings (Pre-1918):

- The earliest attempts to organize workers can be traced back to the late 19th century, with the formation of the Bombay Millhands' Association in 1890.
- This was followed by other unions like the Amalgamated Society of Railway Servants of India and Burma (1897), the Printers' Union (1905), and the Bombay Postal Union (1907).
- These early unions focused on issues like working hours, wages, and the abolition of child labour.

The Rise of National Organization (1918-1924):

- The end of World War I saw a surge in trade union activity and the need for greater coordination among unions.
- The All India Trade Union Congress (AITUC) was established in 1920, marking a significant step towards a national-level trade union movement.
- Leaders like Lala Lajpat Rai, Bal Gangadhar Tilak, and Mahatma Gandhi played a crucial role in advocating for workers' rights during this period.
- The movement gained momentum with the participation of key figures in the nationalist movement and the fight for independence.

Post-Independence and Beyond:

- The number of registered trade unions grew rapidly after independence, with over 2,766 unions and a membership of over 1.66 million by 1947.
- The trade union movement has continued to evolve, facing challenges like political divisions and the impact of economic liberalization.

3.2 TRADE UNION MOVEMENT

Today, several major central trade union organizations operate in India, representing a diverse range of workers and industries.

Key Features of the Indian Trade Union Movement:

Political Influence:

- The movement has been significantly influenced by political parties, leading to a complex relationship between political ideologies and trade union activities.

Focus on Workers' Rights:

- Trade unions have consistently advocated for better working conditions, fair wages, social justice, and job security for workers.

Evolution and Adaptation:

- The movement has adapted to changing economic and political landscapes, facing challenges like globalization and economic reforms.

Diversity:

- The movement includes a wide range of unions, representing various industries, sectors, and political affiliations.

3.3 OBJECTIVE OF TRADE UNIONS

Trade unions primarily aim to protect and promote the interests of their members in the workplace. This includes securing fair wages, safe working conditions, and job security through collective bargaining and other means. They also strive to improve overall working lives by providing services like training, legal advice, and welfare programs. Lets understand its objectives point wise

1. Economic Objectives:

- **Fair Wages and Benefits:** Securing better pay, bonuses, and other benefits for members.
- **Job Security:** Protecting workers from unfair dismissals, layoffs, and retrenchment.
- **Improved Working Conditions:** Ensuring safe and healthy work environments, reasonable working hours, and adequate rest and leave.

2. Social and Welfare Objectives:

- **Collective Bargaining:** Representing workers' interests in negotiations with employers to achieve better terms and conditions.
- **Dispute Resolution:** Assisting members in resolving workplace disputes and grievances.
- **Training and Development:** Providing opportunities for members to acquire new skills and advance their careers.
- **Social Security:** Advocating for social security benefits like pensions, health insurance, and other welfare measures.

3. Political and Legal Objectives:

- **Influencing Legislation:** Lobbying for laws and regulations that protect workers' rights and promote social justice.
- **Promoting Workers' Rights:** Ensuring that workers are treated fairly and have access to legal protection.

4. Other Objectives:

- **Promoting Solidarity:** Fostering a sense of community and cooperation among members.
- **Enhancing Worker Morale:** Boosting morale and confidence by providing support and advocacy.
- **Contributing to Societal Development:** Supporting broader social and economic development through workforce stability and worker well-being.

3.4 ROLE OF TRADE UNION

Trade unions play a crucial role in advocating for workers' rights and improving their working conditions. They achieve this through collective bargaining, legal representation, and political influence. By uniting workers, they can negotiate better wages, benefits, and working conditions with employers, and also provide legal support in labour disputes. Here's a more detailed look at their functions:

1. Collective Bargaining:

- Trade unions act as representatives for workers in negotiations with employers.
- This process, known as collective bargaining, allows unions to negotiate for better wages, working conditions, and benefits on behalf of their members.
- Agreements reached through collective bargaining are often legally binding.

2. **Legal Representation and Support:**

- Trade unions provide legal assistance to workers facing unfair dismissal, wage disputes, or workplace safety issues.
- They can represent workers in legal proceedings and ensure their rights are protected.

3. **Advocacy for Welfare Benefits and Social Security:**

- Trade unions actively advocate for improved social security and welfare benefits for workers.
- This includes advocating for better healthcare, pension schemes, and other social benefits.

4. **Political and Policy Influence:**

- Trade unions play a role in shaping labour policies and advocating for pro-worker legislation.
- They can influence government decisions related to labour laws and regulations.

5. **Protecting Workers from Exploitation:**

- Trade unions work to safeguard workers from exploitation, unfair treatment, and discrimination.
- They set workplace standards and ensure compliance with labour laws.

6. **Promoting Industrial Harmony:**

- By resolving disputes and promoting fair working conditions, trade unions contribute to a more harmonious industrial environment.
- They also encourage a sense of corporate social responsibility among workers.

7. **Improving Living Standards:**

- Trade unions strive to improve the overall living standards of workers by advocating for better wages, reduced working hours, and improved work-life balance.
- They also work towards equality legislation and better protection for vulnerable workers.

3.5 **FUNCTIONS OF TRADE UNION**

Trade union movements primarily focus on improving the working lives of their members. They achieve this through various functions like collective bargaining, advocating for better wages and working conditions, providing legal and social support, and representing workers' interests in negotiations with employers and government. Here's a more detailed breakdown of trade union functions:

1. **Protecting Workers' Rights and Interests:**

- **Negotiating Collective Agreements:** Trade unions negotiate with employers on behalf of their members to secure better wages, benefits, working conditions, and job security.
- **Representing Members:** They represent workers in disputes, disciplinary hearings, and grievance procedures, ensuring their rights are protected.

- **Improving Working Conditions:** Unions advocate for safer workplaces, reasonable hours, adequate rest periods, and other improvements to the work environment.
 - **Ensuring Fair Labour Practices:** They fight against unfair dismissals, discrimination, and other injustices in the workplace.
 - **Providing Legal and Financial Support:** Trade unions often offer legal advice, financial assistance, and other support to members facing work-related problems.
 - **Promoting Social Upliftment:** Some unions engage in social work, providing support to the needy, promoting education, and advocating for social justice.
- 2. Influencing Economic and Social Policies:**
- **Collective Bargaining:** A core function is negotiating with employers on behalf of workers to achieve better pay, benefits, and working conditions.
 - **Lobbying and Political Action:** Unions may engage in political action, such as lobbying government officials, to influence policies that affect workers and their families.
 - **Promoting Social Justice:** Trade unions play a role in promoting social justice and equality, advocating for policies that benefit all workers.
- 3. Enhancing Workers' Status and Well-being:**
- **Raising Workers' Status:** Unions aim to improve the status of workers in society, recognizing their contribution to the economy and advocating for their rights.
 - **Promoting Individual and Collective Welfare:** They work to improve the overall well-being of their members, including their physical, mental, and social health.
 - **Providing Training and Development:** Some unions offer training programs to enhance workers' skills and knowledge, helping them advance in their careers.

3.6 PROCEDURE OF REGISTRATION OF TRADE UNION

The procedure for registering a trade union in India involves submitting an application to the Registrar of Trade Unions, along with the union's rules and other required information. The application must be signed by at least seven members and include details like the union's name, address, and office-bearers. The rules of the union must also comply with the provisions of the Trade Unions Act, 1926. Here's a more detailed breakdown:

- 1. Eligibility and Formation:**
- A trade union can be formed by at least seven or more members who are engaged or employed in the same industry or trade.
 - These members must subscribe their names to the union's rules.
- 2. Application for Registration:**
- The application is made to the Registrar of Trade Unions for the state where the union's head office is located.
 - The application must be accompanied by a copy of the union's rules and a statement of particulars.

3. Required Information:

- **Application form:** The application should be in the prescribed format, as per the Trade Unions Act, 1926.
- **Rules of the Union:** A copy of the union's rules must be submitted.
- **Member Information:** The application must include the names, occupations, and addresses of the members applying.
- **Union Details:** The application must also include the union's name and the address of its head office.
- **Office-Bearers:** Information about the office-bearers of the union, such as their titles, names, ages, addresses, and occupations, must be provided.

4. Rules of the Trade Union:

- The rules of the union must adhere to the provisions of Section 6 of the Trade Unions Act, 1926.
- These rules should cover various aspects, including:
 - The name of the trade union.
 - The objectives for which the union is established.
 - The purposes for which the union's funds will be used.
 - The maintenance of a list of members.
 - The election and removal of office-bearers.
 - The manner in which the union can be dissolved.
 - Other prescribed matters.

5. Registration Process:

- The Registrar will examine the application and the provided documents.
- If the Registrar is satisfied that the union has complied with the requirements, they will register the union.
- The Registrar will then enter the union's particulars in a register maintained for this purpose.
- The union will be issued a certificate of registration.

3.7 RIGHTS AND RESPONSIBILITIES OF TRADE UNION IN INDIA

Registered trade unions in India have specific rights and liabilities under the Trade Unions Act, 1926. They can acquire property, enter into contracts, and sue or be sued in their registered name, effectively acting as a legal entity. They have the right to collective bargaining, the right to form funds for worker welfare, and the right to represent members in disputes. However, they are also subject to certain liabilities, such as spending funds only on approved objects and being held accountable for unlawful activities.

Rights of Registered Trade Unions:

- **Legal Personality:** Registered trade unions are recognized as legal entities with perpetual succession and a common seal, allowing them to acquire and hold property, enter into contracts, and sue or be sued in their registered name.
- **Collective Bargaining:** Trade unions have the right to collectively bargain with employers to secure better wages, benefits, and working conditions for their members.
- **Right to Form Funds:** They can establish and manage funds for various purposes, including salaries for office bearers, administrative expenses, legal costs, worker welfare activities, and providing benefits in case of unemployment, disability, or death.
- **Right to Representation:** Trade unions can represent their members in industrial disputes and individual disputes with the employee's written authorization.
- **Right to Inspect:** Members and office bearers have the right to inspect the union's account books and list of members.
- **Right to Amalgamate:** Trade unions can merge with other unions.
- **Right to Strike:** Trade unions have the right to strike as a means of collective action, but this right is subject to legal restrictions.
- **Immunity from Civil Suits:** In certain cases, trade unions are granted immunity from civil suits related to trade disputes, provided they act within the bounds of the law.
- **Right to sue and be sued:** Trade unions can initiate legal action in their own name to protect their rights or defend themselves against legal claims.

Liabilities of Registered Trade Unions:

- **Proper Use of Funds:** Trade unions must spend their general funds only on the objects specified in the Trade Unions Act, such as worker welfare, administration, and legal expenses.
- **Political Fund:** While unions can create a political fund, they cannot compel members to subscribe to it.
- **Accountability:** Trade unions must maintain proper accounts and records and make them available for inspection.
- **Liability for Unlawful Activities:** If a trade union engages in unlawful activities, such as violence, criminal trespass, or unlawful confinement, it can be held liable for those actions.
- **Compliance with the Law:** Trade unions must comply with all provisions of the Trade Unions Act and other applicable laws.
- **Restrictions on strike action:** While the right to strike is recognized, it is not absolute and is subject to legal limitations.

3.8 PROBLEMS AND CHALLENGES FACED BY TRADE UNIONS

Trade unions face a range of challenges including declining membership, financial instability, political influence, internal conflicts, and the changing nature of work. These issues can weaken unions' ability to effectively represent workers and advocate for their rights.

Here's a more detailed look at the problems:

1. Declining Membership and Lack of Interest:

- Many workers, especially younger ones, are hesitant to join or feel unions are outdated or ineffective.
- The rise of the gig economy and contract work also poses a challenge, as these workers may not be covered by traditional union structures.
- In some sectors, union membership has significantly decreased, leaving fewer workers to support the union's activities.

2. Financial Weakness:

- Low membership and subscription rates can lead to inadequate funding, limiting the union's ability to operate effectively.
- Poor financial health can hinder the union's ability to provide services, organize campaigns, and engage in collective bargaining.

3. Political Influence and Rivalry:

- Political parties may exert influence over unions, potentially politicizing worker grievances and creating internal divisions.
- Multiplicity of unions within the same industry can lead to conflicting ideologies and weaken the overall bargaining power of workers, according to Scribd.

4. Internal Conflicts and Leadership Issues:

- Trade unions can experience internal conflicts due to differing ideologies, leadership styles, or competing objectives.
- Lack of strong, capable leaders can also hinder the union's effectiveness.

5. Challenges Related to Globalization and the Changing Nature of Work:

- Globalization can lead to job displacement and increased competition, impacting workers' bargaining power.
- New forms of work, like the gig economy, require unions to adapt their strategies to effectively represent workers in these non-traditional employment arrangements.

6. Legal and Regulatory Hurdles:

- Some employers and governments may implement policies that are hostile to unions, making it difficult for them to operate.
- The legal framework governing trade unions can also present challenges, such as restrictions on strikes or collective bargaining.

3.9 SUMMARY

The Trade Unions Act, 1926, provides the framework for the registration and regulation of trade unions in India. It grants legal recognition and certain protections to registered unions, enabling them to collectively bargain and protect worker interests. The Act defines a trade union, outlines registration procedures, specifies internal regulations, and addresses issues like multiple unions and political funds. The Act defines a trade union as any combination, whether temporary

or permanent, formed primarily for regulating relations between workmen and employers, workmen and workmen, or employers and employers, or for imposing restrictive conditions on trade or business. A minimum of seven members are required to form a trade union. Registration with the Registrar of Trade Unions is necessary, and the union must submit its rules and regulations. Registered trade unions gain legal status as a corporate body, with the ability to own property, enter into contracts, sue, and be sued.

The Act mandates that union rules address membership, funds, leadership elections, and dissolution procedures. The Act acknowledges the possibility of multiple unions within a workplace, which can lead to competition. The Registrar is responsible for registering unions, overseeing their compliance, and potentially canceling registration under specific circumstances.

3.10 TEST YOUR KNOWLEDGE

- Write a brief description on Trade Union Movement
- What are the objective of trade unions?
- Highlight the Role of trade union
- What are the main functions of trade union
- Explain the procedure of registration of trade union
- What are the rights and responsibilities of trade union in India
- Discuss the problems and challenges faced by trade unions

3.11 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethinamohan, R., Phi Learning

UNIT-4

INDUSTRIAL DISPUTE ACT 1947

Unit structure

- 4.1 Introduction
- 4.2 Key Objectives and Provisions
- 4.3 Impact of industrial dispute act 1947
- 4.4 Causes
- 4.5 Strikes
- 4.6 Aims of industrial disputes act
- 4.7 Industrial peace
- 4.8 Government machinery
- 4.9 Key Differences Summarized
- 4.10 Welfare of unorganised sector
- 4.11 Labour legislations
- 4.12 Types of Labour Legislations
- 4.13 Summary
- 4.14 Test Your Self
- 4.15 Further Reading

4.1 INTRODUCTION

The Industrial Disputes Act, 1947 is a crucial piece of Indian labour law focused on regulating and resolving industrial disputes between employers and employees. It provides mechanisms like conciliation, arbitration, and adjudication to promote fair treatment, prevent strikes, and maintain industrial peace. The Act also outlines procedures for layoffs, retrenchment, and closure of industries.

4.2 KEY OBJECTIVES AND PROVISIONS

- **Dispute Resolution:** The primary goal is to establish procedures for investigating and settling industrial disputes through various authorities like conciliation officers, courts of inquiry, and tribunals.
- **Preventing Strikes and Lockouts:** The Act places restrictions on strikes and lockouts in certain essential services and provides for compulsory adjudication in national interest cases.
- **Worker Protections:** It includes provisions for layoffs, retrenchment, and closure of industries, requiring government approval for companies employing more than 100 workers before firing employees or closing down.

- **Scope:** The Act applies to the whole of India and covers various industries, including those carried out by or under the authority of the Central Government, railway companies, and controlled industries as specified by the Central Government.

4.3 IMPACT OF INDUSTRIAL DISPUTE ACT 1947

The Industrial Disputes Act, 1947, significantly impacts industrial relations in India by providing a framework for resolving disputes between employers and employees. It aims to promote industrial peace, protect workers' rights, and establish mechanisms for conciliation, arbitration, and adjudication. The Act also regulates layoffs, retrenchment, and strikes, ensuring a balance between employer interests and employee welfare.

4.4 CAUSES

The Industrial Disputes Act, 1947, aims to prevent and resolve industrial disputes between employers and employees, promoting industrial peace and harmony. It provides a framework for conciliation, arbitration, and adjudication of disputes, and also addresses issues like strikes, lockouts, layoffs, and retrenchment. The Act seeks to ensure fair treatment of workers and prevent unfair labour practices.

Settlement of Disputes: The Act establishes mechanisms like conciliation officers, labour courts, and tribunals to investigate and settle disputes.

Prevention of Illegal Strikes and Lockouts: It aims to prevent illegal strikes and lockouts, ensuring that industrial action is conducted within the legal framework.

Protection of Workers: The Act provides safeguards for workers facing layoffs, retrenchment, or unfair dismissal.

Promotion of Industrial Peace: By providing a structured approach to dispute resolution, the Act strives to maintain industrial peace and harmony.

Collective Bargaining: The Act recognizes the importance of collective bargaining and encourages negotiations between employers and trade unions.

Unfair Labour Practices: The Act prohibits unfair labour practices by employers and employees, ensuring a level playing field.

Common Causes of Industrial Disputes:

Industrial disputes can arise from various factors, including:

- **Economic Issues:** Disputes over wages, bonus, allowances, working conditions, and other economic benefits are common.
- **Working Conditions:** Issues related to hours of work, safety measures, and amenities can also lead to disputes.
- **Management Practices:** Unfair or discriminatory management practices can also cause resentment among workers.
- **Trade Union Rivalry:** Disputes can arise when multiple trade unions represent the same workers.
- **Job Security:** Issues related to layoffs, retrenchment, and closures can be a major cause of conflict.

4.5 STRIKES

The Industrial Disputes Act, 1947 regulates strikes and lockouts in India. It defines strikes, prohibits certain types of strikes and lockouts, and provides mechanisms for resolving industrial disputes. Specifically, Section 2(q) defines a strike as a cessation of work by a body of persons employed in any industry acting in combination, or a refusal to continue to work or to accept employment.

Section 2(q) defines a strike as a collective refusal by employees to continue working, or a concerted refusal to accept employment.

Section 23 prohibits strikes and lockouts during conciliation and arbitration proceedings, or during the operation of a settlement or award.

While not explicitly stating a notice period for strikes, Section 22 outlines notice requirements for lockouts, which are relevant to understanding the overall framework of dispute resolution.

The Act provides for penalties for engaging in illegal strikes, including fines and imprisonment, according to Section 26 of the India Code.

4.6 AIMS OF INDUSTRIAL DISPUTES ACT

The Industrial Disputes Act, 1947, aims to prevent and resolve industrial disputes through various mechanisms. It establishes procedures for conciliation, arbitration, and adjudication to address conflicts between employers and employees. Additionally, the Act mandates the establishment of Works Committees and Standing Orders to promote better communication and define employment terms, thereby preventing disputes. It also provides mechanisms to address unfair labour practices and protect workers from unfair dismissal or retrenchment.

Preventive Measures:

- **Works Committees:** These committees, composed of representatives from both management and workers, are designed to foster a collaborative environment and address workplace issues proactively.
- **Standing Orders:** Employers with a certain number of employees are required to formulate and implement standing orders, which detail terms and conditions of employment. This ensures clarity and transparency in the workplace, minimizing potential disputes.
- **Grievance Procedures:** The Act encourages the establishment of grievance redressal mechanisms to address individual employee concerns and prevent them from escalating into larger disputes.
- **Conciliation Officers and Boards:** These appointed officials or bodies facilitate communication and negotiation between parties to resolve disputes before they escalate.
- **Voluntary Arbitration:** The Act allows for voluntary arbitration, where both parties agree to have a neutral third party resolve their dispute, providing a less adversarial approach.

Resolution Mechanisms:

- **Conciliation:** Aims to bring disputing parties to a common ground through the intervention of a conciliator.

- **Arbitration:** A neutral third party (arbitrator) is appointed to make a binding decision on the dispute.
- **Adjudication:** Involves legal authorities (Labour Courts, Industrial Tribunals, National Tribunals) making a binding decision on the dispute.

Other Provisions:

- **Protection against unfair practices:** The Act outlines actions against unfair labour practices by employers or unions.
- **Compensation for layoffs and retrenchment:** It provides for compensation to workers in case of layoffs or retrenchment, ensuring a safety net.
- **Prior permission for layoffs/retrenchment:** The Act requires employers to obtain prior permission from the appropriate government before laying off or retrenching workers or closing down industrial establishments

4.7 INDUSTRIAL PEACE

Industrial peace refers to a state of harmonious relations between employers and employees, characterized by the absence of industrial conflict such as strikes and lockouts. It signifies a cooperative environment where both parties work together towards common goals, with a focus on fair treatment, mutual respect, and resolving disputes amicably. Here's a more detailed explanation:

Key aspects of industrial peace:

- **Absence of conflict:** Industrial peace is achieved when there is no active or latent conflict between employers and employees, including strikes, lockouts, and other forms of industrial action.
- **Cooperation and collaboration:** It involves a positive and constructive relationship between management and labour, where both parties work together to achieve organizational goals.
- **Fairness and equity:** Industrial peace requires fair wages, safe working conditions, and equitable treatment for all employees, ensuring their psychological and economic needs are met.
- **Effective communication and grievance handling:** Open communication channels and established grievance procedures are essential for addressing concerns and resolving disputes promptly and effectively.
- **Respect for workers' rights:** Recognizing workers as human beings with rights and dignity is crucial for fostering a sense of trust and mutual respect within the workplace.

Importance of industrial peace:

- **Economic growth:** Industrial peace contributes to increased productivity, efficiency, and overall economic growth by minimizing disruptions and promoting a stable work environment.
- **Social well-being:** It creates a more harmonious and positive work environment, improving employee morale, reducing stress, and enhancing overall social well-being.

- **Reduced costs:** By preventing strikes and disputes, industrial peace helps reduce the financial and legal costs associated with conflict resolution.
- **Improved productivity:** When employees feel valued and respected, they are more likely to be motivated and productive, leading to increased output and innovation.

Achieving industrial peace:

- **Collective bargaining:** This process involves negotiations between employers and trade unions to establish terms and conditions of employment.
- **Mediation and arbitration:** These are methods for resolving disputes through a neutral third party.
- **Employee involvement:** Creating opportunities for employees to participate in decision-making and express their opinions can improve communication and build trust.
- **Fair labour practices:** Implementing fair hiring practices, providing equal opportunities, and ensuring safe working conditions are essential for maintaining a positive work environment.
- **Strong leadership and management:** Effective leaders can foster a culture of respect, collaboration, and open communication, which are crucial for building and maintaining industrial peace.

4.8 GOVERNMENT MACHINERY

The government utilizes several mechanisms to promote and maintain industrial peace, primarily through the Industrial Disputes Act, 1947. This act establishes various statutory bodies and procedures like Works Committees, Conciliation Officers, Boards of Conciliation, Courts of Inquiry, Labour Courts, Industrial Tribunals, and National Tribunals. These bodies aim to prevent and resolve industrial disputes through conciliation, adjudication, and voluntary arbitration, fostering a harmonious relationship between employers and employees. Key Government Machinery for Industrial Peace:

1. Statutory Machinery:

- **Works Committees:** These committees, composed of representatives from both management and workers, facilitate communication and address grievances at the establishment level.
- **Conciliation Officers:** Appointed by the government, they act as mediators to help parties resolve disputes through negotiation and compromise.
- **Boards of Conciliation:** Similar to conciliation officers, but with a wider scope and authority, especially when disputes involve multiple establishments or industries.
- **Courts of Inquiry:** Established to investigate specific disputes and provide findings and recommendations to the government.
- **Labour Courts, Industrial Tribunals, and National Tribunals:** These bodies provide adjudication, meaning they can make binding decisions on disputes that cannot be settled through conciliation.

2. Voluntary Machinery:

- **Voluntary Arbitration:** Parties can agree to submit their disputes to an arbitrator whose decision is binding.
- **Code of Discipline:** A voluntary code adopted by employers and unions to promote peaceful resolution of disputes and avoid strikes and lockouts.
- **Industrial Truce Resolution:** Another voluntary initiative aimed at fostering cooperation and resolving disputes through dialogue and negotiation.

3. Other Measures:

- **Labour Laws:** The government enacts and enforces various labour laws, such as the Industrial Disputes Act, 1947, to protect workers' rights and regulate employment conditions.
- **Profit Sharing Schemes:** These schemes can incentivize employees and promote a sense of shared interest in the company's success.
- **Workers' Participation in Management:** Involving workers in decision-making processes can improve communication, reduce grievances, and foster a more collaborative environment.
- **Grievance Procedures:** Establishing clear and efficient grievance mechanisms allows employees to voice concerns and seek redressal, preventing disputes from escalating.
- **Tripartite Bodies:** Involving representatives from government, employers, and unions in discussions and decision-making can promote consensus and cooperation.

Labour welfare

Labour welfare in India encompasses a range of measures and activities aimed at improving the well-being and working conditions of labourers, both within and outside the workplace. These measures go beyond basic wages and include provisions for healthcare, housing, education, and recreation. Labour welfare initiatives are implemented by various entities including employers, trade unions, and the government, both at the central and state levels. Key Aspects of Labour Welfare in India:

- **Statutory Welfare Measures:** These are legally mandated provisions, such as those outlined in the Factories Act, which require employers to provide certain facilities like drinking water, sanitation, and first aid.
- **Voluntary Welfare Measures:** These are initiatives taken by employers or other organizations beyond what is legally required. Examples include providing housing, canteens, recreational facilities, and educational opportunities for employees and their families.
- **Labour Welfare Funds:** Many states have established Labour Welfare Funds (LWFs) funded by contributions from employers and employees, which are used to provide a variety of welfare services to workers.
- **Social Security:** This includes measures like the Employees' Provident Fund (EPF), Employees' State Insurance (ESI), and other schemes that provide financial security to workers in case of retirement, disability, or illness.

- **Protection of Specific Categories:** Laws and schemes also exist to protect vulnerable groups like child labourers, bonded labourers, and migrant workers.
- **Addressing Specific Issues:** Labour welfare also involves addressing specific issues like occupational safety and health, prevention of industrial accidents, and promoting a healthy work environment.

Objectives of Labour Welfare:

- **Improve Quality of Work Life:** Providing a safe, healthy, and conducive work environment.
- **Enhance Employee Well-being:** Promoting the physical, mental, and social well-being of workers and their families.
- **Foster a Sense of Belonging:** Creating a sense of loyalty and commitment among employees.
- **Increase Productivity and Efficiency:** By improving employee morale and reducing absenteeism.

Various Organizations Involved:

- **Government:** Both central and state governments play a vital role in enacting and enforcing labour laws, establishing welfare schemes, and regulating labour practices.
- **Employers:** Employers are responsible for providing statutory and voluntary welfare measures to their employees.
- **Trade Unions:** Trade unions play a crucial role in advocating for workers' rights and welfare, negotiating for better working conditions, and ensuring that welfare schemes are effectively implemented.
- **Other Agencies:** Various non-governmental organizations (NGOs) and other agencies also contribute to labour welfare initiatives. Statutory and voluntary welfare funds are distinct approaches to employee benefits. Statutory welfare funds are mandated by law, requiring employers to provide specific benefits to their employees, while voluntary welfare funds are offered at the employer's discretion, going beyond legal requirements.

Statutory Welfare Funds:

- **Mandated by law:** These are benefits that employers are legally obligated to provide to their employees, such as those outlined in labour laws.
- **Examples:** In India, this includes contributions to the Provident Fund (PF), Employees' State Insurance (ESI), gratuity payments, and maternity leave benefits.
- **Purpose:** To ensure a minimum standard of living, health, and safety for workers.

Voluntary Welfare Funds:

- **Discretionary:** These are benefits offered by employers beyond the legal requirements, at their own discretion.
- **Examples:** This could include things like health insurance, gym memberships, performance bonuses, flexible work arrangements, employee assistance programs, or educational assistance.

- **Purpose:** To improve employee morale, attract and retain talent, and foster a positive work environment.

4.9 KEY DIFFERENCES SUMMARIZED

Feature	Statutory Welfare Funds	Voluntary Welfare Funds
Legality	Mandatory	Discretionary
Purpose	Ensure basic welfare	Enhance work culture
Flexibility	Limited	High
Legal Impact	Non-compliance can lead to penalties	No legal consequences
Examples	PF, ESI, Gratuity	Health insurance, gym memberships, etc.

4.10 WELFARE OF UNORGANISED SECTOR

The welfare of unorganized labour in India is addressed through various government schemes and legislation, aiming to provide social security and improve living conditions. The Unorganized Workers' Social Security Act, 2008, is a key piece of legislation in this area, focusing on life and disability cover, health and maternity benefits, and old age protection. Additionally, specific welfare funds exist for certain categories like beedi workers, cine workers, and non-coalmine workers, providing healthcare, housing, and education assistance.

The welfare of unorganized labour in India is addressed through various government schemes and acts, primarily focusing on social security, health, and old age protection. The Unorganised Workers Social Security Act, 2008, is a key legislation that aims to provide a framework for social security for unorganized workers.

Key Welfare Measures:

- **Social Security:** The Unorganised Workers Social Security Act, 2008, mandates the formulation of welfare schemes by the Central Government, covering life and disability cover, health and maternity benefits, and old age protection.
- **Life and Disability Cover:** Programs like Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) and Pradhan Mantri Suraksha Bima Yojana (PMSBY) offer life and disability insurance to eligible unorganized workers.
- **Health Benefits:** Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (AB-PMJAY) provides health insurance coverage for secondary and tertiary care hospitalization.
- **Old Age Protection:** The government is working towards providing old age security for unorganized workers, though details are still being formulated.
- **Specific Occupational Groups:** The Ministry of Labour and Employment has also enacted specific welfare schemes for certain occupational groups like beedi workers, handloom workers, and plantation labourers.

Key Initiatives:

- **e-Shram Portal:** The e-Shram portal is a national database of unorganized workers, aiming to register and provide them with a Universal Account Number (UAN) for accessing various welfare schemes.
- **National Social Security Board:** This board is constituted under the Unorganised Workers Social Security Act, 2008, to recommend the formulation of social security schemes for unorganized workers.
- **Central Government's Role:** The Central Government formulates and implements social security schemes for unorganized workers, including those related to life and disability cover, health and maternity benefits, and old age protection.

Challenges:

- **Coverage:** Despite various initiatives, a large percentage of unorganized workers still lack access to adequate social security coverage.
- **Awareness:** Many unorganized workers may not be aware of the available welfare schemes and how to access them.
- **Implementation:** Ensuring effective implementation and reaching the intended beneficiaries remains a challenge.

4.11 LABOUR LEGISLATIONS

The origin and growth of labour legislation in India is a story of addressing the challenges of industrialization and colonialism. Initially, British colonial rule saw the enactment of laws primarily serving British economic interests, often at the expense of Indian workers. Over time, the labour movement and the influence of international organizations like the ILO have shaped modern labour laws in India. Here's a more detailed look:

Early British Influence:

- **Focus on British Interests:** Early labour laws, like the Factories Act, were introduced not solely for worker welfare, but also to protect British textile industries from Indian competition by increasing labour costs through regulations.
- **Limited Scope:** These early laws had limited scope and did not adequately address the needs of the growing workforce.
- **Protectionist Measures:** The initial focus was on protecting British industries, which led to measures like the Factories Act, which introduced the eight-hour workday, restrictions on child labour, and regulations for women's employment.

The Evolution of Labour Legislation:

- **The Indian Factories Act of 1878:** This was a key early piece of legislation, marking the beginning of formal labour regulation in India, though its primary aim was not worker protection.
- **Trade Disputes Act, 1929:** This act was one of the earliest statutes to regulate the relationship between employers and employees.

- **The Indian Labour Movement:** The Indian independence movement and the growing labour movement played a crucial role in advocating for better working conditions and rights for workers.
- **Influence of the ILO:** The International Labour Organization (ILO) also played a role in shaping Indian labour laws, with India ratifying conventions on forced labour and taking steps to eliminate child and bonded labour.
- **Post-Independence:** After India's independence, more comprehensive labour laws were enacted, influenced by national commissions and judicial decisions.

Key Developments:

- **Apprentice Act, 1850:** This Act aimed to help children find employment when they became adults.
- **The Factories Act, 1883:** This Act was introduced due to pressure from British textile magnates and resulted in the eight-hour workday, restrictions on child labour and night work for women.
- **Trade Unions Act, 1926:** This act allowed for the formation of trade unions and was a key step in organizing the workforce.
- **Industrial Disputes Act, 1947:** This act addressed industrial disputes and aimed to resolve conflicts between employers and employees.
- **Minimum Wages Act, 1948:** This act established minimum wages for different industries and occupations.
- **Codes on Industrial Relations, Social Security, and Wages:** In recent years, the Indian government has been consolidating and reforming labour laws through these four codes.

Modern Labour Laws:

- **Article 21 of the Constitution:** This article protects the right to livelihood, which is a fundamental aspect of labour law.
- **Article 23:** This article prohibits traffic in human beings and forced labour, addressing issues like bonded labour.
- **Article 24:** This article prohibits child labour below the age of 14, addressing the issue of child exploitation.

PRINCIPLES OF LABOUR LEGISLATIONS

Labour legislations are built upon several core principles, primarily focused on social justice, social equity, and the overall well-being of the workforce. These principles aim to ensure fair treatment, safe working conditions, and a decent standard of living for all employees. Key principles include social justice, social equality, social security, social welfare, and the promotion of a healthy national economy.

1. **Social Justice:** This principle emphasizes equitable distribution of resources and opportunities, ensuring that all workers have a fair chance to achieve their full potential and enjoy fundamental freedoms.

2. **Social Equity:** Social equity in labour legislation means providing equal opportunities for education, employment, and other benefits to all citizens, regardless of background or status.
3. **Social Security:** This principle focuses on providing a safety net for workers who are unable to meet their basic needs due to unemployment, illness, disability, or old age.
4. **Social Welfare:** Labour laws aim to promote the overall well-being of workers by providing access to healthcare, education, and other social services.
5. **National Economy:** Labour laws play a crucial role in maintaining a healthy national economy by ensuring a productive and stable workforce.
6. **International Uniformity:** Many labour laws are influenced by international standards and conventions, promoting a degree of consistency in labour practices across different countries.
7. **Protection:** Labour legislation also focuses on protecting workers who are vulnerable or exposed to hazardous working conditions.
8. **Freedom of Association and Collective Bargaining:** Workers have the right to form trade unions and bargain collectively for better wages and working conditions.

These principles are often reflected in specific labour laws and regulations designed to address various aspects of the employment relationship, such as wages, working hours, workplace safety, and social security

4.12 TYPES OF LABOUR LEGISLATIONS

Labour legislation encompasses various laws and regulations designed to protect workers' rights and ensure fair labour practices. These laws can be broadly categorized into protective legislation, regulatory legislation, and social security legislation.

1. Protective Legislation:

- **Minimum Wages Act, 1948:** Ensures that workers receive a minimum wage, preventing exploitation and ensuring a basic standard of living. The Minimum Wages Act, 1948, is a piece of Indian legislation that ensures workers receive a minimum wage, protecting them from exploitation by employers. It empowers both the Central and State Governments to fix, review, and revise minimum wages for employees in scheduled employments. The Act aims to provide a basic standard of living for workers and is applicable to various sectors and regions, with different minimum wages for different categories of workers.
- **Factories Act, 1948:** The Factories Act of 1948 is a crucial piece of Indian labour law that regulates working conditions in factories to ensure the safety, health, and welfare of workers. It outlines provisions for various aspects of factory operations, including cleanliness, ventilation, lighting, drinking water, and safety measures. The Act also addresses working hours, overtime, holidays, and leave for workers. Regulates working conditions in factories, including health, safety, and welfare measures for workers.
- **Maternity Benefit Act, 1961:** The Maternity Benefit Act, 1961, is a piece of Indian legislation that regulates the employment of women in certain establishments during the period before and after childbirth, providing them with maternity benefits. It aims

to protect women's dignity and provide them with a secure environment during this crucial phase. Provides for maternity leave and benefits to women employees, ensuring their well-being during and after pregnancy.

- **Equal Remuneration Act, 1976:** The Equal Remuneration Act, 1976, in India, mandates equal pay for men and women for the same work or work of a similar nature. It also aims to prevent discrimination against women in employment matters. The Act applies to all establishments and employments across India. Promotes equal pay for equal work, preventing discrimination based on gender in matters of wages.
- **Child Labour (Prohibition and Regulation) Act, 1986:** The Child Labour (Prohibition and Regulation) Act, 1986, in India, aims to prohibit the employment of children in hazardous occupations and regulate the working conditions of children in other employments. The Act defines a "child" as someone who has not completed their fourteenth year. It prohibits the employment of children in certain occupations and processes listed in a schedule, and it also regulates the conditions of work for children in other employments. Prohibits child labour and regulates the employment of adolescents in certain occupations and processes.

2. Regulatory Legislation:

- **Industrial Disputes Act, 1947:** This act has made provision for the investigation and settlement of industrial disputes and for certain other purposes. It provides for a special machinery of conciliation officers, work committees, court of inquiry, Labour courts, Industrial Tribunals and national Tribunals, defining their powers, functions and duties and also the procedure to be followed by them. It also enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching discharging or dismissing a workman, circumstances under which an industrial can be closed down and several other matters related to industrial employees and employers. (i) The central government is appropriate government for the industries which are carried on:
a. By or under the authority of Central Govt. b. By a railway company: c. A controlled industry, specified for this purpose: d. In relation to certain industries enumerated in sec 2(a) of the act. An ir transport service, or a banking or an insurance company, a mine, an oil field, Cantonment Board, or a major port, any company in which not less than fifty-one percent of the aid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and] (ii) In relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government: Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be Central Government of their State Government, as the case may be, which has control over such industrial establishment. Provides a framework for the investigation and settlement of industrial disputes, promoting harmonious industrial relations.

- **Trade Unions Act, 1926:** The Trade Unions Act, 1926, is a piece of Indian legislation that provides for the registration of trade unions and defines the law relating to registered trade unions. It aims to regulate the formation, functioning, and registration of trade unions, which are associations of workers formed to protect their rights and interests in relation to their employers. Recognizes and regulates trade unions, enabling workers to collectively bargain for their rights and interests.
- **Industrial Employment (Standing Orders) Act, 1946:** This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. And the Central Government is the appropriate Government in respect of establishments under the control of Central Government or a Railway Administration or in a major port, mine or oil field. Under the Industrial Employment (Standing Orders) Act, 1946, all RLCs(C) have been declared Certifying Officers to certify the standing orders in respect of the establishments falling in the Central Sphere. CLC(C) and all Dy.CLCs(C) have been declared Appellate Authorities under the Act. Requires employers to define and regulate the terms and conditions of employment through standing orders, promoting transparency and fairness.
- **Contract Labour (Regulation and Abolition) Act, 1970:** The Contract Labour (Regulation and Abolition) Act, 1970, aims to regulate the employment of contract labour in certain establishments and potentially abolish it in certain circumstances. It applies to establishments employing 20 or more contract labourers and to contractors employing the same number. The Act establishes Central and State Advisory Boards to advise governments on its administration and provides for the registration of establishments and licensing of contractors. Regulates the employment of contract labour, ensuring that contract workers receive fair wages and working conditions.

4. Social Security Legislation:

- **Employees' State Insurance Act, 1948:** The Employees State Insurance Act of 1948 was instituted with the target of getting monetary help in instances of infection, maternity, and disablement and for giving health advantages to workers of processing plants and foundations and their wards. Employees state insurance act 1948 is also abbreviated as an ESIC. After implementing the employee's state insurance act 1948, all the employee's funds are regulated according to the provisions written under the act. All its functioning is regulated by the ministry of labour and employment, a statutory body launched on 24th February 1952. Provides for certain benefits to employees in the event of sickness, maternity, and employment injury, offering a social safety net.
- **Employees' Provident Funds and Miscellaneous Provisions Act, 1952:** The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is a crucial piece of Indian legislation aimed at providing social security benefits to employees in factories and other establishments. It mandates the establishment of a Provident Fund, Pension Fund, and Deposit-Linked Insurance Fund for employees. The Act is administered by the Employees' Provident Fund Organisation (EPFO) under the

supervision of the Central Board of Trustees. Establishes a provident fund scheme for employees, providing retirement and other benefits.

- **Payment of Gratuity Act, 1972:** The Payment of Gratuity Act, 1972, is a social security legislation in India that mandates employers to pay gratuity to employees upon termination of their service under specific conditions. It ensures a lump sum payment as a retirement benefit to employees who have rendered continuous service for at least five years. The act applies to various establishments like factories, mines, oilfields, plantations, ports, railways, and shops or establishments employing ten or more persons. Provides for the payment of gratuity to employees upon retirement or resignation after a certain period of service.
- **Workmen's Compensation Act, 1923:** Provides for the payment of compensation to workmen for injuries sustained by them during the course of their employment.

These are some of the key types of labour legislation, and the specific laws and regulations may vary depending on the country and jurisdiction.

4.13 SUMMARY

In summary, the history of labour legislation in India reflects a journey from early, often exploitative, practices to a more comprehensive system designed to protect workers' rights and ensure fair labour practices. The evolution of these laws has been shaped by both internal factors like the labour movement and external influences like international organizations.

4.14 TEST YOURSELF

1. Write the key objectives and provisions of industrial disputes act 1947
2. Discuss the impact of industrial dispute act 1947
3. What are the main causes of strikes
4. What are the aims of industrial disputes act
5. Define Industrial peace? How it can be managed
6. What are the measures of welfare of unorganised sector
7. Explain the Labour legislations
8. Mention are types of Labour Legislations

4.15 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethnamohan, R., Phi Learning.

UNIT-5

THE FACTORIES ACT, 1948

Unit Structure

- 5.1 Factories Act
- 5.2 Objectives of the Factories Act, 1948
- 5.3 Features of the Factories Act, 1948
- 5.4 Key Sections (Examples)
- 5.5 Challenges in Implementing the Factories Act, 1948
- 5.6 Overcoming Challenges
- 5.7 Summary
- 5.8 Test your Knowledge
- 5.9 Further Readings

5.0 OBJECTIVE OF UNIT

After reading this unit you will be able to understand the

- Factories act 1948 and its features
- Its objectives and key sections with examples
- The major challenges in implementing the factories act 1948

5.1 FACTORIES ACT

The Factories Act, 1948, is a cornerstone of labour legislation in India, designed to safeguard the health, safety, and welfare of factory workers. Let's delve into its learning scope, objectives, features, key sections, challenges, and strategies to overcome them.

The Factories Act, 1948: A Comprehensive Overview

I. Learning Scope

Understanding the Factories Act, 1948, is crucial for:

- **Employers/Occupiers:** To ensure compliance, avoid legal penalties, and create a safe and productive work environment.
- **Workers:** To be aware of their rights, safety provisions, and welfare entitlements.
- **HR Professionals:** To manage labour relations, ensure adherence to legal frameworks, and implement welfare measures.
- **Legal Professionals:** For interpreting and applying labour laws, representing clients in disputes, and advising on compliance.
- **Government Authorities (Inspectors, Labour Departments):** For effective enforcement, inspection, and dispute resolution.
- **Academics/Researchers:** For studying labour laws, industrial relations, and occupational health and safety.

5.2 OBJECTIVES OF THE FACTORIES ACT, 1948

The core objectives of the Act are:

- **Protecting Health and Safety:** To establish and maintain robust standards for worker health and safety within factory premises, preventing industrial accidents and occupational diseases.
- **Regulating Working Conditions:** To prescribe appropriate working hours, rest intervals, and holidays to prevent overwork and fatigue.
- **Ensuring Worker Welfare:** To mandate the provision of essential welfare facilities like drinking water, sanitation, first aid, canteens, and creches.
- **Promoting Fair Livelihood:** To ensure fair remuneration by mandating minimum wage payments.
- **Reducing Industrial Tensions:** By providing a framework for dispute resolution and ensuring fair treatment, the Act aims to minimize conflicts between employers and workers.
- **Encouraging Best Practices:** To promote a culture of industrial safety and health, encouraging factories to adhere to national and international best practices.

5.3 FEATURES OF THE FACTORIES ACT, 1948

The Act encompasses a wide range of features to achieve its objectives:

- **Applicability:** Applies to factories employing 10 or more workers with power, or 20 or more workers without power, engaged in manufacturing processes. State governments have powers to extend its applicability to smaller establishments based on potential dangers.
- **Health Provisions (Sections 11-20):**
 - Cleanliness
 - Disposal of wastes and effluents
 - Ventilation and temperature
 - Dust and fumes
 - Artificial humidification
 - Overcrowding (minimum space per worker)
 - Lighting
 - Drinking water (clean, accessible, separate from latrines)
 - Latrines and urinals (adequate, separate for genders, clean)
 - Spittoons
- **Safety Provisions (Sections 21-41):**
 - Fencing of machinery (moving parts)
 - Work on or near machinery in motion
 - Employment of young persons on dangerous machines

- Striking gear and devices for cutting off power
- Self-acting machines
- Casing of new machinery
- Prohibition of employment of women and children near cotton-openers
- Hoists and lifts
- Lifting machines, chains, ropes and lifting tackles
- Revolving machinery
- Pressure plant
- Floors, stairs, and means of access
- Pits, sumps, openings in floors
- Excessive weights
- Protection of eyes
- Precautions against dangerous fumes, gases, etc.
- Precautions in case of fire
- Safety of buildings and machinery
- Appointment of Safety Officers (for factories employing 1000+ workers or those engaged in hazardous processes).
- **Provisions Relating to Hazardous Processes (Chapter IVA, Sections 41A-41H):**
 - Compulsory disclosure of information by the occupier to workers and the public.
 - Specific responsibility of the occupier in relation to hazardous processes.
 - Workers' participation in safety management.
 - Right of workers to warn about imminent danger.
- **Welfare Provisions (Sections 42-50):**
 - Washing facilities (adequate, separate for genders)
 - Facilities for storing and drying clothing
 - Seating arrangements
 - First-aid appliances (with trained personnel)
 - Canteens (for factories with 250+ workers)
 - Shelters, restrooms, and lunchrooms (for factories with 150+ workers)
 - Creches (for factories with 30+ female workers)
 - Appointment of Welfare Officers (for factories with 500+ workers).
- **Working Hours of Adults (Sections 51-66):**
 - **Maximum 48 hours a week.** (Note: The initial contradiction in the provided text should be resolved by referencing the 48-hour limit as the standard).

- **Maximum 9 hours a day.**
- Rest intervals.
- Weekly holidays.
- Restriction on employment of women (e.g., night shifts).
- Overtime work regulations.
- **Employment of Young Persons (Sections 67-77):**
 - Minimum age for employment (14 years).
 - Restrictions on working hours and types of work.
 - Requirement of medical certificates of fitness.
- **Annual Leave with Wages (Sections 78-84):** Entitlement to paid annual leave based on working days.
- **Inspecting Staff (Sections 8-10):** Appointment of Inspectors and Certifying Surgeons to oversee compliance.
- **Penalties and Procedure (Sections 92-106A):** Specifies fines and imprisonment for contravention of the Act's provisions.

5.4 KEY SECTIONS (EXAMPLES)

While the entire Act is important, some sections are particularly notable:

- **Section 2(m): Definition of 'Factory':** Crucial for determining applicability.
- **Section 6: Approval, Licensing, and Registration of Factories:** Mandates proper authorization for factory operations.
- **Section 7A: General duties of the occupier:** Places primary responsibility for safety and health on the factory occupier.
- **Section 11: Cleanliness:** Foundation for a hygienic work environment.
- **Section 21: Fencing of Machinery:** Core safety provision to prevent accidents.
- **Section 45: First Aid Appliances:** Essential for immediate medical attention.
- **Section 48: Creches:** Important welfare provision for working mothers.
- **Section 51: Weekly Hours:** Defines the standard working week.
- **Section 67: Prohibition of employment of young children:** Sets the minimum age for employment.
- **Section 92: General Penalty for Offences:** Outlines the consequences of non-compliance.

5.5 CHALLENGES IN IMPLEMENTING THE FACTORIES ACT, 1948

Despite its comprehensive nature, the Factories Act faces several challenges in implementation:

1. **Lack of Awareness:** Many small and medium-sized enterprises (SMEs) and even workers may not be fully aware of the Act's provisions.

2. **Inadequate Enforcement Machinery:** A shortage of factory inspectors and insufficient resources for inspection and monitoring can hinder effective enforcement.
3. **Compliance Burden for SMEs:** For smaller factories, the administrative and financial burden of complying with all provisions can be significant, potentially leading to non-compliance.
4. **Informal Sector Exclusion:** The Act's applicability thresholds (10 or 20 workers) leave a large portion of the informal sector, with poor working conditions, outside its purview.
5. **Evolving Industrial Landscape:** New technologies, hazardous processes, and work arrangements (e.g., gig economy) may not be fully covered or adequately addressed by the existing provisions.
6. **Loopholes and Ambiguities:** Some provisions might have loopholes or be subject to different interpretations, leading to inconsistencies in application.
7. **Corruption:** Instances of corruption among inspecting authorities can undermine enforcement efforts.
8. **Lack of Worker Participation:** Inadequate worker participation in safety committees and decision-making processes can limit the effectiveness of safety initiatives.
9. **Reluctance to Invest:** Some employers may be reluctant to invest in safety equipment, welfare facilities, and training due to cost considerations.
10. **State-Level Variations:** While a central act, its implementation often involves state-level rules, which can lead to variations and complexities across different states.

5.6 OVERCOMING CHALLENGES

Addressing these challenges requires a multi-pronged approach:

- **Awareness Campaigns:**
 - Regular awareness programs for employers, workers, and trade unions on the provisions of the Act.
 - Simplifying legal language into easily understandable formats (leaflets, online resources).
 - Leveraging digital platforms for information dissemination.
- **Strengthening Enforcement:**
 - Increasing the number of factory inspectors and providing them with adequate training and resources (e.g., technology for remote monitoring).
 - Implementing stricter penalties for non-compliance and ensuring swift legal action.
 - Promoting transparency and accountability in the inspection process.
- **Simplifying Compliance for SMEs:**
 - Providing simplified compliance guides and checklists tailored for smaller factories.
 - Offering subsidies or incentives for adopting safety and welfare measures.
 - Facilitating online registration and reporting to reduce paperwork.
- **Extending Coverage and Adapting to New Realities:**

- Gradually extending the Act's coverage to smaller establishments or developing specific regulations for them.
- Regularly reviewing and amending the Act to incorporate new technologies, work processes, and emerging occupational hazards (e.g., the Occupational Safety, Health and Working Conditions Code, 2020, which aims to consolidate and update labour laws, including the Factories Act).
- **Promoting Worker Participation:**
 - Encouraging the formation and effective functioning of safety committees.
 - Empowering workers to report unsafe conditions without fear of reprisal.
 - Providing training to workers on their rights and responsibilities regarding safety.
- **Capacity Building:**
 - Training factory managers and supervisors on safety management systems.
 - Developing industry-specific safety guidelines and best practices.
- **Technological Adoption:**
 - Using data analytics to identify high-risk industries or factories for targeted inspections.
 - Promoting automation and smart solutions for safety monitoring.
 - Digitization of records and compliance processes.
- **Collabouration:**
 - Fostering collabouration between government, industry associations, trade unions, and NGOs to promote compliance and share best practices.
 - Learning from international best practices in occupational health and safety.

By continuously adapting and strengthening its implementation mechanisms, the Factories Act, 1948, can continue to play a vital role in ensuring safe, healthy, and dignified working conditions for millions of factory workers in India.

5.7 SUMMARY

The Factories Act of 1948 is a comprehensive piece of Indian legislation focused on regulating working conditions in factories. It aims to ensure the safety, health, and welfare of workers by establishing standards for hygiene, safety precautions, and working hours. The Act also addresses issues like the employment of young persons and provides for penalties for non-compliance. The Act mandates various safety measures to prevent accidents and injuries in the workplace, including requirements for machinery guarding, safe access, and proper lighting. It addresses issues like cleanliness, ventilation, temperature, and disposal of waste to create a healthy working environment. The Act requires factories to provide amenities like drinking water, latrines, washbasins, and first-aid facilities. For factories with a large number of women workers, it mandates creches. The Act limits working hours for adults (48 hours per week, 9 hours per day) and young persons, and it provides for rest intervals and overtime pay. The Act specifies restrictions on the employment of children and young persons, including age limits and working hours. It outlines procedures for factory registration and licensing, and it specifies penalties for violations of the Act.

Key provisions given in acts are The Act covers aspects like cleanliness, ventilation, temperature control, dust and fumes control, and adequate lighting. It includes provisions for machinery safety, secure fencing, safe access, and the use of protective equipment. The Act mandates welfare measures like drinking water, latrines, urinals, washing facilities, and first-aid. It regulates the number of hours that can be worked in a week and a day, providing for rest intervals and overtime pay. Restrictions are placed on the employment of children and young persons, including age limits and working hours. The Act requires factories to be registered and licensed with the relevant authorities. Non-compliance with the Act can result in penalties, including fines and imprisonment.

5.8 TEST YOUR KNOWLEDGE

1. Discuss the main points of Factories Act
2. What are the objectives of the Factories Act, 1948
3. What are the features of the Factories Act, 1948
4. Explain the key sections with examples mentioned in factories Act 1948
5. What are the challenges in Implementing the Factories Act, 1948
6. State the measures that are needed in overcoming challenges in Implementing the Factories Act, 1948

5.10 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethinamohan, R., Phi Learning.

UNIT-6

MINIMUM WAGES ACT, 1948

Unit Structure

- 6.1 Introduction
- 6.2 Scope of minimum wages act 1948
- 6.3 Objectives of the Minimum Wages Act, 1948
- 6.4 Features of the Minimum Wages Act, 1948
- 6.5 Key Sections (Examples)
- 6.6 Challenges in Implementing the Minimum Wages Act, 1948
- 6.7 Overcoming Challenges
- 6.8 Impact of the Act in Industry
- 6.9 Summary
- 6.10 Test Your Knowledge
- 6.11 Further Readings

6.0 UNIT OBJECTIVE

After reading this unit you will be understand about the

- Scope, objectives and features of minimum wages act 1948
- Challenges in implementing the minimum wages act, 1948

6.1 INTRODUCTION

The Minimum Wages Act, 1948, is a pivotal piece of legislation in India aimed at preventing the exploitation of labour by ensuring a basic standard of living for workers. Let's explore its various facets:

6.2 SCOPE OF MINIMUM WAGES ACT 1948

Studying the Minimum Wages Act, 1948, is essential for:

- **Policy Makers and Government Bodies:** To formulate, revise, and effectively enforce minimum wage rates that are fair and responsive to economic conditions and cost of living.
- **Employers:** To ensure legal compliance, avoid penalties, manage payroll effectively, and foster good labour relations by paying fair wages.
- **Workers and Trade Unions:** To understand their rights, entitlements, and mechanisms for redressal in case of underpayment.
- **Labour Economists and Researchers:** To analyze the impact of minimum wages on employment, poverty, income inequality, and overall economic development.
- **Human Resources and Payroll Professionals:** To accurately calculate and disburse wages, maintain proper records, and navigate the complexities of varied wage structures.

- **Legal Practitioners:** To advise clients on wage-related matters, handle disputes, and ensure adherence to the Act's provisions.

6.3 OBJECTIVES OF THE MINIMUM WAGES ACT, 1948

The core objectives of this Act are:

- **Prevent Exploitation of Labour:** To protect workers, especially in unorganized sectors and those with low bargaining power, from being paid unduly low wages.
- **Ensure a Basic Standard of Living:** To guarantee that workers receive a minimum remuneration that can cover their basic needs for sustenance, health, efficiency, and a degree of comfort.
- **Promote Social Justice:** To reduce wage disparities and foster an equitable distribution of income, thereby contributing to social justice.
- **Stabilize Financial Position of Workers:** To provide financial security and stability to vulnerable sections of the workforce.
- **Regulate Working Hours and Overtime:** To ensure that fair compensation is provided not only for normal working hours but also for any overtime work.
- **Periodic Revision of Wages:** To ensure that minimum wage rates are regularly reviewed and revised to account for inflation and changes in the cost of living.
- **Gender Neutrality:** To ensure that there is no discrimination in wage rates based on gender.

6.4 FEATURES OF THE MINIMUM WAGES ACT, 1948

Key features that define the scope and functioning of the Act include:

- **Applicability:** Applies to "scheduled employments" specified in the Act's schedule, covering both organized and unorganized sectors where exploitation is common (e.g., agriculture, construction, textiles, mines). Both Central and State Governments have the power to add employments to this schedule.
- **Appropriate Government:** Both the Central Government and State Governments are empowered to fix, review, and revise minimum wages for scheduled employments under their respective jurisdictions.
- **Fixation and Revision of Wages:**
 - **Methods:** Wages can be fixed or revised either by appointing committees/sub-committees to conduct enquiries and advise the government or by publishing proposals in the Official Gazette for public feedback.
 - **Periodicity:** Minimum wage rates must be reviewed and revised at intervals not exceeding **five years**.
 - **Factors Considered:** While not explicitly defined in the Act, judicial pronouncements and recommendations (like the 15th Indian Labour Conference norms) consider factors such as:
 - Three consumption units for one earner (worker, spouse, two children).
 - Minimum food requirements (e.g., 2700 calories per adult).

- Clothing, housing, fuel, lighting, and other miscellaneous expenses.
- Cost of living index.
- Nature of work, skill level (unskilled, semi-skilled, skilled, highly skilled).
- Geographic location/region.
- **Types of Wages:** The Act provides for different types of minimum wage rates:
 - Time rate
 - Piece rate
 - Guaranteed time rate
 - Overtime rate (at least twice the ordinary rate of wages)
- **Wages in Kind:** Permits payment of wages wholly or partly in kind, subject to prescribed conditions.
- **Working Hours:** Empowers the appropriate government to fix the number of hours constituting a normal working day, including intervals for rest, and to provide for a weekly holiday with pay.
- **Advisory Boards:** Establishes Central and State Advisory Boards, consisting of representatives of employers, employees, and independent persons, to advise the respective governments on matters related to minimum wages.
- **Enforcement Machinery:** Provides for the appointment of Inspectors to monitor compliance and investigate complaints.
- **Claims and Penalties:**
 - Workers who are paid less than the minimum wage can file claims with the designated authorities.
 - Employers contravening the provisions are liable to fines and/or imprisonment.

6.5 KEY SECTIONS (EXAMPLES)

- **Section 2(h): Definition of 'Wages':** Crucial for understanding what constitutes remuneration under the Act.
- **Section 3: Fixing of minimum rates of wages:** Empowers the appropriate government to fix and revise minimum wages.
- **Section 4: Minimum rate of wages:** Specifies the components that can constitute the minimum wage (e.g., basic rate, cost of living allowance).
- **Section 5: Procedure for fixing and revising minimum wages:** Outlines the two methods for wage fixation/revision (committee method or notification method).
- **Section 11: Wages in kind:** Allows for payment in kind under certain conditions.
- **Section 12: Payment of minimum rates of wages:** Mandates employers to pay not less than the minimum rates.
- **Section 13: Fixing hours for a normal working day, etc.:** Pertains to daily working hours, rest intervals, and weekly holidays.

- **Section 14: Overtime:** Deals with payment for work done in excess of normal working hours.
- **Section 18: Maintenance of registers and records:** Requires employers to maintain prescribed records.
- **Section 19: Inspectors:** Outlines the powers and duties of inspectors.
- **Section 20: Claims:** Provides for filing of claims by workers for non-payment or underpayment of minimum wages.
- **Section 22: Penalties for certain offences:** Specifies penalties for contraventions.

6.6 CHALLENGES IN IMPLEMENTING THE MINIMUM WAGES ACT, 1948

Despite its noble objectives, the Act faces significant challenges:

- **Complexity of Wage Structure:** India's minimum wage system is highly complex, with multiple rates varying by state, industry, occupation, skill level, and even region within a state. This makes compliance and monitoring difficult.
- **Frequent Revisions:** While necessary to combat inflation, frequent revisions (sometimes with short notice) pose administrative challenges for employers, especially SMEs.
- **Low Awareness:** A significant portion of workers, particularly in the unorganized sector, are unaware of their minimum wage entitlements.
- **Weak Enforcement Machinery:** Insufficient number of labour inspectors, limited resources, and lack of stringent monitoring mechanisms lead to widespread non-compliance, particularly in remote and informal sectors.
- **Informal Sector Dominance:** A large segment of the Indian workforce operates in the informal sector, where formal contracts are rare, and enforcement is notoriously difficult. Many employers in this sector continue to pay below minimum wages.
- **Data Gaps:** Lack of reliable and timely data on cost of living across different regions makes scientific and accurate wage fixation challenging.
- **Capacity to Pay:** While minimum wages are intended to be "need-based," some industries, especially smaller ones, argue that higher minimum wages might impair their "capacity to pay" and lead to job losses or closure.
- **Lack of Uniformity (Pre-Code):** The absence of a uniform national minimum wage (though a National Floor Level Minimum Wage exists) leads to interstate disparities and potential "wage arbitrage" where industries might shift to states with lower wage rates.
- **Administrative Burden:** Maintaining detailed records and complying with varied regulations can be a significant administrative burden for businesses.
- **Corruption:** Instances of corruption can undermine the effectiveness of inspection and enforcement.
- **Grievance Redressal:** Workers, especially migrant workers, often face difficulties in accessing grievance redressal mechanisms due to fear of job loss, lack of documentation, or geographical distance.

6.7 OVERCOMING CHALLENGES

Strategies to enhance the effectiveness of the Minimum Wages Act include:

- **Simplification and Rationalization of Wage Structure:**
 - Moving towards a simpler, more rationalized wage structure, possibly with fewer categories and broader regional applicability.
 - The **Code on Wages, 2019**, aims to consolidate and simplify various labour laws, including the Minimum Wages Act, and introduces the concept of a national floor wage, which is a step in this direction.
- **Strengthening Enforcement Mechanisms:**
 - Increasing the number of labour inspectors and providing them with better training, technology, and resources.
 - Implementing surprise inspections and stricter penalties for non-compliance.
 - Leveraging technology for real-time monitoring and reporting of wage payments.
- **Mass Awareness Campaigns:**
 - Educating workers through various media (print, electronic, digital, local community channels) about their rights and the process to file complaints.
 - Promoting digital platforms for easy access to wage information and grievance redressal.
- **Addressing the Informal Sector:**
 - Developing specific strategies to extend the Act's coverage and enforcement to the informal economy.
 - Encouraging formalization of employment through various incentives.
 - Promoting social security schemes for informal workers.
- **Data-Driven Wage Fixation:**
 - Conducting regular and robust surveys to collect accurate data on cost of living, consumption patterns, and economic indicators across regions.
 - Utilizing expert committees for evidence-based wage fixation.
- **Promoting Digital Payment of Wages:** Encouraging direct bank transfers can enhance transparency and reduce instances of underpayment or delayed payment.
- **Streamlining Grievance Redressal:** Establishing easily accessible, worker-friendly, and quick grievance redressal mechanisms, possibly through mobile apps or dedicated helplines.
- **Capacity Building:** Training employers, particularly SMEs, on compliance requirements and best practices for wage management.
- **Public-Private Partnership:** Fostering collaboration between government, industry bodies, trade unions, and civil society organizations for effective implementation and monitoring.

6.8 IMPACT OF THE ACT IN INDUSTRY

The Minimum Wages Act has had a significant and multifaceted impact on industries in India:

- **Improved Worker Livelihoods:** The most direct impact is the improvement in the living standards of low-wage workers, helping them meet basic necessities and escape extreme poverty. This can lead to better health outcomes and increased productivity.
- **Reduced Wage Exploitation:** It acts as a legal safety net, protecting vulnerable workers from arbitrary wage cuts and unfair labour practices by employers, especially in industries characterized by high labour supply and low skill requirements.
- **Increased Labour Costs for Industries:** For industries that previously paid below minimum wages, compliance with the Act leads to increased labour costs. This can impact profitability, especially for labour-intensive sectors and SMEs.
- **Pressure on Pricing and Competitiveness:** Increased labour costs might force industries to either absorb the cost, increase product prices, or find efficiencies. This can affect their competitiveness, especially against global players or informal sector rivals who may not comply.
- **Shift towards Capital-Intensive Methods:** Some industries might respond to rising labour costs by investing in automation and more capital-intensive production methods, potentially leading to job displacement for low-skilled workers.
- **Formalization of Employment:** The Act encourages employers to formalize employment relationships to ensure compliance, which can bring more workers into the formal economy with associated benefits.
- **Industrial Harmony:** By ensuring fair wages, the Act can contribute to reducing industrial unrest, strikes, and disputes, fostering a more stable labour environment.
- **Regional Disparities:** The varying minimum wage rates across states can influence industrial location decisions, with some industries preferring to set up in states with lower minimum wages.
- **Increased Consumer Demand:** Higher wages for a significant portion of the workforce can lead to increased purchasing power, boosting consumer demand and contributing to economic growth in certain sectors.
- **Ethical Business Practices:** The Act encourages more ethical and socially responsible business practices by mandating fair treatment and compensation for workers.
- **Challenges for Unorganized Sector:** While aimed at protecting them, the Act's enforcement often remains weak in the highly fragmented unorganized sector, leading to continued non-compliance and perpetuating exploitation.

In conclusion, the Minimum Wages Act, 1948, is a crucial legal instrument for social protection in India. While it faces ongoing challenges related to its complexity, enforcement, and coverage, its fundamental objective of ensuring fair remuneration for workers remains vital for fostering economic justice and sustainable industrial development. The recent push towards a consolidated Code on Wages signifies an effort to modernize and strengthen this crucial piece of legislation.

6.9 SUMMARY

The Minimum Wages Act, 1948, is a piece of Indian labour legislation aimed at ensuring workers receive a minimum wage, preventing their exploitation through low pay. It empowers both the Central and State Governments to fix, review, and revise minimum wages for scheduled employments. The Act applies to various scheduled industries and aims to provide a safety net for workers, ensuring they earn a wage sufficient to meet basic needs and prevent exploitation. The Act mandates the fixation of minimum wages for workers in scheduled employments. The Act specifies certain industries (scheduled employments) where minimum wages are applicable. Both the Central and State Governments can add to or modify the list of scheduled employments. Both Central and State Governments are empowered to fix and revise minimum wages for scheduled employments under their respective jurisdictions. Minimum wages are to be reviewed and revised periodically, at intervals not exceeding five years.

The minimum wage can include components like basic wages and a special allowance (Variable Dearness Allowance) linked to the Consumer Price Index, which is revised twice a year. The Act does not discriminate between male and female workers and applies equally to both. The Act also addresses overtime work, requiring employers to pay overtime wages at a rate not less than double the ordinary rate for hours exceeding the normal working day. The Act provides for the appointment of Inspectors to ensure compliance and penal provisions for non-compliance.

6.10 TEST YOUR KNOWLEDGE

1. What are the scope of minimum wages act 1948
2. Explain the objectives of the Minimum Wages Act, 1948
3. Discuss the features of the Minimum Wages Act, 1948
4. Explain the challenges in Implementing the Minimum Wages Act, 1948
5. What is the Impact of the minimum wages act 1948 in Industry

6.11 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethnamohan, R., Phi Learning.

UNIT-7

PAYMENT OF WAGES ACT, 1936

Unit Structure

- 7.1 Introduction
- 7.2 Learning Scope
- 7.3 Objectives of the Payment of Wages Act, 1936
- 7.4 Features of the Payment of Wages Act, 1936
- 7.5 Challenges in Implementing the Payment of Wages Act, 1936
- 7.6 Overcoming Challenges
- 7.7 Impact of the Act in Industry
- 7.8 Summary
- 7.9 Test your knowledge
- 7.10 Further Readings

7.1 INTRODUCTION

The Payment of Wages Act, 1936, is a crucial piece of Indian labour legislation that predates the Factories Act and Minimum Wages Act. It specifically focuses on regulating the **manner, periodicity, and deductions** related to wage payments, aiming to prevent arbitrary practices by employers.

The Payment of Wages Act, 1936: A Detailed Examination

Before the enactment of this Act, widespread malpractices existed in industries regarding the payment of wages. Workers often faced:

- **Irregular and delayed payments:** Wages were not paid consistently or on time.
- **Arbitrary and unauthorized deductions:** Employers would deduct amounts from wages for reasons not specified or justified.
- **Lack of transparency:** Workers had little clarity on how their wages were calculated or why deductions were made.

The **Royal Commission on Labour** (1929-1931) investigated these abuses and made recommendations, which eventually led to the promulgation of the Payment of Wages Act in 1936.

7.2 LEARNING SCOPE

Understanding the Payment of Wages Act, 1936, is vital for:

- **Employers/Managers/Occupiers:** To establish compliant payroll systems, adhere to wage payment schedules, and avoid illegal deductions and the associated legal consequences.
- **Payroll and Finance Professionals:** To accurately process wages, manage deductions, and maintain proper records in line with the Act.
- **Workers:** To know their rights regarding timely payment, permitted deductions, and avenues for redressal.

- **Trade Unions:** To advocate for workers' rights, identify non-compliance, and assist workers in filing claims.
- **Labour Inspectors and Enforcement Authorities:** To effectively monitor compliance, investigate complaints, and enforce the Act's provisions.
- **Legal Professionals:** For advising on wage-related matters, representing parties in disputes, and ensuring statutory adherence.

7.3 OBJECTIVES OF THE PAYMENT OF WAGES ACT, 1936

The primary objectives of the Act are:

1. **Regulate Wage Payments:** To establish clear rules regarding the payment of wages to certain classes of employed persons.
2. **Ensure Timely Payment:** To mandate that wages are paid within specified time limits after the expiry of the wage period.
3. **Prevent Unauthorized Deductions:** To restrict employers from making deductions from wages except for those specifically authorized by the Act.
4. **Eliminate Malpractices:** To curb exploitation by laying down rules for wage periods, time, and mode of payment.
5. **Provide Speedy Remedy:** To offer a quick and effective mechanism for workers to seek redressal in case of non-payment, delayed payment, or illegal deductions.
6. **Enhance Transparency:** To ensure clarity in wage calculations and deductions, thereby reducing disputes.

7.4 FEATURES OF THE PAYMENT OF WAGES ACT, 1936

The Act has several salient features:

Applicability:

- Applies to persons employed in **factories, railway establishments, and industrial or other establishments** as defined in the Act (e.g., tramway service, motor transport service, air transport service, docks, mines, quarries, oilfields, plantations, workshops, etc.).
- Initially, it applied to employees earning below a certain wage ceiling. This ceiling has been **periodically revised** (e.g., from Rs. 400 to Rs. 1600, then Rs. 6500, and is now subject to the wage ceiling under the Code on Wages, 2019).
- The **Central Government** enforces the Act in railways, mines, oilfields, and air transport services.
- **State Governments** enforce it in factories and other industrial establishments.

Responsibility for Payment (Section 3): The employer is primarily responsible. In factories, it can be the manager; in other establishments, the person designated or nominated by the employer. For contract labour, the contractor is responsible, and in case of their failure, the principal employer may become liable.

Fixation of Wage Periods (Section 4):

- The person responsible for wage payment must fix wage periods.

- **No wage period can exceed one month.** This means wages must be paid at least monthly (or weekly, fortnightly, etc.).

Time of Payment of Wages (Section 5):

- For establishments employing **less than 1000 persons**, wages must be paid before the expiry of the **7th day** after the last day of the wage period.
- For establishments employing **1000 or more persons**, wages must be paid before the expiry of the **10th day** after the last day of the wage period.
- For employees whose employment is terminated, their wages must be paid before the expiry of the **second working day** from the date of termination.

Mode of Payment (Section 6):

- Wages must be paid in **current coin or currency notes (cash)**.
- However, with the **written authorization of the employee**, wages can be paid by **cheque or by crediting the wages to their bank account**. This provision was added through amendments to facilitate digital payments.

Deductions from Wages (Section 7-13): This is a cornerstone of the Act, strictly limiting permissible deductions. No other deductions can be made. Permitted deductions include:

Fines (Section 8): Subject to strict conditions:

- Must be for acts or omissions specified in a notice displayed in the workplace.
- Cannot exceed 3% of the wages payable for the wage period.
- No fine on persons under 15 years of age.
- Cannot be recovered by installments or after 60 days from imposition.
- All fines collected must be utilized for the benefit of the employed persons.

Deductions for Absence from Duty (Section 9): Proportionate to the period of absence.

Deductions for Damage or Loss (Section 10): Must be directly attributable to the employee's neglect or default, and accepted by the employee or proved.

Deductions for House Accommodation/Amenities (Section 11): If provided by the employer.

Recovery of Advances/Loans (Section 12): Subject to specific rules.

- **Deductions for Income Tax, Provident Fund, ESI, Cooperative Societies, Insurance Premiums, Court Orders:** These are generally statutory or authorized deductions.

Maintenance of Registers and Records (Section 18): Employers are required to maintain prescribed registers and records of wages, deductions, etc.

Inspectors (Section 14): Appointment of Inspectors with powers to enter, inspect, examine records, and question persons to ensure compliance.

Claims and Penalties (Sections 15-22):

- A worker (or a trade union, or an Inspector) can file a claim for non-payment, delayed payment, or illegal deductions before a designated authority (e.g., Labour Commissioner).
- The authority can direct the employer to pay the withheld amount and compensation (up to ten times the delayed amount in some cases).

- Penalties for contravention include fines and, in some cases, imprisonment.

7.5 CHALLENGES IN IMPLEMENTING THE PAYMENT OF WAGES ACT, 1936

- **Informal Sector Evasion:** The Act's effective enforcement is challenging in the vast unorganized/informal sector where employment relations are less formalized, records are poorly kept, and workers lack awareness or bargaining power.
- **Low Awareness Among Workers:** Many workers, especially migrants and those in rural areas, are unaware of their rights regarding timely payment and permissible deductions, making them vulnerable to exploitation.
- **Weak Enforcement Machinery:** Shortage of labour inspectors, inadequate resources, and limited powers can hinder effective monitoring and proactive identification of violations.
- **Delayed Grievance Redressal:** While the Act provides for a speedy remedy, the actual process of filing claims, hearings, and recovery can still be time-consuming and cumbersome, especially for workers who cannot afford legal assistance or prolonged absence from work.
- **Employer Reluctance to Comply:** Some employers, particularly those focused on cost-cutting, may deliberately delay payments or make unauthorized deductions, counting on workers' inability or unwillingness to report.
- **Record Keeping Deficiencies:** Poor or fraudulent record-keeping by employers makes it difficult for inspectors to verify compliance and for workers to prove their claims.
- **Complexity of Deductions:** While the Act lists permissible deductions, their practical application can still be complex, leading to disputes over the validity or calculation of certain deductions (e.g., for damage/loss).
- **Digital Payment Adoption Challenges:** While the Act allows digital payments, workers in remote areas or those without bank accounts might still face challenges, and cash payments continue in many informal settings, which are harder to track.
- **Integration with Newer Codes:** With the advent of the Code on Wages, 2019 (which aims to subsume this Act), there might be initial challenges in transitioning and ensuring seamless understanding and implementation of the new consolidated framework.

7.6 OVERCOMING CHALLENGES

Enhanced Awareness and Education:

- Launch widespread campaigns through local languages, community radio, and digital media to educate workers about their rights and the complaint mechanism.
- Develop simple, illustrative guides on wage payment rules and permissible deductions for both employers and employees.
- Strengthening Enforcement:
- Increase the number of labour inspectors and provide them with modern tools (e.g., mobile apps for inspections, digital record-keeping).
- Implement data analytics to identify potential non-compliance hotspots for targeted inspections.

- Ensure strict and timely prosecution of violators to create a deterrent effect.

Streamlining Grievance Redressal:

- Establish dedicated, easily accessible, and worker-friendly online and offline complaint portals.
- Introduce fast-track mechanisms for resolving wage-related disputes.
- Provide legal aid and support services for vulnerable workers to pursue their claims.

Promoting Digital Transactions:

- Encourage and facilitate universal bank account opening for all workers.
- Promote digital payment of wages, as it offers a clear audit trail and reduces opportunities for malpractices.
- Provide incentives for employers to transition to digital payment systems.

Simplifying Compliance for SMEs:

- Offer simplified compliance toolkits and online resources specifically for small businesses.
- Conduct workshops for employers on maintaining proper wage records and understanding permissible deductions.

Regular Audits and Inspections: Implement a robust system of scheduled and surprise audits to ensure adherence to wage payment timelines and deduction rules.

Harmonization with New Labour Codes: Ensure a smooth transition to the Code on Wages, 2019, by clearly communicating the changes, providing training, and ensuring that the spirit of protection enshrined in the 1936 Act is maintained and strengthened.

Leveraging Technology: Use blockchain for immutable wage records, AI for anomaly detection in payroll data, and mobile apps for workers to report issues directly.

7.7 IMPACT OF THE ACT IN INDUSTRY

The Payment of Wages Act, 1936, has had a profound and generally positive impact on Indian industry:

- **Ensured Wage Security:** Its primary impact has been to provide a crucial legal framework that ensures workers receive their earned wages regularly and without arbitrary cuts, bringing a degree of financial stability to the working class.
- **Reduced Exploitation:** By strictly regulating deductions and payment timelines, the Act significantly curtailed the exploitative practices prevalent before its enactment, where employers could arbitrarily fine workers or withhold wages.
- **Improved Industrial Relations:** Timely and fair wage payments are fundamental to good labour relations. The Act contributes to greater trust between employers and employees, reducing disputes related to non-payment or delayed wages.
- **Standardization of Payroll Practices:** It compelled industries to formalize their payroll systems, adopt defined wage periods, and maintain proper records, leading to greater transparency and accountability in wage administration.
- **Defined Employer Liabilities:** The Act clearly delineates the employer's responsibility for wage payments, making them legally accountable for compliance.

- **Catalyst for Formalization:** The stringent requirements for record-keeping and formal payment procedures encourage industries to move towards more formalized employment practices, even if slowly.
- **Increased Productivity and Morale:** Workers who are assured of timely and full payment are likely to have higher morale, be less stressed about finances, and potentially exhibit higher productivity.
- **Legal Recourse for Workers:** It provided workers with a powerful legal tool to seek redressal for wage-related grievances, which was previously difficult or impossible.
- **Administrative Burden:** For some industries, especially SMEs and those in the informal sector, adhering to all the procedural requirements, maintaining detailed records, and managing the complexities of deductions can be an administrative burden and cost.
- **Influence on Future Legislation:** The principles established by the Payment of Wages Act have heavily influenced subsequent labour legislation in India, including the Minimum Wages Act and the more recent Code on Wages, demonstrating its foundational importance.

In essence, the Payment of Wages Act, 1936, established fundamental principles of wage administration, moving India's industrial landscape towards fairer and more transparent labour practices, significantly improving the economic security of millions of workers. Its core tenets continue to be relevant and form the basis of modern wage regulation in the country.

7.8 SUMMARY

The Payment of Wages Act, 1936, regulates the payment of wages to certain classes of employed persons and aims to prevent malpractices by ensuring timely and authorized wage disbursement. It outlines procedures for wage periods, time and mode of payment, and permissible deductions. The Act also provides a mechanism for addressing complaints related to wage deductions or delays. The Act applies to employees in factories, railways (including those employed by contractors), and other specified industrial or other establishments. The Act defines "wages" broadly to include all forms of remuneration, including salaries, allowances, and other monetary benefits. The Act mandates the payment of wages within a specified timeframe, typically within a certain number of days after the end of the wage period. It regulates deductions from wages, allowing them only for specific purposes like fines, damages, or other authorized deductions. The Act outlines the procedure for imposing fines, requiring prior approval from a designated authority and limiting the amount of the fine to a percentage of the wages. It provides a mechanism for employees to file claims for delayed wages or unauthorized deductions with an Authority appointed under the Act. The Act specifies penalties for employers who violate its provisions.

In essence, the Payment of Wages Act, 1936, is a crucial piece of legislation that safeguards the rights of workers by ensuring fair and timely payment of their wages and preventing arbitrary deductions.

7.9 TEST YOUR KNOWLEDGE

1. What are the objectives of the Payment of Wages Act, 1936
2. Explain the features of the Payment of Wages Act, 1936
3. What are the challenges in Implementing the Payment of Wages Act, 1936

4. Discuss the measures for overcoming Challenges in Payment of Wages Act, 1936
5. Discuss the impact of the Payment of Wages Act, 1936 on Industry

7.10 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethnamohan, R., Phi Learning.

UNIT-8

THE PAYMENT OF BONUS ACT, 1965

Unit Structure

- 8.1 Introduction
- 8.2 Relevance:
- 8.3 Learning Scope
- 8.4 Objectives of the Payment of Bonus Act, 1965
- 8.5 Features of the Payment of Bonus Act, 1965
- 8.6 Challenges in Implementing the Payment of Bonus Act, 1965
- 8.7 Overcoming Challenges
- 8.8 Impact of the Act in Industry
- 8.9 Summary
- 8.10 Test Yourself
- 8.11 Further Readings

8.0 OBJECTIVE OF UNIT

After reading this unit you will be able to understand the following

- Relevance and scope of the Payment of Bonus Act, 1965
- Features and challenges in implementing the payment of wages act 1965
- Strategies to overcome challenges in imp[lamenting the payment of bonus act 1965

8.1 INTRODUCTION

The Payment of Bonus Act, 1965, is a significant piece of social welfare legislation in India that aims to provide for the payment of bonus to persons employed in certain establishments, based on the profits or production/productivity of the establishment. It signifies a shared prosperity model between employers and employees.

The Payment of Bonus Act, 1965: A Comprehensive Guide

The concept of "bonus" in India has evolved over time, transitioning from an ex-gratia payment (a voluntary payment by an employer) to a statutory right. Before the Act, bonus payments were often a source of industrial disputes, leading to strikes and unrest. The **Bonus Commission** (1961) was set up to streamline the issue, and its recommendations largely formed the basis for the Payment of Bonus Act, 1965.

8.2 RELEVANCE

- **Industrial Harmony:** The Act aims to reduce disputes over bonus payments by providing a clear, statutory framework, thus fostering industrial peace and good employer-employee relations.

- **Social Justice:** It embodies the principle of social justice by ensuring that employees, who contribute to the generation of profits, get a share in the prosperity of the establishment.
- **Employee Motivation:** Guaranteed bonus payments can significantly boost employee morale, loyalty, and motivation, leading to increased productivity and efficiency.
- **Income Supplement:** For many employees, especially those in lower wage brackets, the annual bonus provides a crucial additional income that helps improve their standard of living.
- **Legal Certainty:** It provides legal certainty to both employers and employees regarding their rights and obligations concerning bonus payments.

8.3 LEARNING SCOPE

Understanding the Payment of Bonus Act, 1965, is crucial for:

- **Employers (including HR, Finance, and Legal teams):** To correctly calculate, disburse, and account for bonus payments, ensure compliance, and avoid legal penalties.
- **Employees and Trade Unions:** To be aware of their eligibility, entitlement, calculation methods, and grievance redressal mechanisms regarding bonus.
- **Accountants and Auditors:** For accurate computation of allocable surplus and bonus, and for auditing compliance.
- **Labour Authorities (Inspectors, Conciliation Officers, Tribunals):** For enforcing the Act, mediating disputes, and adjudicating claims.
- **Students of Labour Law and Industrial Relations:** To gain insight into welfare legislation, profit-sharing models, and their impact on industrial dynamics.

8.4 OBJECTIVES OF THE PAYMENT OF BONUS ACT, 1965

The primary objectives of the Act are:

- **To Impose a Statutory Obligation:** To make it a legal requirement for certain employers to pay a bonus to their employees.
- **To Define Minimum and Maximum Bonus:** To specify the minimum (8.33%) and maximum (20%) percentage of bonus payable, regardless of profit in some cases (minimum bonus).
- **To Lay Down Formula for Calculation:** To provide a standardized formula for calculating "available surplus" and "allocable surplus" based on the establishment's profits, ensuring transparency and uniformity.
- **To Link Bonus with Profit/Productivity:** To establish a connection between the bonus paid and the profits earned or production/productivity achieved by the establishment.
- **To Provide Dispute Resolution Mechanism:** To outline procedures for resolving disputes related to bonus payments.
- **To Bridge the Gap:** To bridge the gap between actual wages paid and the concept of a living wage by providing additional remuneration.

8.5 FEATURES OF THE PAYMENT OF BONUS ACT, 1965

The Act has several key features:

- **Applicability (Section 1):**
 - Applies to every **factory** and every other **establishment** in which **20 or more persons** are employed on any day during an accounting year.
 - State governments can extend it to establishments employing **10 to 19 persons** with prior notification.
 - Once the Act applies to an establishment, it continues to apply even if the number of employees falls below the threshold.
 - Certain establishments are exempted (e.g., LIC, RBI, universities, hospitals, institutions not established for profit, etc.).
- **Eligibility for Bonus (Section 8):**
 - Every employee earning a salary or wage up to ¹ 21,000 per month (amended in 2015 from ¹ 10,000).
 - Must have worked for at least 30 working days in the accounting year.
 - Includes all types of employees (skilled, unskilled, manual, supervisory, managerial, administrative, technical, clerical, contract labour if they meet criteria). Apprentices are not eligible.
- **Disqualification for Bonus (Section 9):** An employee can be disqualified if dismissed for:
 - Fraud
 - Riotous or violent behavior on the premises of the establishment
 - Theft, misappropriation, or sabotage of any property of the establishment
- **Minimum Bonus (Section 10):**
 - Every employer is bound to pay a minimum bonus of **8.33% of the salary or wage earned by the employee during the accounting year**, or ¹ 100 (or ¹ 60 for employees below 15 years), **whichever is higher**.
 - This minimum bonus is payable *even if the employer has no allocable surplus or incurs losses* in the accounting year.
- **Maximum Bonus (Section 11):**
 - Where the allocable surplus exceeds the amount of minimum bonus, the employer must pay a higher bonus, but it cannot exceed **20% of the salary or wage** of the employee in that accounting year.
- **Calculation of Bonus (Section 12):**
 - For employees whose salary or wage **exceeds ¹ 7,000 per month** (or the minimum wage for the scheduled employment, whichever is higher, amended in 2015 from ¹ 3,500), the bonus payable is calculated **as if their salary or wage was ¹ 7,000 per month (or the minimum wage, whichever is higher)**. This acts as a capping for bonus calculation.

- "Salary or wage" for bonus calculation generally includes basic pay and dearness allowance (DA). Other allowances like HRA, overtime, etc., are excluded.
- **Computation of Gross Profits and Available Surplus (Sections 4 & 5, Schedule I & II):**
 - The Act provides detailed schedules and formulas for calculating "gross profits" and then "available surplus" (the amount from which bonus can be paid) by deducting various items like direct taxes, depreciation, and return on capital.
- **Set On and Set Off (Section 15):**
 - **Set On:** If the allocable surplus in an accounting year exceeds the maximum bonus (20%), the excess amount is carried forward to the next accounting year for up to 4 years to be "set on" for future bonus payments.
 - **Set Off:** If there is no sufficient allocable surplus to pay the minimum bonus (8.33%), the deficit is carried forward to the next accounting year for up to 4 years to be "set off" against future surplus. This ensures the continuous payment of minimum bonus even in loss-making years.
- **Time Limit for Payment (Section 19):** Bonus must be paid within **eight months** from the close of the accounting year. This period can be extended by the appropriate government on application, but not exceeding two years. In case of a dispute, it should be paid within one month of the settlement/award becoming enforceable.
- **Maintenance of Registers and Records (Section 26):** Employers are required to maintain prescribed registers and records related to bonus computation and payment (Form A, B, C under Bonus Rules).
- **Offences and Penalties (Section 28):** Non-compliance with the Act's provisions can lead to imprisonment (up to 6 months) or fines (up to ¹ 1,000), or both.

8.6 CHALLENGES IN IMPLEMENTING THE PAYMENT OF BONUS ACT, 1965

Complexity of Calculation: The formulas for calculating "gross profits," "available surplus," and "allocable surplus" are complex, requiring detailed accounting and can be a challenge for smaller establishments lacking dedicated finance teams.

Increased Financial Burden (for some industries): The mandate to pay a minimum bonus of 8.33% even in loss-making years can place a significant financial burden on new establishments or those facing economic downturns, especially for SMEs.

Ambiguity in "Salary or Wage" Definition (pre-Code): While the Act specifies what's included (basic + DA), disputes often arise over what constitutes "salary or wage" for bonus calculation, particularly for variable pay components.

Enforcement Gaps: Similar to other labour laws, inadequate inspection machinery, lack of resources, and sometimes corruption can lead to non-compliance, particularly in the unorganized sector.

Disputes over Allocable Surplus: Even with prescribed formulas, employers and employees (often through unions) can dispute the computation of profits and available surplus, leading to industrial unrest.

Retrospective Amendments: Past amendments, particularly those increasing the eligibility and calculation ceilings with retrospective effect (e.g., 2015 amendment), have caused significant financial strain and legal challenges for employers.

Impact on New Businesses: The obligation to pay minimum bonus from the first accounting year (unless specific exemptions apply) can hinder the growth of startups and new ventures, which often operate on thin margins initially.

Industrial Dispute Proneness: Despite the Act, bonus remains a frequent subject of industrial disputes, especially when expectations exceed the statutory maximum or when profit sharing is perceived as unfair.

8.7 OVERCOMING CHALLENGES

Simplification and Digitization:

- Simplify the bonus calculation formulas or provide user-friendly online tools and calculators for employers.
- Promote digital record-keeping and online submission of bonus-related returns to reduce administrative burden.

Awareness and Training:

- Conduct widespread awareness campaigns for both employers and employees on the Act's provisions, calculation methods, and grievance redressal.
- Provide training for HR professionals and accountants on compliant bonus calculation and payment.

Strengthening Enforcement and Dispute Resolution:

- Increase the number of labour inspectors and provide them with better training, technology, and powers.
- Establish dedicated fast-track mechanisms for resolving bonus-related disputes.
- Encourage transparent disclosure of financial performance to reduce disputes over surplus calculation.

Addressing Financial Burden for SMEs/New Businesses:

- Consider specific incentive schemes or temporary relaxations for new businesses or MSMEs facing genuine financial distress, possibly through government support.
- Promote easier access to financial and compliance advisory services for these entities.

Clarity on "Salary or Wage" and Amendments:

- Provide clear official guidelines and FAQs on what constitutes "salary or wage" for bonus calculation under different scenarios.
- Ensure that future amendments are prospective in nature to avoid retrospective financial shocks to businesses.

Promoting Productivity-Linked Bonus: While the Act mandates profit-based bonus, industries can also implement separate productivity-linked bonus schemes (within the overall 20% limit or as *ex-gratia* beyond it, if permitted) to foster a direct link between effort and reward.

Integration with Labour Codes: The **Code on Wages, 2019**, aims to subsume the Payment of Bonus Act. A smooth transition with clear rules, comprehensive guidelines, and adequate time for adaptation will be crucial to mitigate challenges during this shift.

8.8 IMPACT OF THE ACT IN INDUSTRY

The Payment of Bonus Act, 1965, has had a profound impact on the Indian industrial landscape:

- **Stabilized Industrial Relations:** By providing a legal framework for bonus payments, the Act significantly reduced the frequency and intensity of bonus-related industrial disputes, contributing to a more stable labour environment.
- **Increased Labour Costs:** For many industries, especially those that previously did not pay bonuses or paid lower amounts, the Act introduced a statutory liability, increasing their labour costs. This has implications for pricing, competitiveness, and profitability.
- **Shift in Wage Structure:** The Act implicitly influenced wage negotiations, as bonus became a guaranteed component of total remuneration for eligible employees, separate from their basic pay and allowances.
- **Encouraged Formalization:** The requirement to maintain detailed financial records and adhere to a statutory bonus calculation process encouraged greater formalization of accounting and payroll practices within establishments.
- **Impact on Profit Distribution:** It mandated a sharing of profits (or at least a minimum payment) with employees, affecting the allocable profits available for reinvestment or shareholder dividends.
- **Employee Morale and Productivity:** By ensuring a share in prosperity, the Act generally boosted employee morale, fostering a sense of belonging and motivating workers to contribute to the establishment's success.
- **Challenges for New/Loss-Making Units:** For new businesses or those undergoing financial difficulties, the compulsory minimum bonus payment can be a significant burden, potentially impacting their viability and growth.
- **Inter-Industry and Inter-Region Variations:** While the Act provides a national framework, the actual bonus outgo can vary significantly between industries and regions due to differences in profitability, wage structures (especially after the ₹7,000 calculation ceiling), and interpretation of the rules.
- **Compliance Burden:** For HR and finance departments, ensuring compliance involves complex calculations, meticulous record-keeping, and adherence to payment timelines.
- **Litigation:** Despite its aim, the Act still leads to litigation, primarily concerning eligibility, calculation of allocable surplus, and disputes over disqualification.

8.9 SUMMARY

In summary, the Payment of Bonus Act, 1965, is a cornerstone of India's social security legislation, establishing a fundamental right to bonus for eligible employees. While it has undoubtedly contributed to industrial peace and worker welfare, its implementation continues to present challenges that require ongoing adaptation and effective enforcement strategies, particularly in light of the evolving economic landscape and the new Labour Codes.

8.10 TEST YOURSELF

1. Explain the relevance of Payment of Bonus Act, 1965
2. What are the main objectives of the Payment of Bonus Act, 1965
3. Discuss the salient features of the Payment of Bonus Act, 1965
4. What are the challenges in Implementing the Payment of Bonus Act, 1965
5. How to overcoming challenges faced in implementation of Payment of Bonus Act, 1965
6. Discuss the impact of the Payment of Bonus Act, 1965 on Industry

8.11 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethinamohan, R., Phi Learning.

UNIT-9

THE CONTRACT LABOUR (REGULATION AND ABOLITION ACT, 1970)

Unit Structure

- 9.1 Introduction
- 9.2 Benefits the contract labour (regulation and abolition) act, 1970
- 9.3 Process of the contract labour (regulation and abolition) act, 1970
- 9.4 Contract labour (regulation and abolition) act, 1970 amendments 2020
- 9.5 Cases and some examples
- 9.6 Summary
- 9.7 Test your knowledge
- 9.8 Further readings

9.0 OBJECTIVE OF THIS UNIT

After going through this unit, one may be able to understand about the contract labour act 1970, Benefits and process of contract labours act 1970. With suitable examples and some cases study.

9.1 INTRODUCTION

The Contract Labour (Regulation and Abolition) Act, 1970, regulates the employment of contract labour in certain establishments and provides for its abolition in specific circumstances. It aims to protect contract workers by ensuring they receive certain basic facilities and benefits, and to regulate the conditions under which contract labour is employed.

Key Provisions of the Act:

- **Applicability:** The Act applies to establishments employing 20 or more contract labourers and contractors employing 20 or more contract labourers.
- **Registration and Licensing:** It mandates registration of establishments that employ contract labour and licensing of contractors who supply such labour.
- **Advisory Boards:** The Act provides for the constitution of Central and State Advisory Boards to advise the concerned governments on matters related to the Act.
- **Abolition of Contract Labour:** The Act allows for the abolition of contract labour in certain processes, operations, or employments if it is deemed necessary.
- **Welfare Measures:** Principal employers are required to ensure that contract labourers receive basic amenities like canteens, restrooms, and first aid facilities.
- **Payment of Wages:** Contractors are responsible for the payment of wages to contract labourers, and the principal employer is liable to ensure payment if the contractor fails to do so.

- **Penalties for Non-compliance:** The Act prescribes penalties, including fines and imprisonment, for violations of its provisions.
- **Licensing of Contractors:** Contractors must obtain a license to employ contract labour, and this license may include conditions related to working hours, wages, and other amenities.
- **Registration of Establishments:** Establishments employing contract labour need to register with the appropriate authorities.
- **Inspections:** The Act empowers labour inspectors to conduct inspections to ensure compliance with its provisions.

9.2 BENEFITS THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

The Contract Labour (Regulation and Abolition) Act, 1970, aims to protect contract workers by regulating their employment and working conditions, and to abolish the contract labour system in certain situations. Key benefits include preventing worker exploitation, ensuring fair wages and benefits, and promoting safe working conditions.

Detailed Benefits:

- **Protection from Exploitation:** The Act provides a legal framework to prevent the exploitation of contract labourers by employers and contractors.
- **Fair Wages and Benefits:** It ensures that contract workers receive wages and other benefits that are comparable to those of regular employees in similar roles.
- **Improved Working Conditions:** The Act mandates that contract workers be provided with safe and healthy working conditions, including access to basic amenities.
- **Regulation of Contract Labour:** It regulates the employment of contract labour in certain establishments, ensuring that they are not used for work of a perennial nature or work that should be done by regular employees.
- **Abolition of Contract Labour:** The Act provides for the abolition of contract labour in certain establishments where it is deemed appropriate, leading to the absorption of contract workers into the regular workforce.
- **Establishment of Advisory Boards:** The Act provides for the establishment of advisory boards to advise the government on matters related to the implementation of the Act.
- **Registration and Licensing:** The Act mandates the registration of establishments employing contract labour and the licensing of contractors to ensure accountability.
- **Penalties for Violations:** It provides for penalties for employers and contractors who violate the provisions of the Act.

9.3 PROCESS OF THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

The Contract Labour (Regulation and Abolition) Act, 1970, aims to regulate and potentially abolish contract labour in certain establishments. The process involves registration of establishments, licensing of contractors, and the establishment of Advisory Boards to advise on implementation and abolition of the contract labour system.

Here's a breakdown of the process:

1. **Applicability:** The Act applies to establishments employing 20 or more contract labourers and to contractors employing 20 or more contract labourers.
2. **Registration of Establishments:** Establishments covered by the Act must register with the registering officer appointed by the appropriate government.
3. **Licensing of Contractors:** Contractors who employ contract labour must obtain a license from the licensing officer.
4. **Conditions for Licensing:** Licenses have conditions related to working hours, wage fixation, and provision of amenities to contract labourers.
5. **Advisory Boards:** Central and State Advisory Boards are constituted to advise the respective governments on matters related to the administration of the Act and the abolition of contract labour.
6. **Abolition of Contract Labour:** The appropriate government can prohibit the employment of contract labour in certain categories of work or establishments.
7. **Obligations of Principal Employer:** If the contractor fails to pay wages, the principal employer is liable to pay the wages and can recover it from the contractor.
8. **Temporary Registration/Licensing:** Temporary certificates of registration or licenses can be issued for work that is expected to be completed within 15 days and cannot be delayed.
9. **Absorption of Contract Labour:** In some cases, contract labourers may be absorbed as regular employees upon abolition of the contract labour system in specific establishments.

9.4 CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 AMENDMENTS 2020

The Contract Labour (Regulation and Abolition) Act, 1970, has not been significantly amended in 2020. However, some states, like Punjab, have introduced ordinances to amend the Act. These amendments often focus on streamlining the registration process, increasing penalties for violations, and expanding the coverage of the Act.

Key Points:

No Central Government Amendments in 2020: The central government has not made any significant amendments to the Contract Labour Act in 2020.

State-Level Amendments: Some state governments have introduced ordinances to amend the Act, such as Punjab's Contract Labour (Regulation and Abolition) (Punjab Amendment) Ordinance, 2020.

Focus on Simplification and Increased Penalties: The amendments generally aim to simplify the registration process for establishments and contractors, increase penalties for violations, and broaden the scope of the Act to cover more sectors and industries.

Punjab Amendment Highlights: The Punjab ordinance increased the applicability threshold to establishments employing 50 or more contract labourers, up from the previous 20.

Focus on Reducing Administrative Burden: Recent amendments, whether at the central or state level, generally aim to reduce the administrative burden on businesses while improving the protection of contract labourers.

No Major Changes to Core Principles: The core principles of the Act, such as regulating contract labour and providing for its abolition in certain cases, remain in place.

No Major changes to Core Principles: The core principles of the Act, such as regulating contract labour and providing for its abolition in certain cases, remain in place.

9.5 CASES AND SOME EXAMPLES

The Contract Labour (Regulation and Abolition) Act, 1970, aims to regulate the employment of contract labour and, where appropriate, abolish it. Several cases demonstrate its application and interpretation. For example, in *BHEL Workers Assn. v. Union of India*, it was established that contract labourers are entitled to the same wages and working conditions as direct employees. In *Sirpur Paper Mills Ltd. v. Commr. of Labour*, the court upheld the Act's purpose of controlling labour supply and preventing exploitation. Other cases address issues like the regularization of contract labour, like *Sankaran Mukherjee v. UOI* and *R.K. Panda v. SAIL*, where the courts directed absorption of contract workers into the principal employer's workforce.

Here's a more detailed look at how the Act and related cases apply:

1. **Regulation and Registration:** The Act requires registration of establishments employing contract labour and licensing of contractors. For example, in *Vanita Chemicals Limited*, the canteen, though run by a contractor, was registered under the Act.
2. **Abolition and Absorption:** The Act empowers the "appropriate government" to abolish contract labour in certain circumstances, and in such cases, the contract workers may be absorbed into the principal employer's workforce. Cases like *Sankaran Mukherjee v. UOI* and *R.K. Panda v. SAIL* highlight this aspect.
3. **Equal Wages and Working Conditions:** The Act mandates that contract labourers should receive wages and benefits at par with directly employed workers in similar roles. The case of *BHEL Workers Assn. v. Union of India* specifically addresses this.
4. **Contractor Responsibilities:** The Act outlines the responsibilities of contractors, including providing amenities like canteens, restrooms, and first-aid facilities.
5. **Enforcement and Penalties:** The Act provides for penalties for violations, including imprisonment and fines.

Examples of Cases:

- 1 **BHEL Workers Assn. v. Union of India:** Established the principle of equal wages and working conditions for contract labour.
- 2 **Sirpur Paper Mills Ltd. v. Commr. of Labour:** Upheld the Act's goal of controlling labour supply and preventing exploitation.
- 3 **Sankaran Mukherjee v. UOI and R.K. Panda v. SAIL:** Directed the absorption of contract workers into the principal employer's workforce in certain situations.
- 4 **Vanita Chemicals Limited:** Illustrates the registration of a canteen contract under the Act.

- 5 **Gujarat Electricity Board v. Hind Mazdoor Sabha:** Clarified that only the appropriate government can abolish contract labour.
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9.6 SUMMARY

The Contract Labour (Regulation and Abolition) Act, 1970, aims to regulate the employment of contract labour in certain establishments and to provide for its abolition in specific circumstances. It seeks to protect contract workers from exploitation and ensure they have decent working conditions. The Act applies to establishments employing 20 or more contract labourers and to contractors employing 20 or more contract labourers.

The Act does not apply to establishments where work is of a casual or intermittent nature or where work is performed for less than a specified duration in a year (e.g., less than 120 days for intermittent work, less than 60 days for seasonal work).

In essence, the Act strives to balance the needs of businesses with the rights and welfare of contract workers, promoting fair labour practices and preventing exploitation within the contract labour system.

9.7 TEST YOUR KNOWLEDGE

- 1 What are the provisions given in the contract labour (regulation and abolition) act, 1970
 - 2 Explain the benefits the contract labour (regulation and abolition) act, 1970
 - 3 Discuss the process of the contract labour (regulation and abolition) act, 1970
 - 4 State the amendments in 2020 made in the contract labour (regulation and abolition) act, 1970
 - 5 With some case examples state the usefulness of the contract labour (regulation and abolition) act, 1970
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9.8 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations and Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethnamohan, R., Phi Learning

BLOCK-IV LABOUR LEGISLATIONS-II

Block IV provides an in-depth exploration of critical protective labour legislations that reinforce social security and employment justice in India. This block covers five significant Acts: The Industrial Employment (Standing Orders) Act, 1946; the Apprentices Act, 1961; the Equal Remuneration Act, 1976; the Payment of Gratuity Act, 1972; and the Employee's Compensation Act, 1923. Each unit unpacks the legislative intent, statutory framework and procedural dimensions of these Acts, while also linking them to broader developments such as the Labour Codes, 2020.

Unit-8 focuses on the Industrial Employment (Standing Orders) Act, 1946, outlining its objectives, scope and the legal character of standing orders. It elaborates on the certification process, statutory enforceability and provisions related to subsistence allowance. The unit also examines evidentiary and penal mechanisms, rule making powers and judicial interpretations, especially in the context of alignment with the contemporary Labour Codes.

Unit-9 analyses the Apprentices Act, 1961, detailing its objectives, historical context and major amendments including the Apprenticeship Rules, 1991. It discusses key sections on definitions, contracts of apprenticeship (Sections 4–5), training standards (Sections 8–10) and enumerates the responsibilities of stakeholders, the authority structure and provisions for dispute resolution and penal action.

Unit-10 examines the Equal Remuneration Act, 1976, with emphasis on its purpose of ensuring wage parity and gender equity. It covers definitions, scope (Sections 2–3) and core provisions on equal remuneration (Section 4) and non-discriminatory recruitment practices (Section 5). The unit also includes roles of advisory committees, procedural aspects of claims (Sections 7–9) and enforcement mechanisms including penalties and state powers (Sections 10–17).

Unit-11 presents the Payment of Gratuity Act, 1972, explaining its relevance as a social security measure for long-term employment. It discusses applicability, eligibility conditions, calculation of gratuity, forfeiture clauses, exemptions, nomination procedures and the process for claim settlement and enforcement.

Finally, Unit-12 deals with the Employee's Compensation Act, 1923, highlighting its foundational role in occupational risk protection. It discusses objectives, legal definitions (Section 2), rights and duties of employers and employees, claims procedure and the structure of compensation benefits. The unit also includes regulatory and institutional aspects and concludes with a comparative overview of the original Workmen's Compensation Act and its significant amendment in 2017.

UNIT-10

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Unit Framework

- 10.1 Purpose
- 10.2 Objectives and Significance of the Act
- 10.3 Scope and Applicability
- 10.4 Concept and Legal Nature of Standing Orders
- 10.5 Certification Procedure
- 10.6 Legal Operation and Enforcement
- 10.7 Subsistence Allowance Provisions
- 10.8 Evidentiary and Penal Provisions
- 10.9 Rule Making Powers and Schedule Details
- 10.10 Judicial Trends and Harmonization with Labour Codes, 2020
- 10.11 Summary
- 10.12 Key Words
- 10.13 Self Assessment Question
- 10.14 References

10.1 PURPOSE

The objectives of this unit are:

- To discuss the scope and applicability, concept and legal nature of standing orders
- To discuss the certification procedure, legal operation and enforcement
- To explain the subsistence allowance provisions, evidentiary and penal provisions
- To discuss the rule making powers and schedule details, judicial trends and harmonization with labour codes, 2020

10.2 OBJECTIVES AND SIGNIFICANCE OF THE ACT

The Industrial Employment (Standing Orders) Act, 1946 was enacted to bring uniformity and legal structure to employment conditions across industrial establishments in India. By codifying service rules and mandating their certification, the Act aimed to foster transparency, protect worker rights and ensure procedural fairness in employment practices.

10.2.1 Key Legislative Objectives

- The **Industrial Employment (Standing Orders) Act, 1946** was enacted to provide statutory clarity and consistency in employment terms within industrial establishments. Its

legislative intent reflects a balanced approach towards protecting workers' rights while facilitating managerial efficiency.

- **Standardization of Employment Conditions:** Before the Act, service conditions were largely unwritten and varied across establishments, often leading to confusion and disputes. The Act mandated employers to frame and certify **Standing Orders** written rules governing essential aspects like work classification, hours, leave and termination. This uniformity enhanced both transparency and administrative efficiency.
- **Prevention of Unfair Labour Practices:** The Act acts as a safeguard against arbitrary actions such as unjust dismissal, vague misconduct charges, or discriminatory policies. By requiring that rules be certified by a competent authority and made known to workers, it ensures procedural fairness and legal accountability in workplace decisions.
- **Promotion of Industrial Peace and Stability:** Clearly defined service rules reduce misunderstanding and conflict. The institutional framework created by the Act fosters better employer employee relations, minimizes disputes and contributes to a more stable and productive industrial environment.

10.2.2 Significance For Industrial Relations

- The **Industrial Employment (Standing Orders) Act, 1946** holds a pivotal position in shaping the framework of industrial relations in India. It marked a significant shift from informal, employer dominated systems to legally enforceable and transparent employment relations. The Act's impact can be understood through three interrelated dimensions:
- **Enhancing Transparency in Service Terms:** The Act requires employers to codify and publicly display employment conditions such as worker classification, work hours, leave and disciplinary procedures through certified **Standing Orders**. This visibility ensures all workers are aware of their rights and duties, reduces ambiguity and curbs arbitrary decisions. As a result, it builds a foundation of mutual trust between employers and employees.
- **Legal Backing for Standing Orders:** Once certified under Section 5 and operational under Section 7, Standing Orders have the force of law. They override conflicting contract terms and provide legal certainty to employment practices. This legal backing protects employees from unfair treatment and also shields employers from disputes by establishing clear, enforceable protocols.
- **Foundation for Collective Bargaining Mechanisms:** Although the Act does not mandate collective bargaining, it supports it by encouraging dialogue during the certification process. This participatory approach enhances democratic decision making and lays the groundwork for more structured and equitable negotiations.

Overall, the Act has played a transformative role in institutionalizing fairness and clarity within industrial relations. Its statutory provisions continue to strengthen employer employee dynamics by promoting legal accountability, industrial peace and a conducive framework for collective engagement.

10.3 SCOPE AND APPLICABILITY

The scope and applicability of the Act are designed to ensure standardized employment conditions across a broad spectrum of industrial establishments. By defining the establishments,

stakeholders and exemptions under its purview, the Act brings regulatory clarity and extends legal safeguards to a wide section of the organized workforce.

1. **Industrial Establishments Covered:** As per **Section 1(3)** of the *Industrial Employment (Standing Orders) Act, 1946*, the Act applies to every industrial establishment where 100 or more workmen are employed or were employed on any day in the preceding 12 months. According to **Section 2(e)**, "industrial establishment" broadly includes factories, railways, transport services, mines, oilfields and plantations, among others. This wide coverage ensures that standing orders are enforced in diverse sectors where formal employment terms are essential. The Act empowers the appropriate government to extend its applicability to establishments with fewer workers through official notification.
2. **Workers and Employers Defined:** While the *Industrial Employment (Standing Orders) Act, 1946* does not define "workman" in its own terms, it adopts the definition from the **Industrial Disputes Act, 1947**, which includes any person employed in an industry to do manual, skilled, unskilled, technical, operational, or supervisory work, excluding managerial personnel. The term "**employer**", as per **Section 2(d)** of the Standing Orders Act, refers to the owner of the industrial establishment and includes any person responsible for its supervision and control. These definitions ensure clarity in the application of Standing Orders across varying levels of employment.
3. **Exemptions and Special Cases:** The *Industrial Employment (Standing Orders) Act, 1946* allows for certain exemptions under specific conditions. As per Section 13-B, the Act does not apply to employees in skilled or unskilled supervisory, managerial, or administrative roles in industrial establishments under the Central Government, including the defence sector. Additionally, state governments, such as Madhya Pradesh, have enacted their own rules to adapt or supplement the Act locally. The appropriate government may also issue temporary exemptions by notification, especially where equivalent service conditions already exist or alternative statutory frameworks apply.
4. **Appropriate Government Jurisdiction:** Jurisdiction under the Act is guided by **Section 2(b)**, which defines the "appropriate government." The key distinction lies in the use of "**control**" rather than just "authority," as interpreted in cases like *Heavy Engineering Mazdoor Union v. State of Bihar* (AIR 1970 SC 82). If the Central Government exercises direct functional or financial control over an establishment, it is deemed the appropriate government even if day to day operations is decentralized. This interpretation ensures that the correct authority handles certification, modification and enforcement of Standing Orders, reducing procedural ambiguity and enhancing administrative clarity.

In sum, the Act's comprehensive reach balanced by specified exemptions and jurisdictional clarity ensures its relevance across diverse industrial contexts. It not only institutionalizes uniformity but also empowers both central and state authorities to adapt its provisions for effective and context sensitive enforcement.

10.4 CONCEPT AND LEGAL NATURE OF STANDING ORDERS

Standing orders are codified employment terms mandated by law, ensuring discipline, clarity and procedural fairness in industrial establishments under the Industrial Employment (Standing Orders) Act, 1946.

10.4.1 Definition and Legal Character:

According to **Section 2(g)**, *Standing Orders* refer to the rules governing employment conditions such as classification, discipline, leave and termination. Once certified under **Section 5**, they acquire a **statutory character**, becoming binding on both employers and workers. In *Bagalkot Cement Co. Ltd. v. R.K. Pathan* (AIR 1963 SC 439), the Supreme Court affirmed that certified Standing Orders override conflicting contract terms, ensuring uniformity and legal enforceability. They are not merely administrative guidelines but have the force of law, offering a structured and fair framework for managing industrial employment relationships.

10.4.2 Legal Basis for Scheduled Subjects in Standing Orders

Scheduled Subject	Explanation	Related Act / Judicial Reference
Classification of Workmen	Defines categories like permanent, temporary, casual, apprentices, etc.	Schedule Item-1; Industrial Disputes Act, 1947; (Sec. 2(s))
Working Hours	Specifies daily work duration, shift arrangements and weekly rest.	Schedule Item-2; Factories Act, 1948; (Sec. 51–56)
Leave Rules	Lays down conditions for earned, casual and medical leave.	Schedule Item-4; Factories Act, 1948; (Sec. 79); Shops & Establishments Acts (State)
Misconduct	Lists what constitutes disciplinary breaches by employees.	Schedule Item-6; Judicial: <i>Glaxo Laboratories v. Labour Court</i> (1984 AIR 505)
Disciplinary Procedures	Details inquiry, charge sheet and appeal process in misconduct cases.	Principles of natural justice; <i>Sur Enamel v. Workmen</i> (1963 AIR 1914)
Termination and Suspension	Provides process and grounds for discharge, retrenchment, or suspension.	Schedule Items-7 & 8; ID Act; (Sec. 25F and Sec. 2(oo)); Standing Orders Act; (Sec. 10-A)
Grievance Redressal	Outlines how employees may raise and resolve complaints.	Schedule – Item 13; Model Standing Orders – Rule 14
Coal Mines Specific Rules	Includes rules on temporary stoppage, transfer and return from leave.	Schedule – Part II; Mines Act, 1952, Sec. 22; Model Standing Orders for Coal Mines

10.4.3 Binding Effect and Supremacy Over Private Contracts:

Certified Standing Orders, once approved under Section 5 of the Act, acquire a binding legal character and hold precedence over any inconsistent terms in individual employment contracts. This principle was firmly established in the landmark case *Western India Match Co. Ltd. v. Workmen* (AIR 1973 SC 2650), where the Supreme Court clarified that no private agreement can override the provisions of certified Standing Orders. Even pre existing service conditions that conflict with the certified orders become legally inoperative. This ensures that all employees within an establishment are governed by a uniform, transparent and legally enforceable set of rules, thereby promoting consistency, reducing disputes and upholding procedural fairness across the workforce.

10.5 CERTIFICATION PROCEDURE

The certification procedure under the Industrial Employment (Standing Orders) Act, 1946 ensures that Standing Orders are legally compliant, fair and representative of both employer and worker interests. Through a structured process involving submission, review and approval, the Act institutionalizes transparency and accountability in the formulation of service conditions.

- 1. Submission of Draft Standing Orders (Section 3):** As per Section 3, employers must submit draft Standing Orders within six months of the Act's applicability. The draft should cover all scheduled matters and include the number of workmen and trade union details, if any. Submitted to the Certifying Officer, this process ensures transparency, encourages worker involvement and establishes a consistent, legally binding framework for employment terms within the industrial establishment.
- 2. Certification Criteria (Section 4):** Under Section 4, the Certifying Officer must ensure that the draft Standing Orders include all relevant matters from the Schedule, conform to the model standing orders and are fair and reasonable to both employers and workers. The officer may suggest modifications to ensure alignment with legal standards. This process ensures that the certified orders are not only complete but also balanced, promoting equitable and transparent employment conditions across the establishment.
- 3. Procedure for Certification:** After receiving the draft, the Certifying Officer sends copies to trade unions or worker representatives, allowing 15 days for objections. A hearing is then conducted where both parties present their views. The officer examines the draft for completeness, fairness and conformity with legal standards. Based on this, the draft may be modified before certification, ensuring that the final Standing Orders are both just and legally enforceable.
- 4. Appeals and Appellate Authority (Section 6):** Under Section 6, employers or workers aggrieved by the Certifying Officer's decision can file an appeal within 30 days to the Appellate Authority. The Authority reviews the case and may confirm, modify, or reject the certification. Its decision is final and binding and the certified Standing Orders come into force 30 days after authentication, ensuring timely implementation and legal closure of the process.

In essence, the certification process safeguards procedural integrity by involving all stakeholders and allowing for objections and appeals. This not only reinforces legal enforceability but also promotes equitable industrial relations through participatory and just employment rule making.

10.6 LEGAL OPERATION AND ENFORCEMENT

The legal operation and enforcement of certified Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 establish their binding nature on both employers and employees. By providing statutory backing and clearly defined procedural steps, the Act ensures that these orders function as enforceable instruments regulating service conditions.

- 1. Effective Date of Operation (Section 7):** As per Section 7, certified Standing Orders come into effect 30 days after authentication by the Certifying Officer. However, if an appeal is filed, the operation is deferred and the orders take effect 30 days from the Appellate Authority's decision. This provision ensures both timely implementation and adequate opportunity for parties to seek review, balancing efficiency with procedural fairness.
- 2. Register and Public Display (Sec. 8 & 9):** Sections 8 and 9 mandate that certified Standing Orders be recorded in a register maintained by the Certifying Officer and made available for public inspection. Additionally, employers must display a copy prominently at the workplace in a language understood by the majority of workers. This ensures that all employees are aware of their service conditions, promotes transparency and enables both employers and workmen to adhere to the established legal framework without ambiguity.
- 3. Modification of Standing Orders (Sec. 10):** Under Section 10, Standing Orders can be modified only after six months from their certification or last modification. Any change requires submission of a draft to the Certifying Officer, following the same procedure as initial certification. However, if both employer and workmen mutually agree, modifications can be proposed earlier, ensuring flexibility while maintaining procedural fairness and legal oversight.

Thus, the enforceability of Standing Orders through timely activation, mandatory display and regulated modification strengthens procedural transparency and industrial discipline. These provisions collectively uphold the legal sanctity of employment norms and foster consistency in workplace governance.

10.7 SUBSISTENCE ALLOWANCE PROVISIONS

Subsistence allowance provisions aim to safeguard the livelihood of suspended employees during disciplinary proceedings. Section 10-A, introduced by the 1982 Amendment, codifies this protection within industrial law.

- 1. Introduction of Section 10-A (1982 Amendment):** Section 10-A, inserted through the 1982 Amendment, mandates payment of subsistence allowance to suspended employees during disciplinary inquiries. As per the clause, the allowance must be **50% of wages** for the **first 90 days and 75% thereafter**, if delays are not due to the workman. This ensures basic sustenance during suspension while promoting timely and fair inquiry proceedings in industrial establishments.
- 2. Dispute Resolution:** Disputes over subsistence allowance under Section 10-A fall within the Labour Court's jurisdiction as per the Industrial Disputes Act, 1947. Additionally, Article 21 of the Constitution safeguards the employee's right to livelihood and denial of allowance has been held unconstitutional in key judgments like *M. Paul Anthony v. Bharat Gold Mines Ltd.*

3. **Interaction with State Laws:** State laws offering better conditions like higher subsistence allowances or more protective procedures take precedence over central provisions under Article 254(2) of the Constitution. Courts, including in *Shahdara Railway Co. Case*, have upheld this approach. Such provisions reflect the principle of beneficial legislation, ensuring that the most favourable rules apply to the workmen, provided they have received Presidential assent where necessary.

The legal framework around subsistence allowance upholds both procedural fairness and constitutional rights. Judicial interpretations and state-level enhancements further reinforce its role as a measure of social justice.

10.8 EVIDENTIARY AND PENAL PROVISIONS

Evidentiary and penal provisions under the Act ensure the enforceability and procedural integrity of certified Standing Orders. They establish legal safeguards through defined powers, evidentiary rules and penalties for non-compliance.

10.8.1 POWERS OF CERTIFYING OFFICERS (SEC. 11): Under Section 11, the Certifying Officer holds powers equivalent to a Civil Court, including summoning witnesses, compelling document production and recording evidence on oath. These quasi judicial powers ensure that the certification process is conducted with procedural fairness, legal formality and accountability in all Standing Order matters.

10.8.2 ORAL EVIDENCE BAR (SEC. 12): Section 12 explicitly bars the use of oral evidence to contradict the terms of certified Standing Orders. Once approved, these orders carry statutory force and cannot be overridden by verbal agreements or claims. This ensures legal certainty and protects both employers and employees from disputes based on informal or unverifiable understandings.

10.8.3 PENAL PROVISIONS (SEC. 13): Section 13 of the Act outlines penalties to ensure compliance with certified Standing Orders. Key provisions include:

- Failure to submit Standing Orders or breach of certified provisions can result in a fine up to ₹ 5000, with an additional ₹ 200 per day for continued non-compliance.
- Prosecution requires prior sanction from the appropriate government, ensuring due legal oversight.
- Trials are conducted by a Metropolitan Magistrate or Judicial Magistrate First Class, affirming the seriousness of violations and reinforcing procedural integrity.

10.8.4 INTERPRETATION MECHANISM (SEC. 13-A): Section 13-A empowers either the employer or workman to approach the Labour Court for clarification on the application or interpretation of certified Standing Orders. This provides a specialised dispute resolution mechanism, ensuring quick, impartial and authoritative decisions without lengthy litigation, thereby strengthening trust and transparency in industrial employment relationships.

These provisions reinforce the statutory authority of Standing Orders and promote disciplined industrial governance. By ensuring accountability, they uphold the legal sanctity of employment regulations.

10.9 RULE MAKING POWERS AND SCHEDULE DETAILS

The Act empowers governments to frame rules and prescribe schedules that operationalize and standardize Standing Orders across industries. These provisions ensure legal uniformity while accommodating sector-specific employment practices.

1. **Rule Making Authority (Sec. 15):** Section 15 empowers the appropriate government to frame detailed rules for implementing the Act. These rules may cover the procedure for submitting and certifying Standing Orders, the prescribed forms and fees and issuance of Model Standing Orders for various industries. This delegated legislation ensures administrative flexibility, facilitates uniform enforcement and provides sector specific guidance in managing employment terms effectively.
2. **Detailed Schedule of Matters:** The Schedule outlines essential employment aspects like classification of workmen, working hours, leave rules and misconduct procedures. It also includes additional provisions for specific sectors such as coal mines, covering work stoppages and transfers. General industries may incorporate matters like retirement age, secrecy obligations and entry restrictions, ensuring sector specific clarity and comprehensive governance of service conditions.

Rule making and schedule details enhance administrative effectiveness and regulatory clarity. They serve as vital tools in promoting structured, fair and sector sensitive employment governance.

10.10 JUDICIAL TRENDS AND HARMONIZATION WITH LABOUR CODES, 2020

Judicial interpretations have consistently affirmed the binding and statutory nature of certified Standing Orders. Their harmonization with the Industrial Relations Code, 2020 reflects evolving labour jurisprudence and policy reforms.

10.10.1 Key Judicial Interpretations :

1. **Bagalkot Cement Co. Ltd. v. R.K. Pathan (AIR 1963 SC 439):** The Supreme Court held that certified Standing Orders, once approved, become statutory conditions of service. They are enforceable under law and not mere administrative rules, thus binding both employers and workmen uniformly.
2. **Western India Match Co. Ltd. v. Workmen (AIR 1973 SC 2650):** This case established that Standing Orders override inconsistent terms in appointment letters or service contracts. Private agreements cannot dilute certified provisions, affirming the primacy of Standing Orders in regulating service conditions.
3. **A.G. Mazdoor Sangh v. Indian Air Gases Ltd. (1977 I LLJ 529):** The Allahabad High Court held that non-compliance with certified Standing Orders especially regarding termination procedures renders an employer's action void. The decision reinforced the necessity for strict adherence to certified norms.

10.10.2 Alignment with Industrial Relations Code, 2020:

The Industrial Relations Code, 2020 consolidates the Industrial Employment (Standing Orders) Act, 1946 under Chapter IV, streamlining service condition governance. It raises the threshold to 300 workers for mandatory Standing Orders, offering greater flexibility to smaller units. The Code introduces Model Standing Orders applicable by default and expands scope to

include contract labour, promoting uniformity while balancing employer autonomy with worker protection in evolving employment landscapes.

The integration of judicial precedents with the 2020 Code enhances legal clarity and industrial harmony. It marks a shift toward streamlined, equitable and adaptive regulation of employment conditions.

10.11 SUMMARY

The *Industrial Employment (Standing Orders) Act, 1946* was introduced to standardize employment conditions and eliminate ambiguity in industrial establishments. It mandates the certification of Standing Orders legally binding rules outlining service conditions such as worker classification, working hours, leave policies, misconduct and disciplinary procedures. This statutory framework ensures procedural fairness, curbs arbitrary practices and fosters a harmonious industrial environment.

The Act plays a pivotal role in strengthening industrial relations by enhancing transparency and providing a statutory foundation for employment terms. Once certified under Section 5, Standing Orders hold the force of law, overriding inconsistent private contracts, as affirmed in *Western India Match Co.* and *Bagalkot Cement Co.* judgments. They also support collective bargaining by institutionalizing employee participation during certification.

Applicability under Section 1(3) covers establishments with 100+ workers, with the scope extended by appropriate governments when necessary. Key definitions, such as “workman” and “employer,” align with the Industrial Disputes Act, 1947. The certification process includes submission, hearing, appeal (Section 6) and public display (Sections 8 & 9). Section 10 governs modifications, while Section 10-A (1982 amendment) mandates subsistence allowance during suspension.

Enforcement provisions empower Certifying Officers with civil court powers (Section 11), restrict oral evidence (Section 12) and impose penalties under Section 13. Section 13-A allows Labour Courts to interpret disputes. The Schedule elaborates on essential and sector specific employment matters, ensuring comprehensive coverage.

Finally, with the enactment of the *Industrial Relations Code, 2020*, the Standing Orders Act has been merged under Chapter IV, raising the applicability threshold and introducing Model Orders to ensure uniformity, especially in establishments employing contract labour. The Act continues to serve as a cornerstone of fair, lawful and balanced employment governance in India’s industrial sector.

10.12 KEY WORDS

- **Standing Orders:** Statutorily certified rules defining employment conditions in industrial establishments.
- **Certifying Officer:** Government appointed authority empowered to approve, modify, or reject draft Standing Orders.
- **Model Standing Orders:** Government framed templates that apply by default where certified Standing Orders are absent.
- **Workman:** Defined under the Industrial Disputes Act; includes any person doing manual, skilled, or unskilled labour.

- **Subsistence Allowance:** Minimum monetary support payable to suspended workers during disciplinary inquiry (Sec. 10-A).
- **Industrial Establishment:** Includes factories, mines, plantations and other notified units under Sec. 2(e) of the Act.
- **Misconduct:** Acts or omissions by employees that justify disciplinary action, defined within certified Standing Orders.
- **Appellate Authority:** Higher legal authority designated to hear appeals against certification decisions under Sec. 6.

10.13 SELF ASSESSMENT QUESTIONS

- Q-1. What were the primary reasons for enacting the Standing Orders Act, 1946?
- Q-2. How do Standing Orders enhance transparency in employment conditions?
- Q-3. Why are certified Standing Orders legally stronger than informal agreements?
- Q-4. Which establishments are covered under Section 1(3) of the Act?
- Q-5. How did the Supreme Court define their binding nature in Bagalkot Cement case?
- Q-6. What matters are typically included in the Schedule of the Act?
- Q-7. Which Acts support the subjects like working hours and misconduct?
- Q-8. How do Standing Orders prevail over conflicting employment contract terms?
- Q-9. When and how must employers submit draft Standing Orders?
- Q-10. How must certified Standing Orders be displayed at the workplace?
- Q-11. What is the prescribed subsistence allowance under Section 10-A?
- Q-12. What quasi judicial powers are given to Certifying Officers under Section 11?
- Q-13. Why is oral evidence not admissible under Section 12?
- Q-14. What additional matters are listed for coal mines and general industry?
- Q-15. What key principle was upheld in A.G. Mazdoor Sangh case?
- Q-16. How does the IR Code, 2020 alter the scope of Standing Orders?

10.14 REFERENCES

- Srivastava, S. C. (1999). Industrial relations and labour laws (6th ed.). Vikas Publishing House.
- Seth, B. R. (n.d.). Indian labour laws a supervisor should know (11th ed.). All India Management Association (AIMA).
- Government of India. (1946). The Industrial Employment (Standing Orders) Act, 1946. Retrieved from <https://labour.gov.in>
- Government of India. (1947). The Industrial Disputes Act, 1947. Retrieved from <https://labour.gov.in>
- Government of India. (1948). The Factories Act, 1948. Retrieved from <https://labour.gov.in>
- Government of India. (1952). The Mines Act, 1952. Retrieved from <https://labour.gov.in>

- Government of India. (2020). The Code on Industrial Relations, 2020. Retrieved from <https://labour.gov.in>
- Ministry of Labour and Employment. (1946). Model Standing Orders under the Industrial Employment (Standing Orders) Central Rules, 1946. Retrieved from <https://labour.gov.in>
- Bagalkot Cements Co. Ltd. v. R.K. Pathan, AIR 1963 SC 439.
- Western India Match Co. Ltd. v. Workmen, AIR 1973 SC 2650.
- A.G. Mazdoor Sangh v. Indian Air Gases Ltd., 1977 I LLJ 529 (All).
- Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut, & Others, AIR 1984 SC 505.
- Sur Enamel and Stamping Works Ltd. v. Their Workmen, AIR 1963 SC 1914.
- Heavy Engineering Mazdoor Union v. State of Bihar, AIR 1970 SC 82.

UNIT-11

THE APPRENTICES ACT, 1961

Unit Framework

- 11.1 Purpose
- 11.2 Objectives and Significance of the Act
- 11.3 Historical Evolution and Amendments: Apprenticeship Rules-1991
- 11.4 Definitions and Coverage (Sec. 2)
- 11.5 Contract of Apprenticeship (Sec. 4–5)
- 11.6 Training and Instruction (Sec. 8–10)
- 11.7 Duties and Obligations
- 11.8 Authorities, Offences and Dispute Resolution
- 11.9 Summary
- 11.10 Key Words
- 11.11 Self Assessment Question
- 11.12 References

11.1 PURPOSE

The objectives of this unit are:

- To discuss the objectives and significance of the act;
- To discuss the historical evolution and amendments: apprenticeship rules 1991
- To explain the definitions and coverage (sec. 2) and contract of apprenticeship (sec. 4–5)
- To discuss the training and instruction (sec. 8–10)
- To elaborate the duties and obligations; authorities, offences and dispute resolution

11.2 OBJECTIVES AND SIGNIFICANCE OF THE ACT

The Apprentices Act, 1961 serves as the cornerstone legislation for promoting structured industrial training in India. It aims to operationalize apprenticeship as a tool for national skill enhancement and industrial growth.

- 1. Regulation of Apprenticeship Training:** The Act establishes a uniform legal mechanism for engaging apprentices through registered contracts (Schedule–III), ensuring accountability in training processes and legal protection for all parties involved.
- 2. Development of Skilled Human Capital:** By mandating employer led training combined with theoretical instruction, the Act directly contributes to the creation of a technically competent workforce aligned with industrial standards.
- 3. Bridging the Education–Employment Divide:** The Act integrates formal education with practical exposure, helping apprentices’ transition smoothly into gainful employment and addressing the mismatch between academic learning and workplace demands.

4. **Safeguarding Stakeholder Interests:** Provisions related to stipend, working hours, leave entitlements and discipline (as codified in the Apprenticeship Rules, 1991) ensure equitable treatment of apprentices and clarity in employer obligations.
5. **Alignment with National Skill Development Missions:** The Act reinforces national initiatives such as Skill India and the National Apprenticeship Promotion Scheme (NAPS), positioning apprenticeship as a strategic instrument for inclusive industrial development.

Thus, the Act not only facilitates technical skill development but also institutionalizes a rights based approach to apprentice training, contributing significantly to India’s socio economic transformation.

11.3 HISTORICAL EVOLUTION AND AMENDMENTS : APPRENTICESHIP RULES–1991

The Apprentices Act, 1961 was introduced to meet the industrial sector’s need for formally trained manpower. Over time, the Act evolved through significant amendments and policy reforms to remain relevant in a dynamic labour market.

1. **Initial Enactment and Purpose (1961):** The Act was legislated to provide a legal structure for apprentice training in India, ensuring systematic skill development aligned with industry standards.
2. **Amendment of 1973 Novation and Expansion:** This reform enabled novation of contracts (transfer of apprentices) and broadened the scope of establishments under the Act.
3. **Amendment of 1986 Social Inclusion:** Introduced mandatory reservation for Scheduled Castes and Scheduled Tribes in apprentice training, reinforcing equity in workforce development.
4. **Amendment of 2014 Structural Liberalization:** Key changes included the introduction of optional trades, an online portal for contract registration and enhanced autonomy to employers in designing training modules.
5. **Apprenticeship Rules, 1991 Procedural Framework:** These rules provided detailed guidelines on qualifications, registration, stipend, leave, training duration and administrative obligations for stakeholders.
6. **Recent Reforms Skill India Integration:** The apprenticeship system has been realigned with the National Skill Development Mission, encouraging private participation, digital registration and flexible trade recognition.

Thus, the Act’s amendments and evolving rules reflect India’s commitment to inclusive, scalable and industry relevant apprenticeship training.

11.4 DEFINITIONS AND COVERAGE (SEC. 2)

Section 2 of the Apprentices Act, 1961 provides essential statutory definitions that anchor the legal interpretation and implementation of apprenticeship training in India. These definitions ensure consistency and legal clarity across sectors and jurisdictions.

1. **Apprentice:** As per Sec. 2(aa), an apprentice is “*a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship.*” The individual must fulfill eligibility criteria and be formally engaged through a registered agreement (Schedule–III).

2. **Employer:** Defined under Sec. 2(e), an employer is “*any person who employs one or more other persons to do any work in an establishment for remuneration.*” This includes both public and private entities capable of offering practical training.
3. **Designated and Optional Trades:**
 - **Designated Trade** (Sec. 2(g)) refers to “*any trade or occupation as notified by the Central Government.*”
 - **Optional Trades**, introduced via the 2014 amendment, are those not officially notified but approved for training by establishments under their own curriculum.
4. **Establishment:** The term includes any place where any industry or business is carried out. This encompasses:
 - Public sector units (PSUs)
 - Private sector firms
 - Cooperative and autonomous institutions
 - Government departments engaged in commerce or industry
5. **Jurisdictional Coverage:** The “*appropriate government*” (Sec. 2(a)) either Central or State regulates establishments based on ownership. For central government undertakings or industries listed in the Union List, the Central Government is the authority. For others, the State Government applies.
6. **Sectoral Applicability:** The Act applies across industries including manufacturing, IT, healthcare, logistics and other service sectors, ensuring cross sector skill development and widespread adoption of apprenticeship norms.

By codifying these definitions, the Act and its supporting rules (1991) enable a legally uniform and operationally flexible apprenticeship framework essential for national workforce development.

11.5 CONTRACT OF APPRENTICESHIP (SEC. 4–5)

The contract of apprenticeship is the legal backbone of the training process. As per Sections 4 and 5 of the Apprentices Act, 1961, every apprenticeship must be governed by a formal agreement to ensure accountability, structure and mutual obligations.

1. **Mandatory Written Contract:** Section 4(1) mandates that no apprenticeship is valid without a written contract signed by the employer and apprentice (or guardian, if a minor), using the prescribed **Schedule–III format**.
2. **Registration Process:** Contracts must be **registered** with the Apprenticeship Adviser either manually or via the **online portal** (as promoted under post 2014 reforms).
3. **Terms of Training:** The agreement must detail:
 - Duration of apprenticeship (e.g., 1–4 years)
 - **Stipend** rates (as per Rule 11 of the 1991 Rules)
 - Leave entitlements (casual, medical and maternity)
 - Conduct and disciplinary norms

4. **Novation of Contract:** Section 5 allows **novation**, meaning the transfer of an apprentice to another employer, subject to the Adviser's approval, when the original employer cannot continue the training.

This contract formalizes the training relationship, ensuring legal enforceability and protecting both parties under a standardized framework.

Prescribed Minimum Stipend Rates (as per Apprenticeship Rules, 1991, the provisions of sub-rule (2) of rule 11 & Schedule–III)

Category of Apprentice	Stipend Rate (Monthly)
Trade Apprentices (Designated Trades)	
1st Year	70% of minimum wage (semi skilled)
2nd Year	80% of minimum wage (semi skilled)
3rd & 4th Year	90% of minimum wage (semi skilled)
Graduate Apprentices	¹ 4984
Technician Apprentices (Diploma Holders)	¹ 3542
Technician (Vocational) Apprentices	¹ 2758
Sandwich Course: Degree Institutions	¹ 3542
Sandwich Course: Diploma Institutions	¹ 2890

Note: Stipend must be paid by the 10th of the following month. No deductions are permitted for sanctioned leave.

This legal instrument ensures that apprenticeship is structured, monitored and aligned with statutory standards protecting both training quality and individual rights.

11.6 TRAINING AND INSTRUCTION (SEC. 8–10)

Sections 8 to 10 of the Apprentices Act, 1961 outline the core structure of training and instruction. The Act mandates employers to impart both practical and theoretical education, ensuring apprentices gain holistic, job ready skills aligned with national standards.

- 1. Employer’s Responsibility for Practical Training:** Under Section 8, every employer is obligated to provide in house, hands on training in the designated trade, ensuring adequate facilities, tools and supervision.
- 2. Basic Training for Fresh Apprentices:** As per Section 9, apprentices without prior technical education must undergo basic training at institutions recognized by the National Council or employer run facilities.

3. **Related Theoretical Instruction:** Section 10 mandates complementary classroom based instruction to strengthen the theoretical foundation of apprentices alongside practical skills.
4. **Standards for Syllabus and Infrastructure:** The training syllabus, trainer qualifications and infrastructure standards are prescribed by the **Central Apprenticeship Council** and elaborated in the Apprenticeship Rules, 1991.
5. **Working Hours, Holidays and Stipend:** Apprentices may work **42–48 hours per week**, inclusive of instructional time. They are entitled to **12 days casual leave, 15 days medical leave** and applicable **maternity benefits**. Stipends must be disbursed by the 10th of every month, without deduction for approved leave (Schedule–III).

These provisions ensure structured and accountable training, integrating formal instruction with industrial exposure to build a competent, employable workforce.

11.7 DUTIES AND OBLIGATIONS

Sections 11 and 12 of the Apprentices Act, 1961, supported by provisions in the Apprenticeship Rules, 1991 and Schedule–III, clearly outline the reciprocal responsibilities of apprentices and employers. These duties ensure that the apprenticeship operates within a disciplined, safe and legally compliant framework.

1. **Apprentice’s Duties (Sec. 11):** Apprentices are expected to undergo the prescribed training sincerely, attend related instruction regularly and maintain professional discipline. They must also record their daily work and follow lawful directions from their supervisors.
2. **Employer’s Responsibilities (Sec. 12):** Employers are obligated to provide quality training in accordance with the approved syllabus, maintain a safe working environment, disburse the stipulated stipend on time and uphold accurate training records for monitoring and compliance.
3. **Leave Provisions (Rule 13):** Apprentices are entitled to 12 days of casual leave and 15 days of medical leave annually. Female apprentices are eligible for maternity leave as per applicable statutory provisions.
4. **Conduct and Disciplinary Actions:** Breaches such as absenteeism, insubordination, or misconduct can lead to disciplinary proceedings or contract termination. Any such action must follow due process and, where necessary, be referred to the Apprenticeship Adviser for resolution.

These duties and safeguards promote a culture of responsibility and accountability in apprenticeship, supporting the creation of a skilled and disciplined industrial workforce.

11.8 AUTHORITIES, OFFENCES AND DISPUTE RESOLUTION

The Apprentices Act, 1961 establishes a multi tiered institutional framework to ensure effective enforcement, policy guidance and conflict resolution. Sections 20 and 30–32 outline the powers of authorities, penalties for violations and mechanisms for settling disputes arising during apprenticeship.

1. **Apprenticeship Advisers (Central/State):** Appointed under Section 2(a), these officers supervise the implementation of the Act within their jurisdictions. They are empowered to register contracts, inspect establishments, resolve disputes and ensure compliance with training standards.

2. **Apprenticeship Councils (Advisory Bodies):** The Central and State Apprenticeship Councils advise respective governments on policy, trade designation, curriculum design and other training matters. They also coordinate between industry and education sectors to maintain training relevance.
3. **Offences and Penalties (Sec. 30–32):** Non-compliance by employers such as failing to register contracts, pay stipends, or provide training may result in fines up to ¹ 1,000 for a first offence and enhanced penalties for repetition. Wilful violations can attract prosecution under Section 31.
4. **Dispute Resolution Mechanism (Sec. 20):** Disagreements between an apprentice and employer related to training conditions, stipends, or contract terms are first referred to the Apprenticeship Adviser. Their decision is binding unless challenged through proper legal procedure.
5. **Judicial and Administrative Remedies:** While most issues are resolved administratively, parties may seek legal recourse through Labour Courts or appropriate judicial forums in cases involving serious breaches or unresolved grievances.

This authority framework ensures transparent governance, deters exploitation and upholds the integrity of the national apprenticeship system.

11.9 SUMMARY

The Apprentices Act, 1961 institutionalizes apprenticeship training in India as a key strategy for structured workforce development. It aims to ensure that youth acquire practical, industry relevant skills through legally mandated training frameworks. By mandating formal contracts, regulating training content and aligning with national initiatives like Skill India and NAPS, the Act promotes equitable and standardized industrial training. It also protects the rights of both apprentices and employers while enhancing employment readiness.

The historical development of the Act reflects India's evolving labour and industrial landscape. Initially enacted in 1961 to address the shortage of technically skilled workers, it underwent key amendments in 1973 (novation of contracts and expanded coverage), 1986 (inclusion of SC/ST reservations) and 2014 (introduction of optional trades and digital registration mechanisms). The Apprenticeship Rules, 1991 further operationalized the Act by detailing procedures for registration, stipend, training duration and institutional responsibilities. Subsequent reforms under the National Skill Development Mission continue to modernize and liberalize the apprenticeship ecosystem.

Section 2 of the Act provides precise definitions that serve as the legal foundation for its implementation. Terms such as *apprentice*, *employer*, *designated trade* and *establishment* are clearly defined to avoid ambiguity. The Act applies to both public and private sector establishments, with jurisdiction vested in either the Central or State Government based on ownership. Its sectoral applicability spans industries including manufacturing, IT, logistics, healthcare and services, ensuring broad national coverage for skill development.

Sections 4 and 5 of the Act mandate a formal written contract of apprenticeship, executed in the Schedule–III format and registered with the Apprenticeship Adviser. This contract includes terms such as training duration, stipend rates (as per Rule 11), working conditions and grounds for termination. It also allows for novation of contracts when a change of employer is necessary. The legal enforceability of the contract safeguards both parties and ensures structured training delivery.

Sections 8 to 10 establish the dual structure of apprenticeship training practical instruction by employers and theoretical education at designated institutions. Employers are responsible for providing adequate tools, supervision and facilities. Freshers without technical qualifications must undergo basic training, while all apprentices receive related instruction in technical concepts. The Act sets standards for syllabus content, trainer qualifications, working hours and leave. Stipends must be paid regularly, with no deductions for approved leave, ensuring training quality and learner welfare.

Sections 11 and 12 delineate the reciprocal duties of apprentices and employers. Apprentices must attend training regularly, maintain discipline, follow lawful instructions and keep daily records. Employers, on the other hand, are responsible for delivering quality training, ensuring safety, timely stipend payment and proper record maintenance. Leave entitlements include 12 days of casual leave, 15 days of medical leave and maternity benefits where applicable. Misconduct or breach of contract is subject to disciplinary action, following due process.

The Act also provides a robust enforcement and grievance redressal framework. Apprenticeship Advisers (Central and State) are empowered to monitor compliance, register contracts, inspect establishments and resolve disputes. Advisory bodies like Central and State Apprenticeship Councils assist in policy formulation and coordination. Sections 30–32 prescribe penalties for non compliance, such as failure to register or provide training. Disputes are adjudicated initially by the Apprenticeship Adviser under Section 20, with the option for judicial appeal if necessary. This structure ensures transparent governance and legal recourse.

11.10 KEY WORDS

- **Apprentice (Sec. 2(aa)):** A person undergoing apprenticeship training in a designated trade under a valid contract of apprenticeship, combining practical and theoretical instruction.
- **Designated Trade (Sec. 2(g)):** A trade or occupation officially notified by the Central Government for the purpose of structured apprenticeship training, with prescribed syllabi and standards.
- **Contract of Apprenticeship (Sec. 4, Schedule–III):** A written agreement, legally enforceable, that defines the obligations, stipend, training period and disciplinary norms governing the relationship between apprentice and employer.
- **Basic Training (Sec. 9, Rule 8):** Preliminary institutional training required for apprentices who lack prior technical education, delivered through Basic Training Centres or employer recognized facilities.
- **Stipend (Rule 11):** The statutory monthly remuneration paid to apprentices, varying by year of training and category and required to be disbursed by the 10th of each following month without deductions for approved leave.
- **Apprenticeship Adviser (Sec. 2(a), Sec. 20):** A Central or State Government appointed official authorized to oversee implementation, registration, enforcement and dispute resolution related to apprenticeship programmes.

11.11 SELF ASSESSMENT QUESTIONS

- Q-1. What role does the Apprentices Act play in bridging skill gaps?
- Q-2. How does the Act align with India’s national skill development objectives?
- Q-3. What was the primary aim behind enacting the Apprentices Act in 1961?

- Q-4.** How did the 2014 amendment liberalize the apprenticeship training framework?
- Q-5.** How is a designated trade defined under the Apprentices Act, 1961?
- Q-6.** What determines whether Central or State Government holds jurisdiction over establishments?
- Q-7.** What are the mandatory elements of a valid apprenticeship contract?
- Q-8.** What is the process and purpose of novation under Section 5?
- Q-9.** What are employers' obligations regarding related theoretical instruction?
- Q-10.** Who is required to undergo basic training before practical apprenticeship?
- Q-11.** What are apprentices required to record and submit during training?
- Q-12.** What disciplinary actions can be taken for breach of training terms?
- Q-13.** What penalties are imposed for non registration of apprenticeship contracts?
- Q-14.** Who is responsible for resolving disputes between apprentices and employers?

11.12 REFERENCES

- Kumar, A. (2017). *Labour and Industrial Laws* (2nd ed.). New Delhi: Bharat Law House.
- Rao, S. (2021). *Vocational Education and Skill Development in India*. New Delhi: Sage Publications.
- Srivastava, S. C. (2018). *Industrial Relations and Labour Laws* (6th ed.). Vikas Publishing House.
- Sharma, R. & Mehta, D. (2020). Skill development and apprenticeship in India: An evaluation of policy outcomes. *Indian Journal of Labour Economics*, 63(2), 349–364. <https://doi.org/10.1007/s41027-020-00228-7>
- Patel, V. (2019). Institutionalizing apprenticeship for youth employability in India. *Journal of Vocational Education & Training*, 71(1), 22–38. <https://doi.org/10.1080/13636820.2018.1450963>
- Ministry of Law and Justice. (1961). *The Apprentices Act, 1961* (No. 52 of 1961). Government of India. Retrieved from <https://www.indiacode.nic.in>
- Ministry of Labour. (1991). *The Apprenticeship Rules, 1991*. Government of India. Retrieved from <https://www.dgftbrc.nic.in>
- Ministry of Skill Development and Entrepreneurship. (n.d.). *Guidelines under the National Apprenticeship Promotion Scheme (NAPS)*. Government of India. Retrieved from <https://www.msde.gov.in>
- Supreme Court of India. (Various years). *Judgments related to apprenticeship and labour welfare*. Retrieved from <https://main.sci.gov.in>
- University Grants Commission. (2019). *Guidelines for vocational education and skill based training*. UGC Publications. Retrieved from <https://www.ugc.ac.in>

UNIT-12

EQUAL REMUNERATION ACT, 1976

Unit Framework

- 12.1 Purpose
- 12.2 Objectives and Significance of the Act
- 12.3 Definitions and Scope (Sec. 2–3)
- 12.4 Payment of Equal Remuneration (Sec. 4)
- 12.5 Non-Discrimination in Recruitment (Sec. 5)
- 12.6 Advisory Committees and Policy Direction (Sec. 6)
- 12.7 Authorities and Claims Procedure (Sec. 7–9)
- 12.8 Offences, Penalties and Remedies (Sec. 12–12)
- 12.9 Powers of Government (Sec. 13–17)
- 12.10 Summary
- 12.11 Key Words
- 12.12 Self Assessment Questions
- 12.13 References

12.1 PURPOSE

The objectives of this unit are:

- To discuss the objectives and significance of the act; definitions and scope (sec. 2–3)
- To discuss the payment of equal remuneration (sec. 4); non-discrimination in recruitment (sec. 5)
- To explain the advisory committees and policy direction (sec. 6); authorities and claims procedure (sec. 7–9)
- To discuss the offences, penalties and remedies (sec. 10–12); powers of government (sec. 13–17)

12.2 OBJECTIVES AND SIGNIFICANCE OF THE ACT

The Equal Remuneration Act, 1976, was enacted to address one of the most persistent forms of gender based discrimination unequal pay for equal work. Rooted in both constitutional philosophy and global labour norms, the Act serves as a legislative commitment to equality and justice in employment.

1. **Upholding the Principle of Equal Pay:** At the heart of the Act lies Section 4, which mandates that employers must pay equal remuneration to men and women for performing the same work or work of a similar nature. The term “*same work or work of a similar nature*” is defined under Section 2(h) as requiring comparable skill, effort and responsibility, performed under similar working conditions.

2. **Advancing Constitutional and International Mandates:** This legislation operationalizes Article 39(d) of the Indian Constitution, which directs the State to ensure equal pay for equal work for both men and women. Moreover, it aligns with **ILO Convention No. 100**, which obliges ratifying nations to eliminate gender based wage disparities across all sectors.

In sum, the Equal Remuneration Act, 1976 is not merely a statutory safeguard it is a progressive tool for achieving economic justice, workforce inclusivity and national compliance with global human rights standards.

12.3 DEFINITIONS AND SCOPE (SEC. 2–3)

Precise definitions under the Equal Remuneration Act, 1976 are foundational to its legal enforceability. Sections 2 and 3 clarify the operative terms and outline the boundaries of its application across industries, ensuring inclusivity and clarity.

1. **Understanding Remuneration (Sec. 2(g)):** Defined as the basic wage or salary and any additional emoluments payable in cash or kind, *remuneration* excludes travel concessions. This ensures that all monetary benefits linked to employment are brought under regulatory scrutiny.
2. **Who Qualifies as a Worker? (Sec. 2(i)):** The term *worker* includes any person employed to do skilled, unskilled, manual, clerical, or technical work for remuneration. This broad inclusion supports the Act's goal of universal protection, cutting across classes and categories of employment.
3. **Identifying the Appropriate Government (Sec. 2(b)):** The *appropriate government* either Central or State is determined by the nature of the establishment. For industries under Union control (e.g., railways, banking), the Central Government applies; for others, the State Government is responsible.
4. **Scope of Applicability (Sec. 3):** Section 3 clarifies that the Act applies to all establishments where workers are employed, regardless of size or ownership. It thus encompasses private enterprises, public sector units, cooperative bodies and NGOs alike.

In effect, these definitions and scope provisions ensure that the Act operates uniformly and comprehensively, enabling equal pay enforcement in both formal and semi formal sectors across India.

12.4 PAYMENT OF EQUAL REMUNERATION (SEC. 4)

Ensuring fair wages across gender is a legal and ethical cornerstone of workplace equality. Section 4 of the Equal Remuneration Act, 1976, gives enforceable form to this principle by codifying employer obligations regarding wage parity.

1. **Mandatory Equal Pay for Equal Work (Sec. 4(1)):** The law categorically states: “*No employer shall pay to any worker employed by him in an establishment remuneration at rates less favourable than those at which remuneration is paid to workers of the opposite sex.*” for the same work or work of a similar nature. This clause aims to eliminate wage based gender discrimination from formal wage structures.
2. **Proactive Employer Compliance (Sec. 4(2)):** Employers must not only provide equal pay but also maintain transparent remuneration policies. Even if male and female employees

are recruited at different times, parity must be maintained for equivalent roles and responsibilities.

- 3. Burden of Proof Rests on Employer:** When a complaint is raised, it is the employer's legal duty to prove that wage differences are justified based on factors such as seniority or qualifications not gender. This reverses the usual burden of proof, empowering employees in wage related disputes.

Thus, Section 4 operationalizes the concept of gender justice in remuneration, holding employers accountable and establishing a firm legal ground for workers to demand fair pay practices.

12.5 NON-DISCRIMINATION IN RECRUITMENT (SEC. 5)

Fairness in employment begins at the stage of hiring. Section 5 of the Equal Remuneration Act, 1976 ensures that gender does not become a basis for exclusion, discrimination, or differential treatment in recruitment or service conditions.

- 1. Prohibition of Gender Bias in Hiring (Sec. 5(1)):** The law asserts: *“No employer shall, while making recruitment for the same work or work of a similar nature... make any discrimination against women.”* This applies across sectors and employment levels.
- 2. Equal Conditions of Service for All Employees:** Beyond recruitment, equal access to promotional opportunities, transfers and training must also be ensured without gender based distinctions.
- 3. Legitimate Exceptions Recognized by Law (Proviso to Sec. 5):** Employers may restrict female recruitment only when protective legislation or safety concerns prohibit such employment, such as in night shifts or hazardous occupations.
- 4. Wider Implication for Workforce Inclusivity:** This provision mandates inclusive recruitment policies in both public and private sectors, promoting diversity in male dominated industries like mining, manufacturing and logistics.
- 5. Enforcement through Inspections and Grievance Mechanisms:** Recruitment practices can be reviewed by Inspectors appointed under Sec. 9 and aggrieved candidates can seek redressal through the Claims Authority under Sec. 7.

In sum, Section 5 reaffirms India's commitment to workplace equality at the entry level, ensuring women are given equal opportunity to compete, grow and lead within all spheres of employment.

12.6 ADVISORY COMMITTEES AND POLICY DIRECTION (SEC. 6)

Beyond legislative safeguards, the Equal Remuneration Act, 1976 envisions institutional structures to support gender responsive employment. Section 6 plays a pivotal role in translating policy intent into action by mandating advisory mechanisms at the governmental level.

- 1. Legal Constitution of Advisory Committees (Sec. 6(1)):** As per Section 6(1), the appropriate government may establish one or more advisory committees comprising representatives of employers, workers and relevant stakeholders. Importantly, no less than 50% of members must be women, ensuring gender balanced policymaking.
- 2. Function: Promoting Equitable Employment Practices (Sec. 6(2)):** Under Section 6(2), these committees advise on enhancing the recruitment of women in underrepresented

sectors, helping evolve service conditions that are fair and inclusive across industrial domains.

Thus, Section 6 embeds participatory governance into the legislative framework, enabling gender equity through informed consultation and policy guidance.

12.7 AUTHORITIES AND CLAIMS PROCEDURE (SEC. 7–9)

The Equal Remuneration Act, 1976 not only defines substantive rights but also sets in place mechanisms for their enforcement. Sections 7 to 9 detail the institutional framework and procedural route to address violations of the Act.

- 1. Claims Authority and Grievance Resolution (Sec. 7):** To resolve disputes, the appropriate government appoints an authority empowered to hear claims related to unequal pay or discriminatory hiring. Employers and employees may represent their cases directly or through legal representatives, with binding decisions.
- 2. Powers and Duties of Inspectors (Sec. 9):** Under Section 9, Inspectors are designated to examine records, question employers and ensure compliance. They act as watchdogs against workplace gender discrimination in both remuneration and recruitment.
- 3. Complaint Filing and Adjudication Process (Sec. 8):** The Act mandates that all complaints must be filed within six months of the alleged contravention. However, delays can be condoned for sufficient cause. The process ensures speed, fairness and minimal cost.

Together, these sections embed an accessible and accountable redressal system, reinforcing the Act's commitment to gender parity through legal and procedural safeguards.

12.8 OFFENCES, PENALTIES AND REMEDIES (SEC. 10–12)

The viability of the Equal Remuneration Act, 1976 depends significantly on its enforcement mechanisms. Sections 10 to 12 specify the legal consequences of non-compliance, reinforcing that gender equality in pay and employment is not merely aspirational but a statutory obligation. These provisions ensure deterrence, foster employer accountability and provide clear avenues for redressal.

12.8.1 NATURE OF OFFENCES (SECTION 10): SUBSTANTIVE VIOLATIONS DEFINED:

Section 10 establishes that any employer who contravenes the provisions of Section 4 (equal remuneration) or Section 5 (non-discriminatory recruitment) commits an offence. This includes:

- Paying unequal wages to male and female workers for the same or similar work.
- Refusing to recruit or promote women solely on the basis of gender.
- Failing to maintain records as prescribed under the Act or refusing inspection.

Such acts undermine the principle of labour equity and the dignity of work guaranteed under Article 14 and 39(d) of the Indian Constitution.

12.8.2 Penalties For Breach (Sections 10–11): Fines And Imprisonment

Section 10(1) prescribes penalties for first time violations:

- A fine which may extend up to ¹ 10,000.

For repeated offences, **Section 10(2)** stipulates stricter consequences:

- Imprisonment up to one month, or
- Fine up to ¹ 20,000, or
- Both, depending on the gravity and repetition of the offence.

Section 11 classifies these offences as cognizable, empowering enforcement agencies and labour officers to take timely punitive action without needing prior sanction.

12.8.3 EMPLOYER LIABILITY AND BURDEN OF PROOF (SECTION 12): Under Section 12, if a company or firm commits an offence, every person in charge of the business (e.g., managers, directors, HR heads) at the time of the offence is deemed guilty unless they prove that:

- The offence was committed without their knowledge, or
- Due diligence was exercised to prevent such violation.

This clause introduces individual criminal liability, reinforcing proactive compliance and discouraging institutional negligence.

12.8.4 Procedural Safeguards and Remedies

The Act ensures **remedial justice** through designated Claims Authorities under Section 7, who can:

- Hear complaints from aggrieved workers,
- Direct corrective payments or compensation,
- Impose penalties on defaulting employers.

Appeals against such orders can be made to the Appellate Authority, ensuring layered procedural fairness.

12.8.5 Socio Legal Significance of Enforcement Provisions:

Beyond legal deterrence, these sections reflect the reformatory intent of the legislation. They function as instruments to reshape discriminatory employer conduct, encourage compliance through institutional monitoring and reinforce India's international commitments under ILO Conventions.

In conclusion, Sections 10 to 12 convert abstract rights into justiciable protections, ensuring that gender parity is upheld not just in principle but in practice. They affirm that employment equity requires robust institutional safeguards backed by credible penalties and enforceable legal mandates.

12.9 POWERS OF GOVERNMENT (SECTIONS 13–17)

The Equal Remuneration Act, 1976 entrusts both the Central and State Governments with substantial regulatory authority to ensure the law's effective enforcement and contextual relevance. These provisions, laid out in Sections 13 to 17, offer procedural flexibility, institutional clarity and legal adaptability.

- 1. Legislative Rule Making Authority (Section 13):** Section 13 empowers the Central Government to frame detailed rules via notification for carrying out the provisions of the Act. These rules may relate to the maintenance of registers, furnishing of returns, or specifying authorities and formats for enforcement.

2. **Mandate for Record Keeping and Returns (Section 14):** Under Section 14, the appropriate government may compel employers to maintain prescribed records or furnish specific returns. This ensures transparency, facilitates inspections and supports grievance redressal mechanisms.
3. **Clarification Through Orders (Section 15):** Section 15 provides that if any doubt arises about how a provision is to be interpreted, the matter shall be referred to the appropriate government, whose decision shall be final. This acts as a conflict resolution measure embedded within the statute.
4. **Grant of Exemptions in Public Interest (Section 16):** Section 16 authorizes the appropriate government to exempt any class of employment from all or part of the Act's application, if deemed necessary in the public interest such as national security, essential services, or urgent economic exigencies.
5. **Removal of Difficulties (Section 17):** This provision allows the Central Government to issue orders to remove any practical difficulty in implementing the Act. Such orders must be published in the Official Gazette and are subject to a one year time limit post enactment.

In conclusion, Sections 13 to 17 offer the government both operational power and interpretative authority, ensuring that the Act remains administratively functional, legally sound and contextually flexible. This balance reinforces the Act's broader mandate of promoting wage justice and workplace equity.

12.10 SUMMARY

The Equal Remuneration Act, 1976, seeks to eliminate wage based gender discrimination and uphold the constitutional principle of "equal pay for equal work." It mandates that men and women performing the same or similar work receive identical remuneration, as defined under Section 2(h) and enforced through Section 4. Furthermore, the Act aligns with Article 39(d) of the Constitution and international norms such as ILO Convention No. 100. It institutionalizes economic justice, gender inclusivity and compliance with global labour standards in India's employment landscape.

The Act's clarity begins with precise legal definitions in Sections 2 and 3. Remuneration is broadly defined under Section 2(g) to include all monetary benefits, excluding travel concessions. Section 2(i) extends protection to all categories of workers manual, clerical, skilled or unskilled while Section 2(b) determines whether the Central or State Government acts as the appropriate authority. Section 3 extends the Act's applicability across all types of establishments, thereby ensuring comprehensive coverage in both public and private sectors, regardless of enterprise size or industry type.

Section 4 forms the legal bedrock of wage equality. It prohibits employers from offering lower pay to any gender for the same or similar work and obligates them to ensure parity across recruitment cycles. The provision also places the burden of proof on employers, requiring them to justify any wage difference based on non gendered criteria like skill or tenure. This clause operationalizes gender equity in compensation structures and empowers employees to challenge unfair practices.

Section 5 bars gender based discrimination during recruitment, ensuring equal access to employment, promotions and training. It mandates that women not be excluded from roles based solely on their gender, unless protective legislation (e.g., for night shifts or hazardous roles) applies. The provision also obliges employers to maintain inclusive service conditions and enables

enforcement through inspections and redress mechanisms. This provision strengthens gender diversity across industries and reinforces equal opportunity norms.

Section 6 introduces participatory governance by mandating the constitution of advisory committees with at least 50% female representation. These committees, appointed by the appropriate government, provide policy recommendations to enhance female participation in the workforce. They promote inclusive recruitment practices, particularly in male dominated sectors. Through structured consultation, the Act transforms gender equity from legal principle to actionable employment policy.

Sections 7 to 9 establish the enforcement and grievance redressal structure under the Act. Section 7 empowers the Claims Authority to adjudicate disputes, while Section 9 appoints Inspectors to ensure compliance through inspections and record verification. Section 8 provides a time bound, yet flexible, complaint process. Together, these provisions enable swift and cost effective remedies for affected workers, upholding procedural justice and administrative accountability.

Sections 10 to 12 define violations and establish consequences for non-compliance. Section 10 treats unequal pay or discriminatory hiring as cognizable offences, attracting fines and, for repeat offences, imprisonment. Section 12 holds individual managerial staff liable unless they demonstrate due diligence. Complementing punitive measures, Section 7 enables aggrieved parties to claim remedies through the Claims Authority. Collectively, these provisions ensure that the Act is not merely declaratory but also enforceable and reformative in nature.

Sections 13 to 17 endow the Central and State Governments with powers to implement, clarify and adapt the Act's provisions. Section 13 allows for rule making by notification; Section 14 mandates employer record keeping; and Section 15 offers interpretative clarity on statutory doubts. Sections 16 and 17 provide for exemptions and the removal of difficulties in exceptional cases. These clauses provide procedural flexibility and ensure administrative continuity, supporting the Act's objective of fostering equitable employment practices.

At last, we can say that this unit critically explores the Equal Remuneration Act, 1976 detailing its objectives, definitions, key provisions, enforcement mechanisms and institutional framework. It emphasizes legal and administrative safeguards for wage parity and gender inclusive employment, reinforcing India's constitutional mandates and international labour obligations for workplace equality.

12.11 KEY WORDS

- **Equal Remuneration (Sec. 4):** A legal requirement that men and women must be paid equally for doing the same or similar work. This principle eliminates gender based wage disparities in formal employment settings.
- **Same Work or Work of Similar Nature (Sec. 2(h)):** Refers to roles requiring equal levels of skill, effort and responsibility. It ensures comparability under similar working conditions regardless of job title.
- **Remuneration (Sec. 2(g)):** Covers all monetary payments including wages and bonuses, but excludes travel benefits. This comprehensive term ensures fair financial compensation for work performed.
- **Worker (Sec. 2(i)):** Anyone engaged in skilled, unskilled, manual, or clerical tasks for pay. It includes both men and women across public and private sectors.

- **Appropriate Government (Sec. 2(b)):** Refers to either Central or State Government depending on the industry. Jurisdiction is based on whether the establishment falls under Union or State control.
- **Employer (Sec. 2(d)):** A person or organisation responsible for managing and remunerating workers. Includes supervisory and administrative authority over employee relations.
- **Advisory Committee (Sec. 6):** A statutory group promoting equal employment opportunities for women. It advises governments on increasing female participation in the workforce.
- **Discrimination in Recruitment (Sec. 5):** Prohibits employers from treating candidates differently based on gender. Ensures fairness in hiring, promotions and working conditions.
- **Claims Authority (Sec. 7):** A government appointed official empowered to adjudicate wage complaints. They ensure effective redressal of grievances under the Act.
- **Inspector (Sec. 9):** An enforcement officer who checks records and employer practices for compliance. Inspections help detect violations of equal pay and recruitment laws.
- **Penalty (Sec. 10–12):** Includes fines and imprisonment for breaching the Act's provisions. Designed to deter non compliance and promote employer accountability.
- **Rule Making Power (Sec. 13–17):** Empowers governments to issue rules and notifications for enforcing the Act. Also allows clarifications, exemptions and removal of implementation difficulties.

12.12 SELF ASSESSMENT QUESTIONS

- Q-1.** What constitutional provision underpins the principle of equal remuneration?
- Q-2.** How does the Act align with international labour conventions?
- Q-3.** Who is defined as a 'worker' under Section 2(i)?
- Q-4.** What establishments fall under the scope of Section 3?
- Q-5.** What does Section 4(1) mandate regarding wage equality?
- Q-6.** Who bears the burden of proof in wage disparity claims?
- Q-7.** What type of gender based hiring discrimination is prohibited under Sec. 5?
- Q-8.** When are exceptions in recruitment legally permitted?
- Q-9.** What is the required women representation in advisory committees?
- Q-10.** What role do committees play in promoting female employment?
- Q-11.** What is the function of the Claims Authority under Section 7?
- Q-12.** How do Inspectors ensure compliance under Section 9?
- Q-13.** What are the penalties for repeat violations under Section 10?
- Q-14.** How is employer liability established under Section 12?
- Q-15.** What rule making power is granted under Section 13?
- Q-16.** How does Section 16 allow exemption in public interest?

12.13 REFERENCES

- The Equal Remuneration Act, 1976 (Act No. 25 of 1976). Government of India.
- Equal Remuneration Rules, 1976. Ministry of Labour and Employment, Government of India.
- Constitution of India, Article 14, Article 15(1), Article 16 and Article 39(d).
- ILO Convention No. 100: Equal Remuneration Convention, 1951. International Labour Organization.
- Srivastava, S.C. (2020). *Industrial Relations and Labour Laws*. Vikas Publishing House.
- Malik, P.L. (2022). *Handbook of Labour and Industrial Law*. Eastern Book Company.
- Chhabra, T.N. (2019). *Human Resource Management: Concepts and Issues*. Dhanpat Rai & Co.
- Sharma, R. (2021). “Gender Pay Equity in Indian Labour Law: Progress and Pitfalls.” *Indian Journal of Labour Economics*, 64(3), 311–325.
- Menon, K. (2020). “Equal Remuneration and Women’s Workforce Participation in India.” *Economic and Political Weekly*, 55(18), 47–52.
- Ministry of Labour and Employment. (2020). *Annual Report 2019–20*. Government of India.
- Ministry of Women and Child Development. (2019). *Handbook on Gender Equality and Labour Rights*.
- International Labour Organization (ILO). (2022). *Global Wage Report: Gender Pay Gaps and Policy Responses*.

UNIT-13

PAYMENT OF GRATUITY ACT 1972

Unit Framework

- 13.1 Purpose
- 13.2 Objectives and Significance of the Act
- 13.3 Scope and Applicability
- 13.4 Key Definitions
- 13.5 Conditions for Payment of Gratuity
- 13.6 Calculation of Gratuity
- 13.7 Forfeiture, Exemption and Nomination
- 13.8 Settlement of Claims and Enforcement
- 13.9 Summary
- 13.10 Key Words
- 13.11 Self Assessment Questions
- 13.12 References

13.1 PURPOSE

The objectives of this unit are:

- To discuss the objectives and significance of the act; scope and applicability
- To discuss the key definitions; conditions for payment of gratuity
- To explain the calculation of gratuity; forfeiture, exemption and nomination
- To discuss the settlement of claims and enforcement.

13.2 OBJECTIVES AND SIGNIFICANCE OF THE ACT

The Payment of Gratuity Act, 1972 was introduced as a response to increasing demands for fair post employment compensation. It reflects the state's commitment to dignified retirement and socio economic justice.

- **Ensuring Terminal Security for Employees:** The Act aims to guarantee monetary benefits to employees who have served an establishment for a substantial period, thereby recognizing their long-term contribution. It mandates gratuity payment under Section 4(1) upon superannuation, retirement, resignation, or death/disablement, offering financial security post employment.
- **Promoting Industrial Harmony through Legal Safeguards:** By ensuring uniform gratuity provisions across sectors, the Act reduces disputes, builds employer employee trust and fosters stable workplace relations. It aligns with Section 4(5), allowing superior contractual benefits while setting a national minimum benchmark.

- **Constitutional Ethos and Moral Grounding:** Rooted in Directive Principles of State Policy Article 41 (Right to work, education and public assistance) and Article 43 (Living wage, decent conditions), the Act stands as both an economic necessity and a moral obligation of the state and employer alike.

The Act not only supports employees in their post service years but also contributes to India's evolving labour welfare landscape, ensuring dignity, continuity and social security.

13.3 SCOPE AND APPLICABILITY

The Payment of Gratuity Act, 1972 was crafted to ensure that a wide array of working populations benefit from terminal financial protection. Its scope is both inclusive and strategic, addressing multiple employment sectors.

- **Widespread Coverage of Establishments:** The Act applies to factories, mines, oilfields, plantations, ports, railway companies, shops and other notified establishments. It ensures that gratuity benefits are not limited by industry type but extend across formal employment sectors.
- **Threshold and Ongoing Applicability:** As per Section 1(3) of the Act, it becomes applicable when an establishment employs 10 or more persons on any day in the preceding twelve months. Under Section 1(3A), it remains applicable even if the number of employees later falls below ten.
- **Inclusive, Yet Defined Employee Coverage:** The term 'employee' includes those in manual, supervisory, technical, or clerical roles, irrespective of wage ceilings. However, apprentices and government personnel under separate statutes (e.g., Army Act, Navy Act) are excluded from its purview.

Through its structured design, the Act safeguards the rights of diverse workers, making it a vital tool for equitable employment practices and long-term workforce protection.

13.4 KEY DEFINITIONS

The effectiveness of the *Payment of Gratuity Act, 1972* hinges on the clarity of its definitions. These terms form the legal foundation upon which eligibility, computation and enforcement are structured.

13.4.1 Who Qualifies as an Employee?: As per Section 2(e), an *employee* refers to any person (excluding an apprentice) employed on wages in any kind of work manual, technical, supervisory, or clerical within a factory, mine, plantation, shop, or other notified establishment. Government servants and armed forces personnel are excluded.

13.4.2 Understanding Wages and Time Based Terms:

- 'Wages' under the Act include all emoluments earned while on duty or leave, such as dearness allowance and overtime but exclude bonuses and HRA.
- 'Continuous service' (Section 2A) refers to uninterrupted service, including lawful interruptions like sickness or leave. A *completed year of service* means 12 full months of such continuity.

13.4.3 Defining Life Milestones: Superannuation and Family

- '*Superannuation*' means retirement upon reaching the age defined by service rules or, if unspecified, at 58 years.

- ‘Family’ includes the employee, spouse, children (married or unmarried), dependent parents and in the case of a woman, her husband’s dependent parents, unless excluded by written notice.

By interpreting these definitions in light of real world employment, the Act ensures fairness and administrative clarity. These terms collectively protect the spirit of labour welfare in both letter and implementation.

13.5 CONDITIONS FOR PAYMENT OF GRATUITY

The *Payment of Gratuity Act, 1972* lays down clear conditions under which an employee becomes entitled to receive gratuity. These conditions safeguard long serving workers while accommodating unforeseen life events.

- **The Five Year Rule and Its Humane Exception:** Under Section 4(1), gratuity becomes payable only after an employee has completed five years of continuous service. However, this condition is waived if the termination is due to death or disablement from accident or disease ensuring compassion in critical moments.
- **Events That Trigger Gratuity Payment:** Gratuity becomes due upon superannuation, retirement, resignation, death, or disablement. These termination events recognize both voluntary and involuntary end of service, provided they meet the continuity condition or its lawful exception.
- **Timely Fulfilment of Employer Obligation:** According to Section 7(3), gratuity must be paid within thirty days from the date it becomes payable. Delays without justified cause attract interest as per Section 7(3A), reinforcing the importance of prompt employer compliance.

These conditions together ensure a balanced approach rewarding loyalty while preserving dignity in unforeseen situations. They form the ethical and operational core of gratuity disbursement under Indian labour law.

13.6 CALCULATION OF GRATUITY

The *Payment of Gratuity Act, 1972* provides a systematic formula to ensure employees receive a fair financial reward for their years of dedicated service. This calculative framework is inclusive, accounting for different employment categories.

CONDITIONS FOR CALCULATING GRATUITY

1. Eligibility Criteria

- The employee must have completed five years of continuous service (*Section 4(1)*).
- Work at an organisation covered under the Act (10+ employees).
- You leave due to retirement, resignation, termination (not for misconduct), death, or disability.
- **Exception:** No minimum service is required in case of death or disablement due to accident or disease. (Means the 5-year service condition is waived.)

2. Qualifying Termination Events

Gratuity becomes payable upon:

- Superannuation (retirement at stipulated age)

- Voluntary retirement or resignation
- Death or permanent disablement
- Retrenchment or termination not due to employee misconduct

3. Formula for Monthly Rated Employees

$$\text{Gratuity} = \frac{(\text{Last Drawn Basic Salary} + \text{DA})}{26} \times 15 \times \text{Completed years of service}$$

- Here, 26 represents working days in a month (excluding Sundays).
- 15 days' wages for each completed year of service.

4. For Piece Rated Employees

- Daily wages are calculated as the average of last 3 months' wages.
- Overtime is excluded from the calculation.

5. For Seasonal Workers (*Section 4(2)*)

- Gratuity = 7 days' wages per season, for each season worked.

6. Partial Year Condition

- If an employee has served for more than 6 months beyond completed years, it is rounded up to the next full year.

7. Maximum Limit

- Initially ¹ 3.5 lakh under Section 4(3), revised through notifications.
- As per latest amendment (via notification dated March 29, 2018), the maximum limit for tax-free is ¹ 20 lakh under the Income Tax Act.

8. Gratuity Nominee

- A gratuity nominee is the person designated by an employee to receive gratuity after their death.
- Nomination must be submitted using **Form F**.
- If no nominee is registered, gratuity is paid to the **legal heirs**.

9. Calculation Basis Validated by Judiciary

- The Supreme Court in *Digvijay Woolen Mills Ltd. vs. M.L. Varma* affirmed the 26 working day basis for calculating daily wages.

These conditions ensure a uniform, just and transparent mechanism for translating long-term service into financial security for Indian employees.

13.7 FORFEITURE, EXEMPTION AND NOMINATION

The *Payment of Gratuity Act, 1972* not only ensures financial security but also sets boundaries for when this right can be forfeited or passed on. It balances employer protections with employee entitlements, even in succession.

13.7.1 When Gratuity Can Be Forfeited

As per Section 4(6) of the Act, gratuity can be partially or wholly forfeited in the following cases:

- For wilful omission or negligence causing damage or loss to the employer's property (partial forfeiture).
- For riotous or disorderly conduct, acts of violence, or offences involving moral turpitude, committed during employment (full forfeiture).
- However, misconduct unrelated to duty does not justify forfeiture.

13.7.2 Allowing Better Benefits Through Exemptions

According to Section 5, the Act does not apply where employees are already covered by superior gratuity or pension schemes. Such establishments may be exempted by appropriate government notification, preserving workers' rights to better terms of service.

13.7.3 Nomination: Passing The Right Forward

Under Section 6, every employee is required to make a nomination after completing one year of service. This nomination: **Form F & Form I**

- **Form F:** Allows employees to appoint one or more individuals to receive gratuity in the event of their death.
- **Form I:** Used to apply for gratuity after resignation, retirement, or superannuation.

13.7.4 Modifying and Validating Nominations: Nominations can be modified at any time by submitting a fresh nomination in the prescribed format. Upon the death of an employee, the rightful nominee becomes eligible to claim gratuity, ensuring legal transfer without dispute.

In sum, while the Act is generous in spirit, it is also legally sound guarding against misuse and providing for rightful succession. This balance of protection, exemption and nomination strengthens its humane and just framework.

13.8 SETTLEMENT OF CLAIMS AND ENFORCEMENT

The *Payment of Gratuity Act, 1972* doesn't merely confer rights it establishes a robust mechanism for enforcement. It ensures that eligible employees are not left helpless when disputes arise or employers delay or deny payment.

13.8.1 Role of Controlling Authority

The Controlling Authority, appointed under Section 3 of the Act by the appropriate government (Central or State), plays a pivotal role in implementing the Act's provisions. This officer has quasi judicial powers to:

- Receive gratuity claims from employees, nominees, or legal heirs.
- Summon evidence and conduct inquiries when disputes arise.
- Direct employers to pay the due amount with or without interest.

The Controlling Authority ensures that technicalities or employer resistance do not deprive workers of their rightful terminal benefit.

13.8.2 Procedure For Dispute Resolution

When disputes occur whether about the amount, eligibility, or identity of the rightful claimant they are referred to the Controlling Authority under Section 7(4).

The procedure involves:

- Written application by the employee/nominee/legal heir.
- Formal inquiry where both parties present their case.
- Evidence collection and examination of service records.
- A reasoned decision issued in writing.

This mechanism offers an accessible and affordable path to justice without lengthy court litigation.

13.8.3 Appeal Mechanism and Pre-Deposit Requirement

- Under Section 7(7), either party (employer or claimant) may appeal against the decision of the Controlling Authority to the Appellate Authority within 60 days (extendable by another 60 days with cause).
- However, an employer appealing the order is mandated to deposit the gratuity amount with the Appellate Authority before the appeal is admitted. This pre-deposit clause prevents frivolous appeals and ensures interim protection for the employee's dues.

13.8.4 Recovery as Arrears of Land Revenue

If the employer fails to comply with the payment order, Section 8 authorizes the Controlling Authority to issue a certificate to the District Collector. The Collector shall recover the unpaid gratuity as arrears of land revenue, meaning:

- No separate civil case is required.
- The recovery process is summary, direct and enforced like tax dues.

This strong enforcement tool ensures timely realization of benefits due to the employee or nominee.

13.8.5 Offences and Penalties

Deliberate violations of the Act attract penal consequences under Section 9, including:

- Up to one year imprisonment, or
- A fine up to ¹ 10,000, or
- Both, depending on the severity of non-compliance.

Punishable offences include:

- Avoiding gratuity payment,
- Falsifying documents, or
- Obstructing lawful claims.

These provisions underline the seriousness with which gratuity obligations are treated under Indian labour law.

13.8.6 Protection from attachment (Section 13):

Section 13 of the Act provides that *“No gratuity payable under this Act and no gratuity payable to an employee shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.”*

This clause ensures that the gratuity amount remains fully available to the employee or their nominee/legal heir, free from third party claims such as creditors or lawsuits.

13.8.7 Overriding effect of the act (Section 14)

Section 14 states: "*The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.*"

This gives the Act an overriding status, ensuring that:

- Any contractual agreement or law inconsistent with its provisions is null and void to the extent of contradiction. This strengthens the Act's enforceability and protects employee rights across employment types.

These provisions collectively ensure that gratuity is not just a theoretical right, but a legally enforceable, protected and promptly realizable benefit. With clear procedures and robust enforcement tools, the Act empowers employees while ensuring procedural fairness for all stakeholders.

13.9 SUMMARY

The Payment of Gratuity Act, 1972 stands as a pivotal milestone in India's labour welfare jurisprudence, conceived with the express purpose of ensuring financial security and dignity for employees at the end of their service tenure. More than a statutory obligation, the Act represents a socio-economic commitment embedded in the broader framework of a welfare-oriented state. It bridges constitutional ideals with actionable policy, reaffirming the moral and legal responsibilities of employers towards long-serving employees across formal and semi-formal sectors.

At its essence, the Act guarantees a terminal benefit gratuity to employees upon retirement, resignation, superannuation, disablement, or death. Section 4(1) affirms that gratuity is not merely a financial transaction but an institutional acknowledgment of employee loyalty and long-term contribution. This provision enshrines the principle that sustained service warrants structured reward, thereby fostering organisational trust and enhancing employee morale. The uniform applicability of the Act across sectors from factories and plantations to ports and shops supports legal consistency and reduces the scope of employer-employee disputes. Importantly, Section 4(5) allows for the retention of more favourable benefit structures, thereby harmonising national minimum protections with organisational flexibility.

The legislative intent behind the Act is further reinforced by its constitutional underpinnings, particularly Articles 41 and 43 of the Directive Principles of State Policy, which advocate the right to work and the right to a living wage. Gratuity, in this context, is not viewed merely as deferred compensation but as a socio-economic entitlement ensuring dignity in post-employment life. Its wide applicability even to establishments with fewer than ten employees under Section 1(3A) demonstrates a legislative commitment to inclusive social security, regardless of market fluctuations or employment cycles.

The Act adopts a clear and inclusive definitional framework. 'Wages' encompass basic earnings and dearness allowance, excluding variable elements like bonuses or HRA, ensuring predictability in calculation. The term 'continuous service' includes legally sanctioned breaks such as leave or illness and 'superannuation' aligns with the standard retirement age. Such precision facilitates administrative efficiency and protects employees' rights. Notably, while apprentices and select government employees are excluded, the focus remains squarely on private and quasi-formal sectors where social protection mechanisms are comparatively limited.

Eligibility for gratuity arises after five years of continuous service, though compassionate exceptions are made in cases of death or disablement. Section 7 mandates payment within 30 days

of accrual, with penal interest applicable in case of delay, thus reinforcing the principle of timely disbursement. The formula 15 days' wages for each completed year, based on a 26-day working month ensures equitable treatment. Special norms for seasonal and piece-rated workers enhance inclusivity, while the ₹20 lakh ceiling (as per 2018 amendment) reflects an evolving alignment with inflation and living standards.

To deter abuse, the Act includes forfeiture provisions under Section 4(6) for acts of moral turpitude or wilful misconduct. These clauses promote responsible conduct while allowing employers recourse in exceptional circumstances. Simultaneously, superior retirement schemes may exempt establishments from the Act, preserving employee entitlements where already well-protected.

Administrative effectiveness is anchored by a dedicated enforcement mechanism. The Controlling Authority possesses quasi-judicial powers to adjudicate disputes under Section 7(4), ensuring procedural fairness and access to justice. Appeals are permitted but require pre-deposit, thereby preventing frivolous litigation. Crucially, Section 8 facilitates recovery akin to land revenue, bypassing prolonged civil procedures and Section 13 immunises gratuity from attachment by third parties. The Act's overriding effect under Section 14 cements its primacy over conflicting contracts or laws, reinforcing its statutory supremacy.

The *Payment of Gratuity Act, 1972* is a testament to India's progressive labour vision melding economic pragmatism with constitutional morality. It institutionalises respect for labour by guaranteeing post-service financial dignity, supported by a coherent, enforceable legal structure. As India's employment ecosystem continues to modernise, the Act remains indispensable to ensuring that retirement does not entail vulnerability, but rather a well-earned phase of security and recognition.

13.10 KEY WORDS

- **Controlling Authority:** An official appointed under Section 3 to adjudicate disputes and ensure gratuity payment. They have powers akin to a civil court to summon, inquire and enforce compliance.
- **Appellate Authority:** The higher authority designated to hear appeals against orders of the Controlling Authority. Appeals must be filed within 60 days and are subject to gratuity pre-deposit.
- **Pre-deposit Requirement:** Under Section 7(7), employers must deposit the disputed gratuity before filing an appeal. This acts as a safeguard against delay and protects employee interests.
- **Recovery as Land Revenue:** Section 8 enables recovery of unpaid gratuity through the District Collector. This allows for swift enforcement without civil litigation, treating it like tax dues.
- **Gratuity Claim:** A formal application made by an employee, nominee, or legal heir for gratuity payment. It initiates the dispute resolution process under Section 7.
- **Dispute Resolution:** The inquiry mechanism provided by the Act to settle claims on gratuity amount or eligibility. Handled by the Controlling Authority, it ensures access to justice.
- **Section 9 (Penalties):** Imposes punishment for non-compliance, false information, or delay in gratuity payment. Includes imprisonment up to 1 year or a fine, or both.

- **Section 13 (Protection from Attachment):** Gratuity cannot be seized through court orders or decrees from any civil or criminal court. It ensures full retention of benefits by the rightful recipient.
- **Section 14 (Overriding Effect):** Provides that the Act supersedes any conflicting law or employment contract. It protects gratuity rights from being diluted or waived.
- **Legal Heir:** A person entitled to claim gratuity in case of the employee's death, as per succession laws. Recognized formally during claim settlement.
- **Nominee:** A person nominated under Section 6 to receive gratuity upon an employee's death. Helps avoid delays and disputes in fund disbursement.
- **Quasi Judicial Powers:** Authority granted to the Controlling Authority to conduct legal inquiries and pass enforceable orders. These powers resemble those of a civil court.
- **Interest on Delayed Payment:** If gratuity is not paid within 30 days, interest becomes payable under Section 7(3A). This ensures timely compliance and discourages employer delay.
- **False Representation:** Giving wrong or misleading information under the Act is a punishable offence. Section 9 ensures accountability and legal consequences.

13.11 SELF ASSESSMENT QUESTIONS

- Q-1. How does the Act ensure financial dignity after employment ends?
- Q-2. Why is Section 4(1) pivotal for terminal employee security?
- Q-3. What makes the Act applicable to diverse employment sectors?
- Q-4. When does an establishment remain covered under Section 1(3A)?
- Q-5. Who qualifies as an 'employee' under Section 2(e) of the Act?
- Q-6. How does the Act define 'continuous service' for gratuity eligibility?
- Q-7. What exception allows gratuity without completing five years of service?
- Q-8. Why is prompt employer compliance under Section 7(3) important?
- Q-9. How is gratuity calculated for monthly rated employees under the Act?
- Q-10. When is the service period rounded up in gratuity calculations?
- Q-11. In what situations can gratuity be lawfully forfeited?
- Q-12. What makes a nomination legally valid under Section 6?
- Q-13. Who is empowered to settle gratuity disputes under the Act?
- Q-14. Why must employers pre-deposit gratuity before appealing decisions?

13.12 REFERENCES

- The Payment of Gratuity Act, 1972 (Act No. 39 of 1972). Government of India.
- Payment of Gratuity (Central) Rules, 1972. Ministry of Labour and Employment, Government of India.
- Constitution of India, Article 41, Article 43 – Directive Principles of State Policy.

- International Labour Organization (ILO). (2019). *India Wage Report: Wage Policies for Decent Work and Inclusive Growth*.
- Srivastava, S.C. (2020). *Industrial Relations and Labour Laws* (6th ed.). Vikas Publishing House.
- Malik, P.L. (2022). *Handbook of Labour and Industrial Law* (25th ed.). Eastern Book Company.
- Chhabra, T.N. (2019). *Human Resource Management: Concepts and Issues*. Dhanpat Rai & Co.
- Verma, A. (2021). “Legal Dimensions of Gratuity and Retirement Benefits in India.” *Labour Law Journal*, 72(4), 215–227.
- Khan, M. (2020). “Post Employment Benefits and the Indian Labour Market: A Case Study of Gratuity Law.” *Economic and Political Weekly*, 55(12), 33–38.
- Ministry of Labour and Employment. (2021). *Annual Report 2020–21*. Government of India.
- Standing Committee on Labour. (2020). *Report on Implementation of Labour Welfare Measures*. Lok Sabha Secretariat.
- International Labour Organization (ILO). (2022). *Social Protection for Older Persons: Policy Trends and Statistics*.

UNIT-14

EMPLOYEE'S COMPENSATION ACT, 1923

Unit Framework

- 14.1 Purpose
- 14.2 Objectives and Significance of the Act
- 14.3 Scope and Applicability
- 14.4 Definitions and Key Concepts (from Section 2 of the Act)
- 14.5 Rights and Duties under the Act
- 14.6 Claims and Compensation Procedure
- 14.7 Compensation Benefits Structure
- 14.8 Regulatory and Institutional Framework
- 14.9 Comparative Perspective: The Workmen's Compensation Act, 1923 and Its Amendment in 2017
- 14.10 Summary
- 14.11 Key Words
- 14.12 Self Assessment Questions
- 14.13 References

14.1 PURPOSE

The objectives of this unit are:

- To discuss the objectives and significance of the Employee's Compensation Act, 1923 and its 2017 Amendment
- To understand definitions and key concepts (as per Section 2 of the Act)
- To explain the rights and duties under the Act, including claims and compensation procedures
- To examine the compensation benefits structure and the regulatory and institutional framework
- To provide a comparative perspective with the Employee's Compensation Act, 2017

14.2 OBJECTIVES AND SIGNIFICANCE OF THE ACT

In the realm of industrial relations and labour welfare, The Employee's Compensation Act, 1923 stands as a foundational statute aimed at protecting the workforce from the unforeseen perils of occupational injury and death. Enacted during colonial India and subsequently strengthened through amendments, including the Employee's Compensation (Amendment) Act, 2017, this legislation embodies the State's responsibility to ensure a humane and just system of redress for employment related hazards.

14.2.1 Protect Workers from the Economic Impact of Workplace Injuries

The foremost objective of the Act is to shield employees and their families from the financial hardship that may result from injury, disablement, or death arising in the course of employment. Recognizing that workplace accidents can have a devastating impact on wage earning individuals, the Act mandates compulsory compensation for injuries, whether temporary or permanent, partial or total.

As per **Section 3(1)** of the Act: “If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation”

This clause makes it clear that fault or negligence need not be proven making it a no fault liability statute thus ensuring that the economic consequences of occupational risks do not unjustly fall upon the worker alone.

14.2.2 Define Employer Responsibilities and Liabilities Clearly

The Act sets out clear statutory obligations for employers, compelling them to anticipate and account for occupational risks. It establishes employer liability for a range of situations, including accidents and occupational diseases, thereby making workplace safety a legal as well as ethical imperative.

Per **Section 4**, the Act prescribes compensation amounts based on the nature of the injury and the employee’s wage, using a fixed formula involving "relevant factors" listed in Schedule IV. Moreover, the **2017 Amendment Act** introduced **Section 17A**, which mandates: “Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means”.

This provision not only reaffirms employer accountability but also prioritizes employee awareness and transparency.

14.2.3 Institutionalize Compensation, Medical Aid and Dependents’ Benefits

The Act institutionalizes a comprehensive system of compensation that extends beyond the injured employee to include their dependents in case of fatal incidents. **Section 2(1)(d)** defines a wide range of eligible dependents spanning widows, minor children, widowed daughters in law and aged parents ensuring social security coverage to economically vulnerable groups.

While the Act does not create a statutory framework for full fledged medical aid or social insurance like the Employees' State Insurance Act, it mandates basic support for medical examination (**Section 11**) and indirectly encourages rehabilitation, especially through judicial discretion exercised by the Commissioner.

In fatal cases, **Section 4(1)(a)** ensures that the minimum compensation payable is: “An amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor; or one lakh and twenty thousand rupees, whichever is more.”

This structured compensation system mitigates long-term socio economic dislocation of families affected by workplace tragedies.

14.2.4 Provide an Administrative Alternative to Civil Litigation

A key feature of the Act is its intent to reduce the adversarial burden on injured workers. By introducing an administrative mechanism through the Commissioner for Employee’s

Compensation (Section 19), the Act ensures that compensation claims are handled through a quasi-judicial, time bound and less expensive process.

Moreover, **Section 30** allows for appeals to the High Court, but only on substantial questions of law and subject to a minimum compensation threshold (revised to ¹ 10,000 by the 2017 amendment). This ensures judicial scrutiny where necessary while protecting the administrative simplicity of routine claims.

This structure effectively bypasses the delays and uncertainties of civil court proceedings, especially for low income workers who may otherwise be unable to afford legal remedies.

14.2.5 Promote Fairness and Social Justice in Labour Welfare Legislation

At its core, the Act is a product of India's evolving social contract with its labour force. It embodies the constitutional vision of social justice, aligning with Directive Principles of State Policy under Articles 38 and 43 of the Indian Constitution. By mandating employer liability, recognising the rights of dependents and ensuring no fault compensation, the Act ensures equity, dignity and security in the industrial workplace.

Furthermore, the Act has become a model of protective labour legislation, laying the foundation for other progressive frameworks such as the Employees' State Insurance Act, 1948 and the Code on Social Security, 2020.

In conclusion, The Employee's Compensation Act, 1923 is a pivotal legal instrument that harmonizes the imperatives of economic productivity with those of human dignity. Its objectives continue to serve as a benchmark for balanced, humane and responsive labour governance in India.

14.3 SCOPE AND APPLICABILITY

The Act is a cornerstone of Indian labour law, designed to ensure equitable treatment and statutory protection for workers exposed to occupational risks. Its scope and applicability have been framed broadly to ensure that no eligible employee is left without remedial support in case of work related injury, disease, or death.

14.3.1 Territorial Extent: Applicable throughout India

The Act extends to the whole of India, encompassing every State and Union Territory. This wide territorial coverage ensures a uniform standard of worker protection, regardless of geographic location, industrial type, or employer classification.

As per **Section 1(2)** of the Act: "It extends to the whole of India." Notably, post constitutional reforms and integration of Union Territories, the Act's provisions are deemed to be applicable across all jurisdictions unless specifically exempted by the Central Government.

14.3.2 Subject Coverage

The Act covers a wide array of employment categories, most of which are considered hazardous, informal, or semi formal segments often excluded from other comprehensive schemes like the ESI Act. Its coverage is defined primarily through **Schedule II**, which lists occupations where the risk of physical injury or health hazard is pronounced.

(a) **Employments Listed in Schedule II:** Schedule II of the Act (read with **Section 2(1)(dd)(iii)**) specifies categories of employment to which the Act applies. These include but are not limited to:

- Employment in factories and mines

- Work involving machinery operation or maintenance
- Engagement in construction or infrastructure projects
- Work related to railways, docks and warehousing

Section 2(1)(dd)(iii) states: “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.”

This inclusion ensures that even oral or informal contractual engagements are not excluded.

- (b) **Full time, Part time, Seasonal and Contract Workers:** The statute is not confined to permanent employees. It covers full time, part time, daily wage and seasonal workers, including contractual and casual workers, provided they are employed in a scheduled occupation. The underlying principle is functional inclusion workers are protected based on the nature of their employment, not the formality of their contract.
- (c) **Specific Categories: Seamen, Motor Transport Workers, Mine Workers:** Several categories have been explicitly incorporated through amendments and judicial interpretations. For instance:
- **Seamen and crew members of ships** are included via **Section 2(1)(dd)(ii)(a)**
 - **Drivers, helpers, cleaners, mechanics** connected with motor vehicles are covered under **Section 2(1)(dd)(ii)(c)**
 - **Persons employed abroad** by Indian companies are also protected, subject to registration and employment terms under **Section 2(1)(dd)(ii)(d)**

This functional and occupational approach ensures that high risk labour segments, regardless of employment status or geographic location, remain covered under the statute.

14.3.3 Exemptions

While the Act casts a wide protective net, it does carve out specific exclusions based on either **statutory overlap** or **functional irrelevance**.

- (a) **Members of the Armed Forces:** Employees working in the capacity of defence personnel are explicitly excluded under Section 2(1)(dd) proviso, which states: “but does not include any person working in the capacity of a member of the Armed Forces of the Union”

This exclusion is premised on the fact that such individuals are covered under separate military compensation codes.

- (b) **Employees Covered under the Employees' State Insurance Act, 1948:** Where an employee is already covered under the Employees' State Insurance Act, 1948, the compensation mechanism under that Act supersedes this statute. This exclusion avoids double compensation and ensures regulatory clarity.

Although the Employee’s Compensation Act and ESI Act are not mutually exclusive in content, in cases where both apply, judicial precedence (e.g., Rajasthan State Road Transport Corp. v. Satya Narain Mathur, AIR 1996 SC 3199) has clarified that no dual benefit shall be claimable for the same injury.

In essence, the scope and applicability of the Employee’s Compensation Act, 1923 reflect its commitment to inclusive social protection. By embracing a broad spectrum of employments and

occupations, it ensures that the dignity, health and financial security of Indian workers are preserved in the face of occupational adversity.

14.4 DEFINITIONS AND KEY CONCEPTS (FROM SECTION 2 OF THE ACT)

The Act lays down a legal framework to ensure compensatory justice to employees suffering injury or loss in the course of employment. Section 2 of the Act contains crucial definitions that shape the interpretation and execution of the statute.

- **“Employee”** (Sec. 2(1) (dd)) replaces the earlier term “workman” post the 2009 amendment, offering a broader and inclusive scope. It includes railway servants (not in administrative roles), ship crew, aircraft staff, motor vehicle workers and Indian employees working abroad. This classification ensures legal protection to workers across varied and mobile sectors, provided their employment is linked to an Indian entity.
- **“Employer”** (Sec. 2(1)(e)) is expansively defined to include any person or body employing workers, as well as managing agents and legal representatives of deceased employers. Temporary arrangements such as lending or subcontracting are also covered, ensuring employer liability is upheld regardless of contractual complexity.
- **“Injury by Accident”** is not specifically defined but is central to Section 3(1), which stipulates employer liability for injuries arising out of and in the course of employment. Judicial interpretations and subsequent amendments equate such injuries with unforeseen incidents at work, including mechanical faults or unsafe conditions. Occupational diseases, as listed in Schedule III, are also deemed accidental injuries.
- **“Occupational Disease”** (Sec. 3(2)) refers to ailments peculiar to specific trades, including silicosis (mining), asbestosis (construction) and chemical poisoning (match industry). The Act presumes employer liability if such a disease arises during or due to employment conditions listed in Parts A, B, or C of Schedule III.
- **“Compensation”** (Sec. 2(1)(c)) is elaborated further in Section 4, which prescribes formulas based on wage levels, type of injury (death, disablement) and age of the worker (via Schedule IV’s relevant factor). The aim is to offer fair and uniform monetary relief.
- **“Dependent”** (Sec. 2(1)(d)) includes direct family members such as widows, children and widowed mothers, as well as conditionally dependent individuals like widowers, illegitimate children and widowed daughters in law. This ensures a safety net for diverse familial structures, particularly in the Indian socio economic context.
- **“Qualified Medical Practitioner”** (Sec. 2(1)(i)) denotes any person registered under relevant medical acts or notified by state governments. These practitioners play a pivotal role in certifying the extent of injuries and verifying claims.
- **“Disablement”** is categorized as either partial or total and further as temporary or permanent. **Partial disablement** (Sec. 2(1)(g)) refers to reduced earning capacity in the current employment, while **total disablement** (Sec. 2(1)(l)) implies complete incapacity for any work previously undertaken. Schedule I specifies injuries and associated earning capacity losses.

In essence, these definitions underpin the Act’s operation, providing legal clarity, ensuring equitable enforcement and adapting to the complexities of India’s evolving labour landscape.

14.5 RIGHTS AND DUTIES UNDER THE ACT

The Act establishes a balanced framework of mutual obligations between employers and employees, aimed at ensuring effective redressal in cases of workplace injury, disease, or death.

14.5.1 Duties of Employees: Employees are required to:

- Notify the employer or Commissioner promptly after an accident, as mandated by *Section 10(1)*.
- Submit to medical examination if offered by the employer within three days, per *Section 11(1)*. Non-compliance may lead to suspension of compensation.

14.5.2 Duties of Employers: Employers must:

- Report serious or fatal injuries to the Commissioner within seven days (*Section 10B*).
- Cooperate in claims processing, ensuring medical assessment and documentation are facilitated as required under *Sections 19 and 22*.

14.5.3 Rights of Employees: Employees have the right to:

- Receive compensation for injury, death, or occupational disease under *Section 3(1)* and *Schedule III*, without needing to prove employer fault.
- Obtain medical examination and aid, inferred from *Section 11*, especially in urgent cases.

14.5.4 Restrictions: To preserve statutory integrity:

- Rights cannot be waived by contract, as per *Section 17*. Any such agreement is void.
- Compensation claims are non-transferable, protected under *Section 8(5)* from assignment or attachment.

In essence, the Act ensures a structured and equitable process by clearly assigning duties and guaranteeing rights to both employees and employers, reinforcing the spirit of labour welfare and legal justice.

14.6 CLAIMS AND COMPENSATION PROCEDURE

It lays out a structured and accessible process to ensure that employees or their dependents receive timely compensation. The procedure focuses on transparency, medical evaluation, legal oversight and reasonable timelines.

14.6.1 Notification and Filing with the Commissioner: As per *Section 10(1)*, the injured employee or their legal representative must notify the employer of the accident “as soon as practicable.” Subsequently, a formal claim is submitted to the Commissioner for Employee’s Compensation, who is vested with quasi judicial powers under *Section 19* to settle the matter.

14.6.2 Medical Examination and Documentation: The employer may offer a free medical examination within three days of notice, as per *Section 11(1)*. Medical reports are critical to establishing the extent of injury or disablement and must be submitted with the claim. Refusal to undergo such examination may affect eligibility.

14.6.3 Adjudication of Claims and Award Determination: The Commissioner investigates the claim, examines evidence and may hold hearings. Based on findings, compensation is determined as per the injury type and wage category, under *Section 4* and *Schedule I & IV*.

14.6.4 Right of Appeal to the High Court: Under Section 30, a party aggrieved by the Commissioner’s decision may file an appeal to the High Court on a substantial question of law, provided the amount in dispute is ¹ 10,000 or more (post 2017 amendment).

14.6.5 Time Limits: Notice of the accident should be given within 30 days and the claim must generally be filed within 2 years from the date of occurrence (extendable under Section 10 by the Commissioner for sufficient cause).

Thus, the Act ensures a fair, evidence based and legally guided procedure to uphold the rights of injured employees or their dependents.

14.7 COMPENSATION BENEFITS STRUCTURE

The *Employee’s Compensation Act, 1923* ensures that injured workers or their dependents receive fair and proportionate financial relief. Compensation is determined using predefined statutory formulas, taking into account the severity of injury, wage level and loss of earning capacity.

14.7.1 Death Compensation: As per Section 4(1)(a) of the Act: *“In case of death resulting from the injury, an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor, or ¹ 1,20,000, whichever is more.”* The “relevant factor” is drawn from Schedule IV, based on the age of the employee.

14.7.2 Permanent Total Disablement: Under Section 4(1)(b): *“Sixty per cent of the monthly wages of the injured employee multiplied by the relevant factor, or ¹ 1,20,000, whichever is more.”* This applies to severe injuries that incapacitate the worker entirely for any employment.

14.7.3 Partial Disablement: Defined in Section 4(1)(c):

- For listed injuries (Schedule I), compensation is based on the corresponding percentage of loss in earning capacity.
- For unlisted injuries, the Commissioner determines the percentage based on expert opinion.

14.7.4 Medical Aid: Though not comprehensive, Section 11 mandates free medical examination. Emergency treatment costs may be implied but are not uniformly guaranteed unless directed by the Commissioner.

14.7.5 Vocational Rehabilitation: The Act does not explicitly provide rehabilitation benefits, but the Commissioner has discretion to support retraining or alternate placement, especially in disablement cases.

14.7.6 Wage Ceiling for Calculation: As per the latest notification (effective from 1 Jan 2010), the monthly wage cap is ¹ 15,000 for computing compensation.

Thus, the Act’s benefit structure balances legal uniformity with humane concern, ensuring rightful relief aligned with injury and wage context.

14.8 REGULATORY AND INSTITUTIONAL FRAMEWORK

The *Employee’s Compensation Act, 1923* functions within a well defined administrative and legal framework that ensures impartial adjudication and legislative adaptability. The institutions created under this Act play a vital role in enforcing worker protection mechanisms.

14.8.1 Commissioner for Employee’s Compensation: Under Section 19, the Commissioner is the designated quasi judicial authority responsible for resolving disputes, conducting inquiries and

awarding compensation. The Commissioner has powers similar to a civil court, including summoning witnesses and examining evidence.

14.8.2 Medical Referees and Panels: In complex injury or disablement cases, the Commissioner may consult qualified medical practitioners or specialized panels to assess the nature and extent of injury. Though not institutionally formalized, their opinions support fair and medically sound decisions.

14.8.3 Appellate Authority: High Court: As per Section 30, any aggrieved party may file an appeal to the High Court on a substantial question of law. Appeals are permissible if the dispute involves ¹ 10,000 or more and the awarded amount is deposited in advance.

14.8.4 Legislative Oversight: The Central and State Governments are empowered under Sections 32 and 35 to amend Schedules, update compensation rates and frame procedural rules as necessary.

This regulatory framework ensures administrative efficiency, legal recourse and continuous evolution of the Act in line with labour welfare objectives.

14.9 COMPARATIVE PERSPECTIVE: THE WORKMEN'S COMPENSATION ACT, 1923 AND ITS AMENDMENT IN 2017

The *Workmen's Compensation Act, 1923*, now known as the *Employee's Compensation Act*, was India's pioneering effort in establishing legal protection for injured workers. Over time, its provisions have evolved to reflect contemporary labour realities, culminating in significant amendments in 2009 and 2017. This section presents a structured comparison of the Act across its historical roots, key features and present day relevance.

14.9.1 Historical Background: Enacted during colonial rule, the *Workmen's Compensation Act, 1923* became effective on **1 July 1924**. It was the first Indian law to codify social protection for industrial workers. Inspired by British and European compensation systems, it recognized the financial vulnerability of labourers exposed to occupational hazards, especially in mines, factories and railways.

14.9.2 Objective: The primary goal of the Act was to ensure statutory compensation to workers or their dependents in the event of injury, disablement, or death arising "out of and in the course of employment." It aimed to replace expensive and inaccessible civil litigation with a no fault compensation model, ensuring timely relief.

14.9.3 Scope: The Act originally applied to manual labourers in high risk sectors such as:

- Factories and manufacturing units
- Mines and quarries
- Plantations
- Railways and transport services
- Construction and infrastructure projects

Through **Schedule II**, the scope was extended to include drivers, loaders, seamen and other field based workers many of whom are still outside the ambit of the ESI Act, 1948.

14.9.4 Key Provisions

- **No Compensation for Minor Injuries:** As per *Section 3(1)*, injuries not causing disablement for more than **three days** do not qualify for compensation unless serious.
- **Compensation Schedules:** *Schedule I* provides percentages of loss in earning capacity for various injuries; *Schedule IV* supplies age based multipliers for calculation.
- **Quasi Judicial Adjudication:** *Section 19* designates the Commissioner for Workmen's Compensation as the adjudicating authority with powers akin to a civil court, including the authority to summon, examine and award relief.

14.9.5 Comparison with the 2017 Amendment: The Employee's Compensation (Amendment) Act, 2017 brought significant reforms:

- **Section 17A Introduced:** Employers are now legally required to inform workers of their rights to compensation in writing or electronically at the time of employment.
- **Stricter Penalties:** *Section 18A* revised the fine for non-compliance to ¹ 50,000 to ¹ 1,00,000, making enforcement more robust.
- **Appeals Threshold Raised:** Under *Section 30*, appeals to the High Court must now involve a disputed amount of ¹ 10,000 or more, filtering out frivolous litigation.

These changes enhanced accountability, transparency and worker empowerment in compensation matters.

14.9.6 Current Relevance: Now officially titled the *Employee's Compensation Act, 1923*, the legislation remains highly relevant for informal and semi formal workers, especially those excluded from ESI coverage. It continues to offer legal recourse and financial protection to a wide range of employees, including those in gig based, contract and unorganised sectors.

In conclusion, while rooted in a colonial past, the Act has evolved into a vital component of India's labour welfare regime, balancing administrative efficiency with the enduring goal of equity and justice for injured workers.

14.10 SUMMARY

The Employee's Compensation Act, 1923 institutionalizes the State's duty to protect workers from employment related hazards and provides a structured redressal mechanism. It ensures prompt economic support for employees who suffer injury or death during the course of employment, extending protection to their dependents as well. The Act introduces a no fault liability model, clearly outlines employer responsibilities and mandates that employees be informed of their rights, thereby upholding both industrial peace and human dignity.

Uniform in its territorial scope, the Act applies across all Indian states and Union Territories. It encompasses a broad spectrum of occupations, particularly those in hazardous and informal sectors that are often beyond the reach of schemes like the ESI Act. Coverage extends to permanent, contractual, seasonal and even part time workers, provided their roles fall within the scheduled categories. However, armed forces personnel and employees covered under the ESI Act are excluded to avoid jurisdictional overlap.

The Act draws strength from its comprehensive legal definitions in Section 2, which establish clarity in its application. Terms such as "employee," "employer," "accident," "dependent," and "disablement" are defined inclusively, reflecting the realities of India's labour

market. It equates occupational diseases with accidental injuries and empowers medical practitioners to certify such claims, ensuring procedural transparency and legal uniformity.

Both employers and employees are subject to defined duties. Employees must report injuries promptly and undergo required medical evaluations, while employers are obligated to report serious accidents and cooperate with compensation claims. Workers' rights under the Act are protected from contractual waiver or third party claims, maintaining their legal sanctity.

The claims process involves timely notification, medical assessment and adjudication by the Commissioner, who functions with quasi judicial authority. Compensation amounts are calculated using standardized criteria and may be appealed in the High Court only under specified conditions.

In essence, the Employee's Compensation Act, 1923 harmonizes the objectives of economic protection, industrial responsibility and social justice. Through its comprehensive provisions and institutional backing, it offers a robust framework for safeguarding the rights and welfare of India's working population.

14.11 KEY WORDS

- **Compensation:** A statutory monetary relief awarded to employees or their dependents for injuries, disablement, or death arising out of employment. It is calculated based on wage levels, injury severity and age factors as prescribed in the Act.
- **Disablement:** Disablement refers to the reduction or loss of a worker's earning capacity due to injury sustained during employment. It is classified as temporary or permanent and either partial or total.
- **Occupational Disease:** An illness contracted due to exposure to specific hazards inherent in certain types of employment. These are treated under the Act as injuries by accident, provided they are listed in Schedule III.
- **Dependent:** A family member who is legally entitled to receive compensation upon the employee's death. This includes widows, children, aged parents and others as defined in Section 2(1)(d) of the Act.
- **Medical Aid:** Basic medical assistance or examination mandated by the employer after a workplace injury. While not extensive under this Act, it plays a critical role in claim validation and initial treatment.
- **Rehabilitation:** The process of restoring an injured employee's employability through medical care, vocational retraining, or job reassignment. Though not explicitly mandated, it may be encouraged through Commissioner discretion.
- **No fault Principle:** A legal doctrine whereby compensation is awarded without the need to prove employer negligence. This principle ensures quicker, fairer relief for workers suffering workplace injuries.
- **Workmen's Compensation:** The original title of the Employee's Compensation Act, focusing on financial redress for workers injured during employment. It was renamed in 2009 to adopt more inclusive terminology.
- **Workers' Compensation Board:** A term commonly used in international contexts referring to a statutory authority that administers compensation claims. In India, this function is primarily performed by the Commissioner under the Act.

14.12 SELF ASSESSMENT QUESTIONS

- Q-1.** What is the core objective of the Employee's Compensation Act, 1923?
- Q-2.** How does the Act uphold social justice and protect vulnerable workers?
- Q-3.** Why is compensation under the Act based on a no fault liability principle?
- Q-4.** What types of injuries and diseases are recognised as compensable under Section 3(1)?
- Q-5.** How are compensation amounts calculated as per Sections 4 and Schedule IV?
- Q-6.** What is the importance of Section 17A introduced in the 2017 Amendment?
- Q-7.** Who qualifies as a 'dependent' under Section 2(1)(d) and what are their rights?
- Q-8.** How is compensation for death or total disablement determined under the Act?
- Q-9.** What powers and responsibilities do the Commissioner hold in claim adjudication?
- Q-10.** When and under what conditions can a High Court appeal be filed under Section 30?
- Q-11.** How does the Act align with constitutional values such as Articles 38 and 43?
- Q-12.** Which categories of non-permanent or informal workers are included under the Act?
- Q-13.** Why does the Act continue to be essential for workers outside ESI coverage today?
- Q-14.** What key reforms were introduced through the Employee's Compensation (Amendment) Act, 2017?

14.13 REFERENCES

- Srivastava, S. C. (2012). *Commentary on The Workmen's Compensation Act*. Lucknow: Eastern Book Company.
- Padhi, P. K. (2012). *Labour and Industrial Laws* (2nd ed.). New Delhi: PHI Learning Pvt. Ltd.
- Sharma, A. (2018). Legal safeguards for informal workers in India: A review of the Employee's Compensation Act. *Indian Journal of Labour Economics*, 61(3), 421–435.
- Kannan, K. P., & Raveendran, G. (2019). Social security and labour market inequality in India. *Economic and Political Weekly*, 54(34), 36–42.
- Rao, A. R. (2020). Revisiting workers' compensation in India: Legal gaps and governance challenges. *Journal of Industrial Relations*, 45(2), 145–160.
- The Employee's Compensation Act, 1923. Government of India.
- The Employee's Compensation (Amendment) Act, 2017. Ministry of Labour and Employment.
- The Employees' State Insurance Act, 1948. Government of India.
- The Code on Social Security, 2020. Ministry of Labour and Employment.
- International Labour Organization. (2020). *Labour Protection in India: A Review*. Geneva: ILO.
- Supreme Court of India. (1997). *Ved Prakash Garg v. Prem Devi*, AIR 1997 SC 3850.

UNIT-15

LABOUR CODES

Unit Structure

- 15.1 Introduction
- 15.2 Key proposals in the three labour codes
- 15.3 Benefits of labour codes
- 15.4 Why new code on wages?
- 15.5 Types of wages
- 15.6 Concerns with new wage code
- 15.7 Summary
- 15.8 Test your knowledge
- 15.9 Further readings

15.0 OBJECTIVE OF THE UNIT

After studying this unit you will be able to understand the

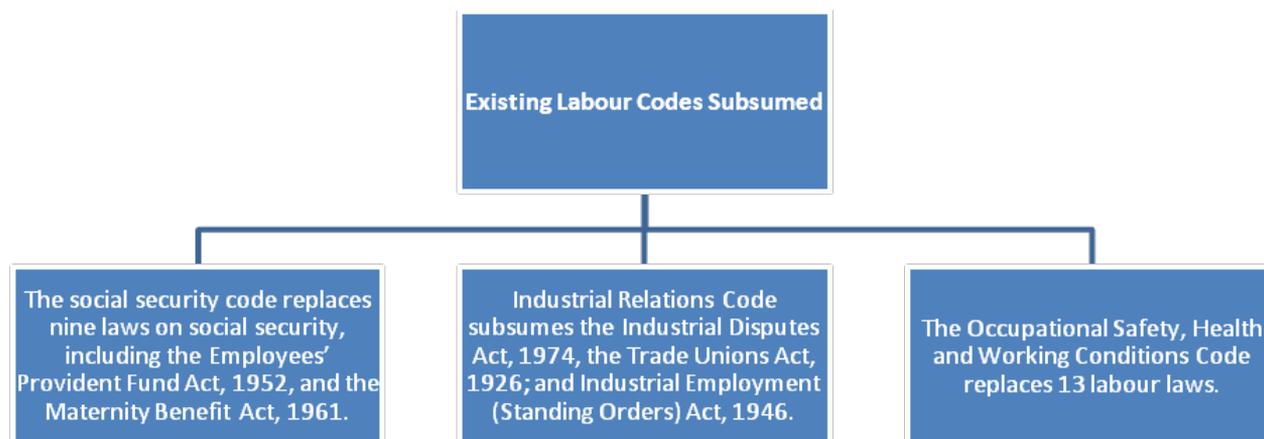
- Labour codes and key proposals in the labour code
- Advantages of labour codes and what are the reasons behind implementation of new IR codes

15.1 INTRODUCTION

Labour falls under the Concurrent List of the Constitution. Recently, the Parliament passed three labour codes— on industrial relations; occupational safety, health and working conditions; and social security — proposing to simplify the country’s archaic labour laws and give impetus to economic activity without compromising with the workers’ benefits.

These labour codes can have a transformative impact on labour relations in India. Along with the ‘Code on Wages Act- 2019’, these can significantly ease the conduct of business by amalgamating a plethora of Central and State laws on labour.

The labour codes were adopted on the recommendations of the Second National Commission on Labour (2002), which suggested consolidating 100 State laws and 40 Central laws across industries, occupations and regions.



15.2 KEY PROPOSALS IN THE THREE LABOUR CODES

15.2.1 Industrial Relations Code Bill 2020

The Industrial Relations Code, 2020, is a comprehensive piece of legislation in India that aims to consolidate and amend the laws related to trade unions, conditions of employment, and the resolution of industrial disputes. It seeks to streamline the existing framework by merging three key labour laws: the Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946. The code intends to foster better industrial relations by protecting worker rights, minimizing conflicts between employers and employees, and providing a mechanism for dispute resolution.

The code, among its important provisions, makes it easier for companies to hire and fire workers.

Companies employing up to 300 workers will not be required to frame rules of conduct for workmen employed in industrial establishments. Presently, it is compulsory for firms employing up to 100 workers.

It proposes that workers in factories will have to give a notice at least 14 days in advance to employers if they want to go on strike.

Presently, only workers in public utility services are required to give notices to hold strikes.

Besides, every industrial establishment employing 20 or more workers will have one or more Grievance Redressal Committees for resolution of disputes arising out of employees' grievances.

The code also proposes setting up of a re-skilling fund to help skill retrenched workers.

15.2.2 Occupational Safety, Health and Working Conditions Code Bill, 2020

The Occupational Safety, Health and Working Conditions Code, 2020, consolidates and amends 13 existing labour laws related to workplace safety, health, and working conditions in India. It applies to establishments with 10 or more workers, and all mines and docks. The Code aims to standardize and streamline regulations across various sectors, simplifying compliance for employers. It spells out duties of employers and employees, and envisages safety standards for different sectors, focusing on the health and working condition of workers, hours of work, leaves, etc.

The code also recognises the right of contractual workers.

The code provides employers the flexibility to employ workers on a fixed-term basis, on the basis of requirement and without restriction in any sector.

More importantly, it also provides for statutory benefits like social security and wages to fixed-term employees at par with their permanent counterparts.

It also mandates that no worker will be allowed to work in any establishment for more than 8 hours a day or more than 6 days in a week.

In case of an overtime, an employee should be paid twice the rate of his/her wage. It will be applicable to even small establishments, which have upto 10 workers.

The code also brings in gender equality and empowers the women workforce. Women will be entitled to be employed in all establishments for all types of work and, with consent can work before 6 am and beyond 7 pm subject to such conditions relating to safety, holidays and working hours.

For the first time, the labour code also recognises the rights of transgender. It makes it mandatory for industrial establishments to provide washrooms, bathing places and locker rooms for male, female and transgender employees.

15.2.3 Code on Social Security Bill, 2020

The Code on Social Security, 2020 is a code to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors.

Social security refers to protection measures provided to workers to ensure healthcare and income security in case of certain contingencies such as old age, maternity, or accidents.

The act amalgamates nine central labour enactments relating to social security.

It consolidated The Employees' Compensation Act, 1923, The Employees' State Insurance Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, The Maternity Benefit Act, 1961, The Payment of Gratuity Act, 1972, The Cine Workers Welfare Fund Act, 1981, The Building and Other Construction Workers Welfare Cess Act, 1996, Unorganised Workers' Social Security Act 2008.

This will replace nine social security laws, including Maternity Benefit Act, Employees' Provident Fund Act, Employees' Pension Scheme, Employees' Compensation Act, among others.

The code universalizes social security coverage to those working in the unorganised sector, such as migrant workers, gig workers and platform workers. For the first time, provisions of social security will also be extended to agricultural workers also. The code also reduces the time limit for

receiving gratuity payment from the continuous service of five years to one year for all kinds of employees, including fixed-term employees, contract labour, daily and monthly wage workers.

15.3 BENEFITS OF LABOUR CODES

Consolidation and simplification of the Complex laws: The three Codes simplify labour laws by subsuming 25 central labour laws that have been on the table for at least 17 years. It will provide a big boost to industry & employment and will reduce multiplicity of definition and multiplicity of authority for businesses.

- **Single Licensing Mechanism:** The codes provide for a single licensing mechanism. It will give fillip to industries by ushering in substantive reform in the licensing mechanism. Currently, industries have to apply for their licence under different laws.
- **Easier Dispute resolution:** The codes also simplify archaic laws dealing with industrial disputes and revamp the adjudication process, which will pave the way for early resolution of disputes.
- **Ease of Doing Business:** According to the industry and some economists such reform shall boost investment and improve ease of doing business. It drastically reduces complexity and internal contradictions, increases flexibility & modernizes regulations on safety/working conditions
- **Other benefits for Labour:** The three codes will promote fixed term employment, reduce influence of trade unions and expand the social security net for informal sector workers.

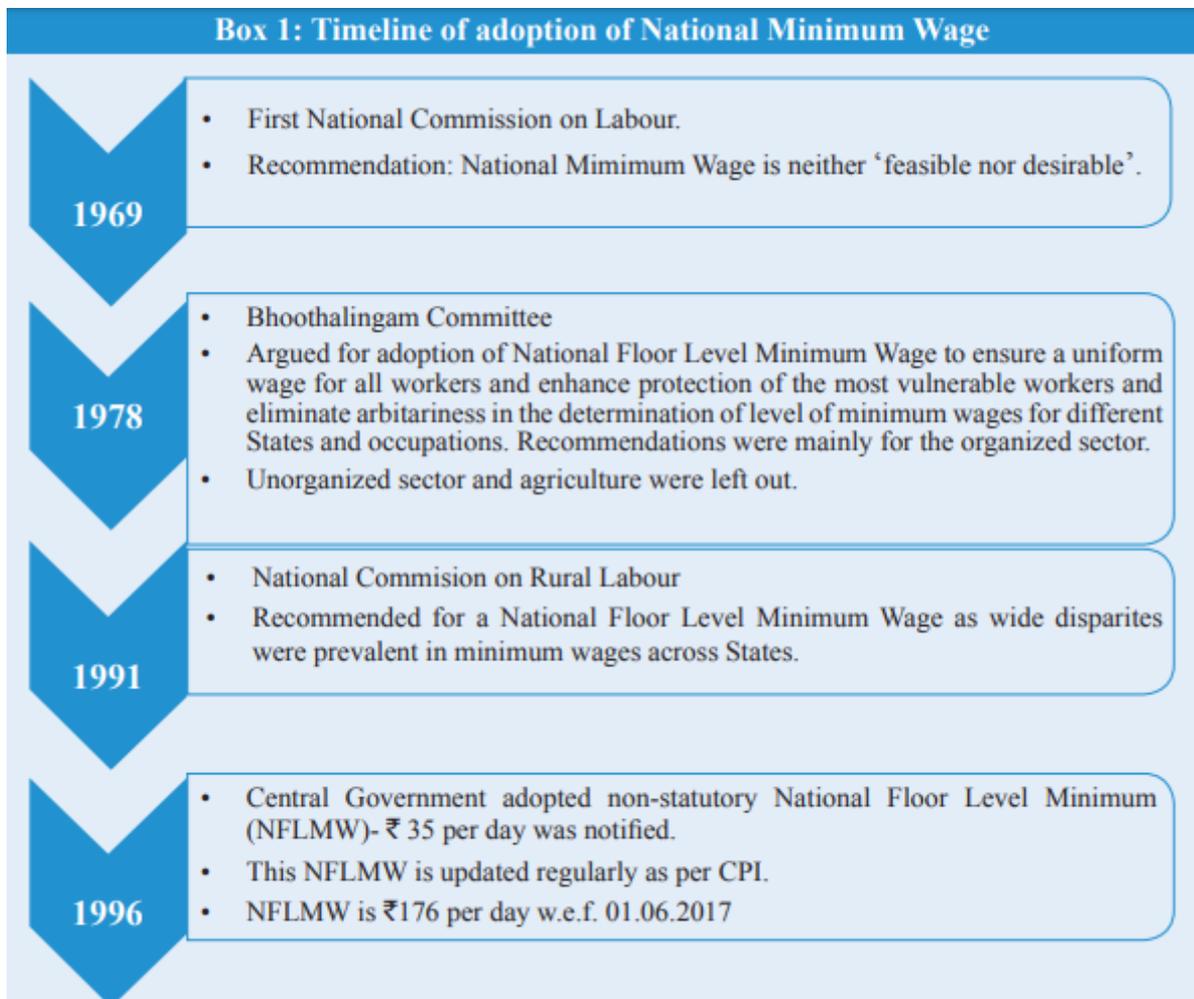
15.4 WHY NEW CODE ON WAGES?

In India, labour market preys on excess availability of workers, therefore workers are not able to demand fair minimum wages and continue to live a precarious life.

In India, labour laws fall in the concurrent list and are extremely complicated, therefore there was a need to bring reform by addressing some of the issues like multiple definition of wages, low wages etc. It will also lead to more formalization of the economy.

An effective minimum wage policy that targets the vulnerable bottom rung of wage earners can help in driving up aggregate demand and building and strengthening the middle class, and thus spur a phase of sustainable and inclusive growth. Minimum wages can promote social justice without any major negative implication for employment if wages are set at an adequate level.

Box 1: Timeline of adoption of National Minimum Wage



Code on Wages Act 2019

The new wage code removes the multiplicity of wage definitions, which can significantly reduce litigation as well as compliance cost for employers. The new Act links minimum wage across the country to the skills of the employee and the place of employment.

It seeks to universalize the provisions of minimum wages and timely payment of wages to all employees irrespective of the sector and wage ceiling. It seeks to ensure "Right to Sustenance" for every worker and intends to increase the legislative protection of minimum wage.

A National Floor Level Minimum Wage will be set by the Centre and will be revised every five years, while states will fix minimum wages for their regions, which cannot be lower than the floor wage.

It subsumes the following four labour laws:

- The Payment of Wages Act, 1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976.

15.5 TYPES OF WAGES

Minimum Wage: International Labour Organisation defines it as “the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract”. The minimum wage includes the bare needs of life like food, shelter, and clothing.

Living Wage: It is the wage needed to provide the minimum income necessary to pay for basic needs based on the cost of living in a specific community. In addition to bare needs, a ‘living wage’ includes education, health, insurance, etc.

Fair Wage: A ‘fair wage’ is a mean between ‘living wage’ and ‘minimum wage’.

Starvation Wage: It refers to the wages which are insufficient to provide the ordinary necessities of life.

15.6 CONCERNS WITH NEW WAGE CODE

Starvation Wages: It has been alleged that the new wage code will **push the starvation wages** further by increasing the income capacity and **purchasing power** of the informal workers. The increase in purchasing power of the workers will lead to the decrease in savings which in turn will reduce expenditure for productive purposes.

The introduction of concept of “**floor wages**” would mean that “starvation wages” which currently guarantees just **178 per day**, will continue to exist and would promote forced labour.

This has been highlighted by Supreme Court in his judgement in **U. Unichoyi and Others vs. The State of Kerala case**, where it remarked that in an underdeveloped country which faces the problem of unemployment on a very large scale, it is likely that labour offers to work even on starvation wages.

Deduction of Wages Clause: The new law provides for the arbitrary deduction of wages (upto 50% of monthly wage) based on performance, damage or loss, advances etc. The deduction clause will lead to reduced bargaining power and right of association of workers. The workers will not be able to demand even basic work rights in fear of wage deduction.

In India, the informal sector employers dominate the workers due to caste and higher social status, therefore the above provision may have the potential to become a handy tool for exploitation of these workers.

Inspection Framework: The rules do not clarify the governance and institutional structure for “labour inspection system”. The rules propose an ad-hoc unclear mechanism called “inspection scheme”.

The scheme provides for appointment of **Inspector-cum-Facilator** by notification by the appropriate government. This may lead to the revival of **inspector-raj system** in the labour market.

The **International Labour Organisation’s (ILO) Labour Inspection Convention of 1947 (Convention C081)** — which has been ratified by India — provides for a **well-resourced and independent inspectorate** with provisions to allow thorough inspections and free access to workplaces. However, the provisions of **ILO’s convention** has been overlooked while framing the new law.

15.7 SUMMARY

The four new Labour Codes in India consolidate and streamline 29 existing central labour laws, aiming to simplify and modernize labour regulations. These codes focus on wages, industrial relations, social security, and occupational safety, health, and working conditions. They aim to improve compliance, clarify provisions, and enhance worker protection.

Code on Wages, 2019: This code consolidates four existing laws related to wages, including minimum wages, payment of wages, and bonus payments. It establishes a "floor wage" and aims to ensure timely payment of wages to all employees.

Industrial Relations Code, 2020: This code deals with industrial disputes, trade unions, and the relationship between employers and employees. It simplifies procedures for dispute resolution and aims to promote better industrial relations.

Social Security Code, 2020: This code consolidates various social security laws, including those related to provident fund, employee state insurance, and gratuity. It aims to extend social security benefits to a wider range of workers, including those in the unorganized sector.

Occupational Safety, Health, and Working Conditions Code, 2020: This code focuses on ensuring safe and healthy working conditions for employees. It covers various aspects of workplace safety, including hygiene, ventilation, and safety measures.

The codes aim to reduce the complexity and multiplicity of existing labour laws, making them easier to understand and implement. By consolidating and clarifying provisions, the codes are expected to improve compliance with labour laws. The codes aim to extend social security benefits, ensure fair wages, and improve working conditions for all employees. The streamlined regulations are expected to make it easier for businesses to operate and comply with labour laws. The codes aim to extend the benefits of labour laws to workers in the unorganized sector, who are often excluded from such protections.

15.8 TEST YOUR KNOWLEDGE

1. What are labour codes?
2. Explain the key proposals in the three labour codes
3. What are the benefits of labour codes? Explain
4. Why new code on wages is needed?
5. Explain the types of wages

15.9 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethnamohan, R., Phi Learning.

UNIT-16

SOCIAL SECURITY 2020 (“SS CODE”)

Unit Structure

- 16.1 Introduction
- 16.2 Salient features of the code
- 16.3 Benefits to unorganised worker, gig workers and platform workers
- 16.4 Registration
- 16.5 Employee provident fund
- 16.6 Employees state insurance (esi)
- 16.7 Gratuity
- 16.8 Maternity benefit
- 16.9 Summary
- 16.10 Test your knowledge
- 16.11 Further readings

16.1 INTRODUCTION

The Second National Commission on Labour (2002) suggested the amalgamation of central labour laws into broader groups such as: (i) Wages, (ii) Industrial Relations, (iii) Social Security, and (iv) Occupational Safety, Health and Working Conditions. The Code on Social Security 2020 (“SS Code”) is enacted to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised sector.

The Social Security Code (SS Code) has replaced the following enactments, The Employee’s Compensation Act, 1923; The Employees’ State Insurance Act, 1948; The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952; The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; The Cine-Workers Welfare Fund Act, 1981; The Building and Other Construction Workers’ Welfare Cess Act, 1996; The Unorganised Workers Social Security Act, 2008.

The SS code defines various terms such as, aggregator, gig worker, platform worker, unorganised worker (home based worker and self based workers). Further, the definition of the employee has been widened to include maximum number of employees and workers.

1.4 The SS code provides the social security and protection to the workers in the unorganized sector to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code. This article aims to summarize some of the important provisions introduced by the SS code.

16.2 SALIENT FEATURES OF THE CODE

16.2.1. GIG WORKERS

Gig worker is the new concept introduced in the code. The code defines gig worker as ‘a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship’. Normally a gig worker means a person who performs a job temporarily or someone who takes up part time jobs on hourly basis. The concept of gig workers has been introduced for the first time under the ambit of labour laws. It was the need of the hour to define such category of workers that consists of a large number of freelancers which work on temporary basis.

16.2.2 PLATFORM WORKERS

The code define platform worker as “a person engaged in or undertaking platform work”. Most commonly platform based work is where workers earn money by providing specific services or to solve specific problems through online platform such as amazon, flipkart etc.

16.2.3. UNORGANISED WORKER

Generally unorganized workers means a home-based worker, self-employed worker or a wage worker in the unorganised sector.

16.3 BENEFITS TO UNORGANISED WORKER, GIG WORKERS AND PLATFORM WORKERS

16.1 As there were no specific legislation for the unorganised workers, they cannot claim significant benefits like minimum wages, hours of work, overtime, leave etc. The new code introduced the same opportunities and protections which is given to the other employees (government employees and private sector employees) under various labour laws in India.

16.2 The Code provides right to the Central Government and State Government to frame and notify the social security schemes for such workers on the matters related to life and disability cover, accident insurance, health and maternity benefits, old age protection, crèche. The schemes may be funded by the combination of Central Government, State Government, aggregators, beneficiaries of the scheme, or funded from corporate social responsibility.

16.3 The code places an obligation on the Central Government to constitute the National Social Security Board for the welfare of the unorganised worker as well as for the gig workers and platform workers and can recommend and monitor the schemes for such worker. The Central Government will setup and administer the social security fund for the welfare of such workers.

16.4 The code also gives the right to the government to setup helpline and such facilitation centre etc. for such workers. This will encourage the youth to participate in such jobs and can avail the given benefits.

16.4 REGISTRATION

16.4.1 The code provides the compulsory registration of the every unorganised worker, gig worker and platform workers to avail the benefit of the concerned scheme framed under this code, subject to the fulfilment of the following conditions: (a) he has completed sixteen years of age or such age as may be prescribed by the Central Government; (b) he has submitted a self-declaration containing information prescribed by the Central Government.

16.4.2. Every eligible worker is to make an application for registration in such form along with such documents including Aadhaar number as may be prescribed by the Central Government.

16.5 EMPLOYEE PROVIDENT FUND

16.5.1 The code has revised the applicability of the **Employees Provident Fund Scheme (“EPF”)**. The EPF will apply to the establishment employing 20 or more employees. The Central Government may establish the Provident fund where the contribution paid by the employer to the fund shall be 10% of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contactor), and the employee’s contribution shall be equal to the contribution payable by the employer.

16.5.2 An employee can contribute more than 10 %, subject to the condition that the employer is not be under an obligation to pay more than 10 %, Provided that the Central Government may by notification, modify the rate from 10% to 12%

16.6 EMPLOYEES STATE INSURANCE (ESI)

16.6.1. ESI scheme will apply to establishment employing 10 or more employs. It is also be applicable to an establishment, which carries on such hazardous or life threatening occupation as notified by the Central Government, even a single employee is employed. The code covers the gig workers and platform workers under the ESI scheme.

16.6.2. If the employer fails to pay ESI contributions, the ESIC (employees state insurance corporation) may pay the benefits to the employee and recover it from the employer the capitalized value of the benefit, including the contribution amount, interest and damages, as an arrear of land revenue or otherwise.

16.7 GRATUITY

16.7.1 Gratuity is applicable to every factory, mine, oilfield, plantation, port and railway company; and every establishment in which 10 or more employees are employed, or were employed, on any day of the preceding 12 months, shall pay gratuity to their eligible employees. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, Provided further that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment.

16.7.2 In case of working journalist, the gratuity shall be payable on the termination of employment after continuous service of three years.

16.7.3 The SS code entitled the fixed term employees (i.e. employed for a fixed duration) to receive gratuity on pro rata basis, based on the term of their contract.

16.8 MATERNITY BENEFIT

16.8.1 No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

16.8.2 every woman shall be entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence.

16.8.3 Every woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

16.8 .4 The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery.

16.8.5 In addition to maternity benefit in terms of paid leaves, every woman is entitled to medical bonus of up to INR 3,500 (if pre-natal confinement and post-natal care is not provided by employer)

16.8.6 In case of miscarriage, or medical termination of pregnancy, a woman shall, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage.

16.9 SUMMARY

The Code on Social Security, 2020, aims to consolidate and amend laws related to social security in India, extending coverage to all employees and workers, including those in the organized, unorganized, and gig/platform sectors. It replaces nine existing central labour laws related to social security. The Code aims to streamline and simplify social security provisions, including benefits like provident fund, employee state insurance, gratuity, and more. The Code amalgamates nine existing central labour laws, including the Employees' Compensation Act, 1923, the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and the Employees' State Insurance Act, 1948. It seeks to extend social security benefits to all employees and workers, regardless of their sector (organized, unorganized, gig, or platform workers). The Code aims to simplify registration, compliance, and administration of social security schemes.

It provides for the creation of various social security funds, including those for unorganized workers, gig workers, and platform workers. The Code includes specific provisions for gig and platform workers, recognizing them as a distinct category of workers and providing for social security schemes for them. The central government can notify various social security schemes, while state governments can also notify specific schemes for different categories of workers. The Code provides for the appointment of Inspector-cum-facilitators to ensure compliance and advise employers and employees. The Code outlines penalties for various violations, including failure to deposit contributions, obstructing inspectors, and unlawfully deducting employee contributions.

Specific provision are Gratuity is payable to employees after 5 years of continuous service, with exceptions for death, disablement, or fixed-term contracts. The Code includes provisions for maternity benefits, including creche facilities for establishments with 50 or more employees. Contributions to EPF, EPS, EDLI, and ESI schemes will be made by employers and employees. A gig worker is defined as someone participating in a work arrangement outside of a traditional employer-employee relationship. The Code on Social Security, 2020, represents a significant step towards providing comprehensive social security coverage to all workers in India, with a particular focus on the evolving nature of work in the gig and platform economy.

16.10 TEST YOUR KNOWLEDGE

1. What are social security 2020 code? Discuss
2. What are salient features of the labour code?
3. Discuss about the benefits to unorganised worker, gig workers and platform workers?
4. What is employee provident fund? Explain

5. Discuss about the employees state insurance (ESI)
6. What is gratuity?
7. What are maternity benefits in new labour codes?

16.11 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethinamohan, R., Phi Learning.

UNIT-17

THE COMPANIES (AMENDMENT) BILL, 2020 (THE IR CODE)

Unit Structure

- 17.1 Introduction
- 17.2 Rationale behind the industrial relations code
- 17.3 New definitions
- 17.4 Scope & applicability
- 17.5 Industrial dispute
- 17.6 Creating an industrial tribunal
- 17.7 Fixed-term workers to enjoy the benefits of permanent employees
- 17.8 Highlights of industrial relations code, 2020
- 17.9 Key definitions
- 17.10 Summary
- 17.11 Test your knowledge
- 17.12 Further readings

17.0 OBJECTIVE OF UNIT

After going through this unit you will be able to understand about

- New industrial relation code and its rationale
- Scope and applicability of industrial relation code
- Industrial disputes and creating tribunal to resolve problems

17.1 INTRODUCTION

The Companies (Amendment) Bill, 2020 was introduced in Lok Sabha by the Minister for Corporate Affairs, Ms. Nirmala Sitharaman, on March 17, 2020.

On September 29, 2020 the government amalgamated the following existing legislative Acts under the IR Code:

- The Industrial Disputes Act (ID Act), 1947
- The Industrial Employment (Standing Orders) Act, 1946
- The Trade Unions Act, 1926

The IR Code is one of four new labour codes introduced for the purpose of simplifying and consolidating the country's matrix of labour laws, which in turn will make it easier to comply with for foreign investors and the private sector. Altogether, the four codes look at introducing uniformity in rules and regulations relating to wages, industrial relations, social security, and occupational safety and health to be in line with international best practices.

The Bill seeks to amend the Companies Act, 2013. Following amendments were made:

Producer companies: Under the 2013 Act, certain provisions from the Companies Act, 1956 continue to apply to producer companies. These include provisions on their membership, conduct of meetings, and maintenance of accounts. Producer companies include companies which are engaged in the production, marketing and sale of agricultural produce, and sale of produce from cottage industries. The Bill removes these provisions and adds a new chapter in the Act with similar provisions on producer companies.

Changes to offences: The Bill makes three changes. First, it removes the penalty for certain offences. For example, it removes the penalties which apply for any change in the rights of a class of shareholders made in violation of the Act. Note that where a specific penalty is not mentioned, the Act prescribes a penalty of up to Rs 10,000 which may extend to Rs 1,000 per day for a continuing default. Second, it removes imprisonment in certain offences. For example, it removes the imprisonment of three years applicable to a company for buying back its shares without complying with the Act. Third, it reduces the amount of fine payable in certain offences. For example, it reduces the maximum fine for failure to file annual return with the Registrar of Companies from five lakhs rupees to two lakhs rupees.

Under the Act, one person companies (i.e., companies with only one member) or small companies (i.e., with lower paid-up share capital and turnover thresholds) are only liable to pay up to 50% of the penalty for certain offences (such as failing to file annual return). The Bill: (i) extends this provision to all producer companies and start-up companies, (ii) extends this provision to apply to violation of any provision of the Act, and (iii) limits the maximum penalty to two lakhs rupees for the company and one lakh rupees for a defaulting officer.

Direct listing in foreign jurisdictions: The Bill empowers the central government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions.

- **Exclusion from listed companies:** The Bill empowers the central government, in consultation with the Securities and Exchange Board of India, to exclude companies issuing specified classes of securities from the definition of a "listed company".
- **Remuneration to non-executive directors:** The Act makes special provisions for payment of remuneration to executive directors of a company (including managing director and other whole-time directors) if the company has inadequate or no profits in a year. For example, if a company has an effective capital of up to five crore rupees, the annual remuneration to its executive directors cannot exceed 60 lakh rupees. The Bill extends this provision to non-executive directors, including independent directors.
- **Beneficial shareholding:** Under the Act, if a person holds beneficial interest of at least 10% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest to the company. The company is required to note the declaration in a separate register. The Bill empowers the central government to exempt any class of persons from complying with these requirements if considered necessary in public interest.
- **Exemptions from filing resolutions:** The Act requires companies to file certain resolutions with the Registrar of Companies. These include resolutions of the Board of Directors of the company to borrow money, or grant loans. However, banking companies are exempt from filing resolutions passed to grant loans, or to provide guarantees or

security for a loan. This exemption has been extended to registered non-banking financial companies and housing finance companies.

- **Corporate Social Responsibility (CSR):** Under the Act, companies with net worth, turnover or profits above a specified amount are required to constitute CSR Committees and spend 2% of their average net profits in the last three financial years, towards its CSR policy. The Bill exempts companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees. Further, companies which spend any amount in excess of their CSR obligation in a financial year can set off the excess amount towards their CSR obligations in subsequent financial years.
- **Periodic financial results for unlisted companies:** The Bill empowers the central government to require classes of unlisted companies (as may be prescribed) to prepare and file periodical financial results, and to complete the audit or review of such results.
- **Benches of NCLAT:** The Bill seeks to establish benches of the National Company Law Appellate Tribunal. These shall ordinarily sit in New Delhi or such other place as may be notified. India's New Industrial Relations Code and its Impact on Labour Law

The Industrial Relations Code (IR Code) was passed last year and received the President's assent on September

17.2 RATIONALE BEHIND THE INDUSTRIAL RELATIONS CODE

The main purpose of the IR Code is to benefit, both, employers and employees by:

- Streamlining the dispute resolution mechanism.
- Protecting fixed-term employees, that is, those employees who have been contracted to work for a specific period of time.
- Ensuring implementation of standing orders by large industrial establishments.
- Initiating a re-skill fund for retrenched employees.
- Enforcing strict penalties to avoid non-compliance.
- Enabling a business-friendly environment as the Code provides for a single negotiating body and greater flexibility to employers to make operational decisions. This may prevent industrial disputes, for example, from being mediated by multiple stakeholders and intervened into by vested interests.

Reforming India's labour law has long been felt necessary by multiple stakeholders – to be updated to the current needs of the labour market and support a friendly business environment.

In recent years, as India has aggressively pitched its economy to foreign investors to set up here, many have pointed to the country's labour and employment laws as limiting – erecting several compliance and regulatory barriers.

17.3 NEW DEFINITIONS

Under the IR Code, definitions of the terms – industry, worker, employer, industrial dispute, and fixed-term employment have been updated. Amending old definitions the new definitions under the IR code are as follows :

Industry

An industry refers to any systemic activity between employers and workers for the purpose of production, supply, or distribution of goods and services, regardless of whether or not this activity is pursued with the motive of profit or capital investment. Hospitals, educational, and scientific institutions now come under industry as per the new definition.

Specifically, an industry is not:

- An institution owned or managed by those organizations that are wholly or substantially engaged in any charitable, social, or philanthropic services
- An activity carried out by certain departments of the federal government dealing in defence, atomic energy, and space research
- Any domestic activity at home
- Any other activity that is not approved by the federal government to be under the ambit of an industry

Worker

The following are now included within the new definition of worker:

- Working journalists as defined under the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
- Sales promotion employees as defined under the Sales Promotion Employees (Conditions of Service) Act, 1976
- Supervisory employees earning less than INR 18,000 (US\$246) a month

Employer

The following are now included within the new definition of employer:

- Contractors
- Legal representatives of deceased employers
- Manager of a factory, so named as per the definition given by the Factories Act, 1948
- Manager or managing director of any establishment who is in full control of it and is entrusted with it

17.4 SCOPE & APPLICABILITY

The Code is designed to consolidate & amend the laws regarding Trade Unions, conditions of employment in Industrial establishment or undertaking, and sleek settlement of industrial disputes. The code regulates the subsequent areas:

- Registration of Trade Union
- Cancellation of Trade Union
- Alteration of Name of Trade Union
- Formation of Work Committee
- Incorporation of a Registered Trade Union
- Recognition of Negotiating Union

- Preparation of Standing Order
- Register of Standing Order
- Constitution of Industrial Tribunal
- Illegal Strikes and Lock-outs
- Procedure for Retrenchment and Re-employment of Retrenched Worker
- Compensation to Workers in case of Transfer of Establishment
- Prohibition of Lay-off
- Closure of an Industrial Establishment

Objective

- The Code designated to safeguard the rights of employers and employees by providing easy labour reforms and to facilitate ease of Doing Business.
- The object of the Code is to realize industrial peace and harmony as the ultimate pursuit in resolving industrial disputes and to advance the progress of industry by bringing about the existence of harmony and cordial relationship between the employers and workers.

17.5 INDUSTRIAL DISPUTE

This definition is expanded to include any dispute or difference arising between an individual worker and employer that relates to discharge, dismissal, retrenchment, or termination of such worker within the ambit of the Code.

Fixed-term worker

The provisions of a fixed-term worker have been extended to include the following:

- Work hours, wages, and other benefits will not be less than those given to permanent employees for doing the same or similar work.
- Eligibility for gratuity will be granted if services have been provided for a period of one year.
- Eligibility for statutory benefits will be granted in proportion to the services provided, regardless of whether the period of employment extends to the qualifying period of employment needed to attain statutory benefits.

Appointing a grievance redressal committee

The IR Code stipulates that for each establishment that employs more than 20 employees, a grievance redressal committee of maximum 10 members must be set up, that will be responsible for overseeing and resolving disputes. There should be equality in the number of members representing the employers, employees, as well as women employees. Representation of women workers in the committee should not be less than the proportion of women workers to the total workers in an establishment. Establishments that do not comply with the setting up of a GRC can be fined up to INR 100,000.

The committee has been permitted one year to hear a party's grievances. However, if there is any grievance that remains unresolved or if the committee declares an employee as aggrieved, the matter will no longer be limited to the jurisdiction of that establishment, and the employee has the right to seek conciliation proceedings.

Appointing a negotiating council

All establishments with a registered trade union must set up a single negotiating union or council that will be responsible for handling all matters as prescribed by the IR Code.

Establishments that have only one functioning registered trade union will recognize that trade union to be the sole negotiating union of its employees, and this union will be subjected to certain criteria as prescribed by the Code.

For those establishments that have more than one functioning registered trade union, the union that is made up of 51 percent or more employees will be recognized as the sole negotiation union of its employees.

In establishments with multiple functioning registered trade unions – where none constitute 51 percent or more employees – the negotiation council that is set up should be made up of not less than 20 percent of the total number of employees who are employed in such an establishment.

Controlling arbitrary strikes and lock-outs

A strike refers a concerted or mass causal leave by 50 percent or more employees of an establishment, on any working day. The IR Code prescribes that only public utility (supply of water, electricity, gas) workers may go on a strike on the 14th day of their in-advance 42-day notice of strike.

All other workers belonging to any industrial establishment – may not go on a strike either:

- Before 60 days from the notice of strike; or
- Before 14 days from giving this notice of strike; or
- Before the end of the date of strike specified in the notice; or
- During any pending conciliation proceedings; or
- Seven days after the end of the conciliation proceedings; or
- During any pending arbitrary proceedings; or
- Sixty days after the end of the arbitrary proceedings; or
- During any period of time wherein awards or settlements are underway with regards to such matters.

If the above conditions are met, no employer will be allowed to lock-out (be allowed to deny employment to) any of their employees.

By expanding the definition of a strike and imposing clear conditions of being able to strike, the IR Code intends to stop employees from going on strike arbitrarily and seeks to protect the interests of all parties affected.

17.6 CREATING AN INDUSTRIAL TRIBUNAL

The IR Code has pushed for the setting up of the National Industrial Tribunal and the constitution of either one or more industrial tribunals to begin handling industrial disputes. These tribunals will replace the existing labour courts, the court of inquiry, and the board of conciliation that had been set up under the jurisdiction of the existing Industrial Disputes Act.

Each tribunal will consist of:

- Two members appointed by the federal government

- Two members appointed by a government body appropriate for this task, namely, one judicial member and one administrative member

The federal government may also notify the constitution of another or more National Industrial Tribunals as the adjudication of industrial disputes is a matter of national importance. Industrial establishments located in one or more states may need to approach the national-level tribunal to seek resolution to disputes.

Raising wage ceiling for supervisory employees

A supervisory employee refers to an employee who has the power to hire, promote, award, transfer, recall, lay-off, suspend, and discipline other employees. Under the IR Code, all supervisory employees who earn from between INR 10,000-18,000 qualify as working employees, and employers can fulfil the same retrenchment requirements to terminate their services as they would any other of their employees.

Increasing threshold for lay-off and retrenchment in fixed industrial establishments

Under the Industrial Disputes Act, industrial establishments of over 100 employees were required to seek permission from the appropriate government body to lay-off or retrench their employees when it came to closing industrial undertakings. Under the Industrial Relations Code, this requirement has been waived off for industrial establishments, such as mines, factories, and plantations that require permission from the government to retrench their employees – if they hired not less than 300 employees on an average working day in the previous year.

The raising of the threshold (that is, the number of employees) will bring uniformity across all the states. It also provides employers with operational independence and encourages them to hire more employees. In case of power shortage or natural calamities and during fires, flooding, explosions, or excessive inflammable gas in mines – employers do not require government approval. However, in case the government does not properly communicate to an employer the order of permission within a period of 60 days since the filing of the application, then it is deemed that permission has been granted for these 60 days and the application is disposed of.

Increasing the threshold for standing orders

The IR Code allows only those industrial establishments that have been defined by The Industrial Employment (Standing Orders) Act, 1946 and have 100 or more employees to formulate standing orders and have them certified (CSO).

Currently, some states have allowed their establishments to have as few as 50 employees while others have raised the applicability for CSO to 300 or more employees. Thus, by removing the CSO requirement for new/ smaller industrial establishments, the IR Code establishes regulatory uniformity – making compliance easier for establishments with operations in multiple state jurisdictions. Existing industrial establishments that already have CSO will continue to be governed by the same – if the provisions are consistent with the IR Code. Unless specific or conditional exemption is granted under the IR Code, information technology (IT) and information technology-enabled services (ITeS) units will need to have CSO.

Further, commercial establishments, such as offices, that previously did not come within the purview of ‘industrial establishment’ under The Industrial Employment (Standing Orders) Act may get covered by the wider definition of industrial establishment under the IR Code, and need to have certified standing orders in place.

Establishments having 300 employees must prepare standing orders on the following matters:

- Classification of employees – temporary, permanent, fixed-term etc.
- Assignment of work hours, holidays and wage rates.
- Shift work, that is, providing customer services over 24 hours of the clock each day of a week.
- Attendance and consequences of late arrival.
- Process of deciding the conditions and procedure of applying for leave and the authority that will grant it.
- Requirement to enter premises by certain gates, and liability to search.
- Process of reporting on, initiating temporary stoppage of work and closing certain sections of an establishment and deciding the rights and liabilities of the employers and employees.
- Termination of employment and by when a notice should be given by the employers and the employees.
- Dismissal and/or suspension of employees for misconduct and deciding which acts qualify as misconduct.
- Compensation for employees who have been treated unfairly by their employers.
- Any other matter which the appropriate government body deems necessary.

The federal government is required to make model standing orders relating to conditions of service and other related matters. Where an employer adopts a model standing order of the federal government with respect to matters relevant to the employer's industrial establishment or undertaking, then such model standing order shall be deemed to have been certified; the employer can forward this information to the concerned certifying officer as prescribed by the law / state authority.

17.7 FIXED-TERM WORKERS TO ENJOY THE BENEFITS OF PERMANENT EMPLOYEES

Under the IR Code, fixed-term workers of those commercial establishments that need CSO are eligible to obtain the benefits of permanent employees, including gratuity, if they provide their services for a period of one year.

Organizing an employee re-skill fund

An employee re-skill fund will provide laid-off employees with opportunities to learn new skills and be able to secure new employment for themselves. This fund will be made use of by crediting the bank accounts of laid-off employees with wages worth 15 days of work within 45 days of their retrenchment.

According to the IR Code, the fund shall consist of the following:

- The contribution of the employer of an industrial establishment will be of an amount equal to 15-days wages last drawn by the worker immediately before the retrenchment, or such other number of days as notified by the federal government, for every retrenched worker in the case of retrenchment only.
- The contribution from other sources as prescribed by the appropriate government.

Setting a time limit to investigate any misconduct by employees

The IR Code has set a limit of 90 days to investigate the misconduct of any employee suspended by their employers. This feature has been added under the IR Code to protect the interests of all employees and to ensure that they are treated fairly.

KEY HIGHLIGHTS

#	Earlier Provisions	New Provisions
1	<p>Definitions</p> <ul style="list-style-type: none"> Employee. Fixed-term employment was not defined in any of the Act Changes in definitions of Strike, wages, Industrial Dispute, Lay off Workman was defined in the Industrial Dispute Act 	<ul style="list-style-type: none"> New Definition of Employee, fixed term employment introduced Definition of Strike has been amended to mass casual leave by 50% or more workers on a given day, while the definition of Wages kept aligned with other Labour code Workman now renamed as the worker
2	<p>Sec-9.C of the Industrial Dispute Act, the workman need not raise its grievance to the committee before moving to a conciliation officer</p>	<p>Grievance Redressal Committee is mandate under Industrial Relations Code, 2020</p>
3	<p>No provision for “Negotiating Union”</p>	<p>Recognition of “Negotiating Union” is mandatory</p>
4	<p>Standing Orders</p> <ul style="list-style-type: none"> Only the Industrial Establishments defined under the Industrial Establishment Standing Order Act required to formulate standing orders Threshold for applicability of standing order was on having 100 or more workers 	<ul style="list-style-type: none"> The code defines an Industrial Establishment as defined under the Payment of Wages Act, 1936 Therefore, unless specifically notified under the Payment of Wages Act, the provisions of the code do not apply to an industrial establishment, except railways, establishment of a contractor of an industrial establishment and factories Threshold increased up to 300 workers
5	<p>No time limit mentioned for completing the disciplinary proceedings against the worker</p>	<p>Investigation and inquiry have to be completed within 90 days from the date of suspension of a worker</p>

6	Resolution of Industrial dispute use to be done by only one member Tribunal under Industrial Dispute Act	The mechanism for the resolution of industrial disputes introduced under the Industrial Relations Code Now the Industrial tribunal will consist of two members out of whom one shall be a judicial member and the other will be an administrative member
7	Prior Notice condition was only applicable to public utility service industries	14 days prior notice before strike mandated for all industrial establishments
8	No concept for worker re-skilling fund	Chapter XI introduced around worker re-skilling fund. According to the provision, the employer will be required to deposit an amount equal to fifteen days last drawn wages of every retrenched worker
9	No provision existed for Fixed-term Employment. Employers often enter into a contract with employees for the short term, but the same was not regulated	Fixed-term Employment Introduced, which refers to workers employed for a fixed duration based on a contract signed between the worker and employer
10	Penalties: For failure to certify standing orders or the modifications to the same and comply with the finally certified standing orders, fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to INR 200 for every day after the first during which the offence continues.	Penalties are more stringent now. <ul style="list-style-type: none"> • Up to INR 2,00,000. • In case of non-certification of standing orders, an additional fine of INR 2,000 per day during which the contravention continues. • In subsequent contravention of the finally certified standing orders, fine up to INR 4,00,000 and imprisonment for a term up to 3 months, or both

Exhibit: Comparative Chart - Earlier Vs New Provisions

17.8 HIGHLIGHTS OF INDUSTRIAL RELATIONS CODE, 2020

The **Industrial Relations Code, 2020** provides a broader framework to protect the rights of workers to make unions, to reduce the friction between the employers, and workers and to provide regulations for settlement of industrial disputes.

The Code is prepared after amalgamating, simplifying and repealing following 3 central labour Acts:

- 1 The Trade Unions Act, 1926
- 2 The Industrial Employment (Standing Orders) Act, 1946
- 3 The Industrial Disputes Act, 1947

17.9 KEY DEFINITIONS

Industry means any systematic activity carried on by co-operation between an employer and for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes, whether or not:

- any capital has been invested for the purpose of carrying on such activity
- such activity is carried on with a motive to make any gain or profit, but does not include:
- institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service
- any activity of the appropriate Government relating to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defense research, atomic energy and space any domestic service.
- any other activity as may be notified by the Central Government.

Employer means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employee or worker in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified by the head of the department in this behalf or where no authority is so specified, the head of the department, and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes:

- in relation to an establishment which is a factory, the occupier of the factory,
- where a person has been named as a manager of the factory
- in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director; contractor and legal representative of a deceased employer.

Employee means any person other than an apprentice engaged under Apprentices Act, 1961 employed by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.

Worker means any person except 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 includes working journalists, and includes any such person who has been, dismissed, discharged or retrenched or otherwise terminated in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

- who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957

- who is employed in the police service or as an officer or other employee of a prison; or
- who is employed mainly in a managerial or administrative capacity
- who is employed in a supervisory capacity drawing wage of exceeding eighteen thousand rupees (INR 18,000) per month or an amount as may be notified by the Central Government from time to time.

Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

Retrenchment means termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

- Voluntary retirement of the worker
- Retirement of the worker on reaching the age of superannuation
- Termination of the service of the worker as a result of the non-renewal of the contract of employment between the employer.

Standing orders means orders relating to matters set-out in the First Schedule

17.10 SUMMARY

The Industrial Relations (IR) Code, 2020, consolidates and amends three existing labour laws: the Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946. It aims to streamline industrial relations, enhance ease of doing business, and provide a broader framework for protecting worker rights and settling disputes. Key changes include provisions for fixed-term employment, changes to the threshold for government permission for layoffs and closures, and the establishment of a reskilling fund for retrenched workers.

The IR Code replaces three existing labour laws, aiming to simplify and streamline industrial relations. The code formalizes fixed-term employment contracts, ensuring equal benefits for these workers as permanent employees. Establishments with 300 or more workers require prior government permission for layoffs, retrenchment, or closure. A reskilling fund is established to support retrenched workers in acquiring new skills and finding re-employment. The code applies standing orders (specifying working conditions) to establishments with 300 or more workers, reducing the compliance burden on smaller enterprises. The code outlines procedures for resolving industrial disputes through conciliation, arbitration, and adjudication. The code regulates strikes and lockouts, requiring advance notice and prohibiting them during certain periods (e.g., during conciliation proceedings).

The code provides for the formation and registration of trade unions, recognizing their legal entity status and ability to sue or be sued. The code defines the "appropriate government" for different establishments, with the central government having jurisdiction over specific sectors like railways and mines. The IR Code is intended to create a more flexible and efficient labour market while also providing a framework for protecting worker rights and promoting industrial harmony. The changes aim to reduce the burden on businesses, particularly small and medium enterprises, while ensuring fair treatment and opportunities for workers.

17.11 TEST YOUR KNOWLEDGE

1. Discuss about the companies (amendment) bill, 2020 (the IR code)
2. What is the rationale behind the industrial relations code
3. Define workers as per ir code
4. Explain the scope & applicability of ir code 2020
5. What is industrial dispute
6. Explain the process of creating an industrial tribunal
7. Explain the highlights of industrial relations code, 2020

17.12 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethinamohan, R., Phi Learning.

UNIT-18

OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

Unit Structure

- 18.1 Introduction
- 18.2 Statement of objects and reasons
- 18.3 Notes on clauses
- 18.4 Summary
- 18.5 Test your knowledge
- 18.6 Further readings

Objective of the unit

after studying this unit you will be able to understand:

- Objective behind new working code 2020
- Different clauses and its implementation

18.1 INTRODUCTION

Occupational Safety, Health And Working Conditions Code, 2020 was introduced in Lok Sabha on 19th September 2020 vide Bill No. 122 of 2020. Occupational Safety, Health And Working Conditions Code, 2020 is expected to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.

18.2 STATEMENT OF OBJECTS AND REASONS

1. The Second National Commission on Labour, which submitted its report in June, 2002, had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:—
 - (a) industrial relations;
 - (b) wages;
 - (c) social security;
 - (d) safety; and
 - (e) welfare and working conditions.
2. In pursuance of the recommendations of the said Commission and the deliberations made in the tripartite meeting comprising of the Government, employers' and industry representatives, it has been decided to bring the Occupational Safety, Health and Working Conditions Code, 2020. The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the following thirteen Central labour enactments relating to occupation, safety, health and working conditions of workers, namely:—
 - i. The Factories Act, 1948;

- ii. The Plantations Labour Act, 1951;
 - iii. The Mines Act, 1952;
 - iv. The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955;
 - v. The Working Journalists (Fixation of Rates of Wages) Act, 1958;
 - vi. The Motor Transport Workers Act, 1961;
 - vii. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
 - viii. The Contract Labour (Regulation and Abolition) Act, 1970;
 - ix. The Sales Promotion Employees (Condition of Service) Act, 1976;
 - x. The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
 - xi. The Cine Workers and Cinema Theatre Workers Act, 1981;
 - xii. The Dock Workers (Safety, Health and Welfare) Act, 1986; and
 - xiii. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
3. In the light of above, the Occupational Safety, Health and Working Conditions Code, 2019 was introduced in Lok Sabha on the 23rd day of July, 2019 and the same was referred to the Department related Parliamentary Standing Committee on Labour. The said Committee recommended several substantive modifications to the said Code. In addition to the said modifications, the Government of India has also proposed certain changes to the said Code in the light of COVID-19 Pandemic. In view of this, the Government of India has decided to withdraw pending the Occupational Safety, Health and Working Conditions Code, 2019 and to introduce the Occupational Safety, Health and Working Conditions Code, 2020. The proposed Code simplifies, amalgamates and rationalises the provisions of the aforesaid thirteen enactments with certain important changes which, *inter alia*, are as under:—
- (i) to impart flexibility in adapting technological changes and dynamic factors, in the matters relating to health, safety, welfare and working conditions of workers;
 - (ii) to apply the provisions of the proposed Code for all establishments having ten or more workers, other than the establishments relating to mines and docks;
 - (iii) to provide the concept of “one registration” for all establishments having ten or more employees. However, for the applicability of all other provisions of the Code in respect of factories, except registration, the threshold has been fixed twenty workers in a factory (with power) and forty workers (without power);
 - (iv) to include the journalist working in electronic media such as in e-paper establishment or in radio or in other media in the definition of “working journalists”;
 - (v) to provide for issuing of appointment letter mandatorily by the employer of an establishment to promote formalisation in employment;
 - (vi) to provide free of cost annual health check-ups for employees above the specified age in all or certain class of establishments by which it would be possible to detect diseases at an early stage for effective and proper treatment of the employees;

- (vii) to make the provisions relating to Inter-State Migrant Workers applicable on the establishment in which ten or more migrant workers are employed or were employed on any day of the preceding twelve months and also provide that a Inter-State Migrant may register himself as an Inter-State Migrant Worker on the portal on the basis of self-declaration and Aadhaar;
 - (viii) an Inter-State Migrant Worker has been provided with the portability to avail benefits in the destination State in respect of ration and availing benefits of building and other construction worker cess;
 - (ix) to constitute the National Occupational Safety and Health Advisory Board to give recommendations to the Central Government on policy matters, relating to occupational safety, health and working conditions of workers;
 - (x) to constitute the State Occupational Safety and Health Advisory Board at the State level to advise the State Government on such matters arising out of the administration of the proposed Code;
 - (xi) to make a provision for the constitution of Safety Committee by the appropriate Government in any establishment or class of establishments;
 - (xii) to employ women in all establishments for all types of work. They can also work at night, that is, beyond 7 PM and before 6 AM subject to the conditions relating to safety, holiday, working hours and their consent;
 - (xiii) to make provision of “common license” for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for a period of five years to engage the contract labour;
 - (xiv) to enable the courts to give a portion of monetary penalties up to fifty per cent. to the worker who is a victim of accident or to the legal heirs of such victim in the case of his death;
 - (xv) to provide overriding powers to the Central Government to regulate general safety and health of persons residing in whole or part of India in the event of declaration of epidemic or pandemic or disaster;
 - (xvi) to make provision for Social Security Fund for the welfare of unorganised workers; and
 - (xvii) to make provision for adjudging the penalties imposed under the Code.
4. The notes on *clause* explain in detail the various provisions contained in the Code.
 5. The Code seeks to achieve the aforesaid objectives.

18.3 NOTES ON CLAUSES

Clause 1.—This clause relates to short title, extent and commencement of the proposed Code.

Clause 2.—This clause seeks to define certain expressions used in the proposed Code.

Clause 3.—This clause relates to the registration of establishments and specifies the procedure for such registration.

Clause 4.—This clause contains the provisions of appeal against the order of the registering officer under Clause 3.

Clause 5.—This clause deals with notice by employer relating to the factory, mine, contract labour or building or other construction work before the commencement of the operation of any industry, trade, business, manufacture or occupation in the concern establishment and shall also intimate the cessation thereof.

Clause 6.—This clause deals with the duties of employer in respect of workplace, occupational safety and health standards, health examination, appointment letter etc.

Clause 7.—This clause deals with the duties and responsibilities of owner, agent and manager in relation to mine. The responsibilities of the owner and agent are joint and several.

Clause 8.—This clause deals with the duties of manufacturers, designers, importers or suppliers of any article for use in any establishment, to avoid risk and to ensure safety.

Clause 9.—This clause deals with the duties of architects, project engineers and designers in respect of building or other construction work, project or part thereof relating to building or other construction work, for the purposes of safety and health aspects.

Clause 10.—This clause deals with notice of certain accidents at any place in an establishment by the employer or owner or agent or manager in respect of mines, employer or manager in respect of factory or dock work, employer in respect of plantation, building or other construction work or other establishment, to the concerned authorities and the inquiry by the concerned authority or if there is no such authority, by the Inspector-cum-Facilitator on the direction of the Chief Inspector-cum-Facilitator.

Clause 11.—This clause deals with notice of certain dangerous occurrences by the employer to the authorities determined by the appropriate Government by rules.

Clause 12.—This clause deals with notice of certain diseases specified in the Third Schedule to the proposed Code by the employer to the authorities determined by the appropriate Government by rules and the report to be sent by the medical practitioner to the Chief Inspector-cum-Facilitator, if he believes that the person attended by him has been suffering by such disease.

Clause 13.—This clause deals with duties of the employees at workplace in respect of health and safety, co-operation with the employer, interference with, misuse or neglect of any appliance, convenience or other thing provided for work and avoiding anything likely to endanger workers and others.

Clause 14.—This clause deals with rights of employee to obtain from the employer information relating to employee's health and safety at work, to represent employer directly or through a member of the Safety Committee, to give information regarding the imminent danger, etc., to the employer. It also contains the provisions regarding immediate remedial action to be taken by the employer, etc.

Clause 15.—This clause deals with duty not to interfere with or misuse things which is provided in the interest of health, safety or welfare.

Clause 16.—This clause contains provisions relating to the constitution of National Occupational Safety and Health Advisory Board and the constitution of technical committees or advisory committees.

Clause 17.—This clause contain provisions relating to the constitution of State Occupational Safety and Health Advisory Board and the technical committees are advisory committees thereof.

Clause 18.—This clause empower the Central Government to declare standards on occupational safety and health for work places relating to factories, mines, dock work, building and other construction work and other establishments and other details relating thereto.

Clause 19.—This clause seeks to notify the research related activities in certain institutions in the field of occupational safety and health to conduct research, experiments and demonstrations relating to occupational safety and health and thereafter to submit their recommendation to the appropriate Government. It also provides the consultation by the State Government with National Board.

Clause 20.—This clause relates to safety and occupational health surveys by the Chief Inspector-cum-Facilitator, the Director General of Factory Advice Service, Director General of Mines Safety, Director General of Health Service and other officers authorised by the appropriate Government after giving notice to the employer and other matters relating thereto.

Clause 21.—This clause relates to collection of Statistics and portal for Inter-State migrant workers. The responsibility regarding maintaining the data base or record, For Inter-State migrant worker on portal is entrusted on the Central and State Governments as per provisions of clause.

Clause 22.—This clause provides the provisions relating to constitution of Safety Committee in the establishment or class of establishment and the responsibility of the employer to appoint safety officers.

Clause 23.—This clause relating to responsibility of employer for maintaining health and working conditions in his establishments and the Central Government may also make rules for such purpose.

Clause 24.—This clause relating to impose responsibility on the employer to provide and maintain the welfare facilities in his establishment in accordance with the rules made by the Central Government which includes the rules relating to ambulance room, medical facilities, shelter or rest room and the appointment of welfare officer, temporary leaving accommodation, free of charge and within the work site or as near to it or as possible, payment by principal employer the expenses incurred on providing the accommodation through the contractor, facility of crèche.

Clause 25.—This clause relating to daily and weekly working hours, leave, etc., to the workers, including overtime work to be performed by worker. It also provides additional provisions relating to holidays, casual leave or other kinds of leave in respect of sales promotion employee and the working journalist, and the regulation of working hours of an adolescent worker in accordance with Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (61 of 1986). The working hours in a day are eight hours.

Clause 26.—This clause relating to weekly and compensatory holidays to the workers. The appropriate Government has power to exempt the workers from the provision under this clause.

Clause 27.—This clause provides for extra wages for overtime which shall be wages at the rate of twice the ordinary rate of wages in respect of overtime work as provided in the clause and no worker shall be required to work overtime by the employer without the prior consent of the worker for such work.

Clause 28.—This clause provide certain provisions relating to night shifts where a worker in an establishment works on a shift which extends beyond midnight relating to the calculation of holiday and the following day for the worker.

Clause 29.—This clause relates to prohibition of overlapping shifts which relates to the arrangement of the system of shifts and to exempt any establishment or class of establishments or

any department or section of an establishment or any category or description of workers therein from the provisions contained in the clause.

Clause 30.—This clause relates to restriction on double employment in factory and mine where the worker has already been working in any other such similar establishment within the preceding twelve hours, save in such circumstances as may be provided by the appropriate Government by rules.

Clause 31.—This clause relates to notice of periods of work and such notice shall contain periods of work, showing clearly for every day the periods during which workers may be required to work in accordance with the provisions of the proposed Code. It also provides regarding form of notice, the manner of its display and to send it to the Inspector-cum-Facilitator and regarding change in the notice where there is change in system of work.

Clause 32.—This clause contains provision relating to annual leave with wages in an establishment subject to the provisions specified in the clause. It also contains regarding the extension of the provisions to any other establishment except railway establishment. Such provision shall not operate to the prejudice of any right to which a person employed in a mine may be entitled as specified in the clause.

Clause 33.—This clause relates to maintenance of registers and records and filing of returns by the employer electronically or otherwise in accordance with the rules made by the appropriate Government.

Clause 34.—This clause contains the provisions relating to appointment of Inspector-cum-Facilitators and Chief Inspector-cum-Facilitator. The qualifications and experience of the Chief Inspector-cum-Facilitator shall be determined by rules. The duties of the Inspector-cum-Facilitator and the powers of the Chief Inspector-cum-Facilitator have been specified in the clause. The Clause also provide the appointment of Additional Chief Inspector-cum-Facilitators, Joint Chief Inspector-cum-Facilitators and Deputy Chief Inspector-cum-Facilitators or any other officer of any designation and their powers and other matters relating thereto.

Clause 35.—This clause relates to powers of Inspector-cum-Facilitators which includes power to enter to work place, examine the premises etc., and inquire into any accident or dangerous occurrence, etc., with necessary details in this regard.

Clause 36.—This clause relates to powers and duties of District Magistrate to exercise powers and duties of the Inspector-cum-Facilitator in respect of mines.

Clause 37.—This clause provides for third party audit and certification by the empanel experts possessing the qualifications and experience as determined by the rules made by the appropriate Government, For the purpose of start-up establishments and class of other establishments in apropos with the provisions as specified in the clause.

Clause 38.—This clause relates to special powers of Inspector-cum-Facilitator in respect of factory, mines and dock work and building and other construction work. The special powers of the Inspector-cum-Facilitator have been specified in respect of factory, mine, dock work and building or other construction work in this clause. There is also provision of appeal provided in this clause against the order of the Inspector-cum-Facilitator, which he may pass relating to the building or other construction work, if such work is being carried on, is in such condition that it is dangerous to life, safety or health of building workers or the general public.

Clause 39.—This clause relates to secrecy of information by Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator, etc. Such information relating to establishment shall be disclosed by the

Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator, in case it is necessary to ensure the health, safety or welfare of any person employed in establishment. There are certain exceptions provided in the clause to which the provision of secrecy shall not apply. The right of the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator not to disclose the source of any complaint is not constrained by the provision of the Right to Information Act, 2005 (22 of 2005).

Clause 40.—This clause contain the provisions relating to facilities to be afforded to the Inspector-cum-Facilitator. Such facilities shall be provided to the Inspector-cum-Facilitator by the employer of the establishment, which relate to the reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry under the provisions of the proposed Code.

Clause 41.—This clause relates to the powers of Special Officer to enter, measure, etc., in relation to mine. Such officer is required to be in the service of the Government duly authorised in this behalf by a special order in writing of the Chief Inspector-cum-Facilitator or of an Inspector-cum-Facilitator for the purpose of surveying, levelling or measuring any mine or any output therefrom.

Clause 42.—This clause relates to the appointment of medical officer by the appropriate Government and have the qualification specified in the rules. Such medical officer shall be appointed in relation to factory, mines, plantation, motor transport undertakings and any other establishment. The duties of the medical officer have been also specified in the clause.

Clause 43.—This clause relates to employment of women. The employment of women worker shall be made by the employer in all kinds of occupation subject to the conditions relating *inter alia* to safety, holidays and working hours as specified in the rules and with the consent of such women before 6 a.m. and beyond 7 p.m..

Clause 44.—This clause relates to prohibition of employment of women in dangerous operation. Such dangerous operations relate to the health and safety of the women worker in an establishment or class of establishments. This clause requires for providing adequate safeguards in accordance with the rules made by appropriate Government.

Clause 45.—This clause provide the details for the applicability of part I of chapter XI of the proposed Code.

Clause 46.—This clause relates to appointment of authority officers who shall be Gazetted officer of the appropriate Government.

Clause 47.—This clause contains of the provisions relating to licensing of contractors. For supplying or engaging contract labour in any establishment or undertaking or executing the work through contract labour, it is essential to obtain the licence. The provision of the clause also specifies the content of the licence.

Clause 48.—This clause contains the provisions relating to procedure for issue and renewal of the licence. It provides that the form of the application for issuing licence and the manner and other particulars, thereof shall be as provided under the rules made by the appropriate Government. It also provides other details of procedure regarding the issuing of licence and the period of validity of a license for five years.

Clause 49.—This clause provides that the contractor shall not charge directly or indirectly, in whole or in part, any fee or commission from the contract labour.

Clause 50.—This clause provides the provisions relating to the information regarding work order to be given to the authority. The contractor shall inform about the work order receive from the establishment to the authority in accordance with the procedure as specified in the clause and in

case of failure the licence may be suspended or cancelled in accordance with rules made by the appropriate Government.

Clause 51.—This clause relates to revocation, suspension and amendment of licence. It contains the circumstances such as the misrepresentation or suppression of any material fact in obtaining the licence as ground for revocation or suspension of licence and the procedure for revocation and suspension of the licence and the amendment thereof. Such revocation and suspension shall be in addition to the other penalty to which the contractor may be liable.

Clause 52.—This clause provides the provisions relating to the appeal which shall be made by the aggrieved person against the order made in respect of licensing of contractor, issue of licence and revocation, suspension and amendment of licence.

Clause 53.—This clause relates to liability of principal employer for welfare facilities relating to providing of canteens, rest rooms, drinking water and first aid.

Clause 54.—This clause relates to effect of employing contract labour from a non-licensed contractor. In case of employment of contract labour through such contractor shall be deemed to be contravention of the provisions of the court.

Clause 55.—This clause deals with the responsibility for payment of wages. The primary responsibility for payment of wages to the contract labour shall be of the contractor before the expiry of such period specified in rules made by the appropriate Government. The electronic payment has been introduced by this clause. In case the contractor fails to make payment of the wages to the contract labour then the responsibility shifts to the principal employer as specified in the clause. The appropriate Government is also empowered to make order for making payment under the provisions of the clause.

Clause 56.—This clause relates to experience certificate to be given by the concerned contractor of the establishment concerned to the contract labour as and when demanded giving details therein of the work performed by the contract labour.

Clause 57.—This clause prohibit the employment of contract labour in core activities with certain exceptions. It also provides the appointment of designated authority to advise the appropriate Government on the question whether any activity of an establishment is a core activity or otherwise. It also contains the provision for deciding the question regarding the core activity.

Clause 58.—This clause deals with power to exempt in special cases. Such exemption relating to provisions of the proposed Code or the rules made there under shall be made by the appropriate Government, in the case of an emergency as specified in the clause.

Clause 59.—This clause relates to applicability of Part I.

Clause 60.—This Clause relates to facilities to Inter-State Migrant workers. Such facilities shall be provided by the contractor or employer of an establishment employing inter- State Migrant worker for the purposes as specified in the clause.

Clause 61.—This clause provides the provisions relating to journey allowance. Such allowance shall be paid by the employer to the inter-State Migrant worker in a year as lump sum amount of fare for to and fro journey to his native place from the place of his employment as specified in the class.

Clause 62.—This clause relating to the benefits of public distribution system, etc., to the inter-State migrant workers through Schemes as specified for the class.

Clause 63.—This clause provides the facility of toll free helpline to the inter-State migrant workers as specified in the class.

Clause 64.—This clause relates to study of inter-State migrant workers in the manner as specified for the class.

Clause 65.—This clause relates to past liability of inter-State migrant workers. No suit or other proceeding shall lie in any court or before any authority against the inter-State migrant workers for the recovery of debt or any part thereof as specified in the class.

Clause 66.—This clause provides the provisions relating to prohibition of employment of audio-visual worker without agreement. Such agreement shall be in writing and between the audio-visual worker and the producer of audio-visual programme or between producers of the audio-visual programme with the contractor and shall be registered with the competent authority. In case of the benefit of provident fund a copy of such agreement shall be forwarded by the producer of the audio-visual programme to the authority and the payment of wages to the audio-visual worker shall be through electronic mode.

Clause 67.—This clause deals with the Managers in mine. Subject to the rules made in this behalf, every mine shall be under the sole Manager. The qualifications of the manager shall be such as provided in the rules made under the Code. The appointment of the manager shall be made by the owner or the agent. The qualified owner or agent may also be appointed as manager. The clause also provides regarding the responsibility of a manager.

Clause 68.—This clause relates to non-applicability of the certain provision of the Code in certain cases such as excavation in mine being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale subject to the conditions specified in the clause and in case the mine engaged in the extraction of kankar, murrum, laterite, boulder, gravel, shingle, ordinary sand etc., as specified in the clause. However, regarding applicability of the provisions of the Code to a mine, the Central Government has powers as specified in this clause and in case of non-fulfilment of certain conditions; the provisions of the Code shall apply to a mine as specified in the clause.

Clause 69.—This clause provides the provisions relating to exemption from this Code relating to employment as specified therein. Such exemptions are in case of emergency involving serious risk to the safety of the mine or of persons employed therein, or in case of an accident, whether actual or apprehended, or in case of any act of God or in case of any urgent work to be done to machinery, plant or equipment of the mine as a result of breakdown of such machinery plant or equipment. In such cases the manager is empowered as specified in the clause to permit persons to be employed in contravention of certain provisions of the Code on the work as may be necessary to protect the safety of the mine or of the persons employed therein. The manager may also take action, in case of any urgent work to be done to machinery, plant or equipment as specified in the clause and such action shall be recorded with the circumstances relating thereto and a report thereof shall also be made to the Chief Inspector-cum-Facilitator or the Inspector-cum-Facilitator.

Clause 70.—This clause relates to employment of persons below eighteen years of age. It provides that no person below eighteen years of age shall be allowed to work in any mine or part thereof but in case of apprentices and other trainees, such age limit is not below sixteen years as provided in the clause. The rules shall be made by the Central Government for medical examination of apprentice, other trainee and employee in the mine to ensure their fitness to work and to prevent the persons below sixteen years of age to work as apprentice or trainee and those who are not adults to work as the employee.

Clause 71.—This clause provides the provisions relating to exemption.

Clause 72.—This clause relates to vocational training and rescue and recovery services for person employed in a mine.

Clause 73.—This clause provides the provisions relating to decision of question whether any excavation or working or premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on is a mine and such question shall be decided by the Government of India and a certificate given by the secretary to the Government of India in this behalf shall be conclusive.

Clause 74.—This clause deals with licence to industrial premises and person. Without licence no employer shall use or allow to use any place or premises. The licence shall be granted by the designated authority after complying with the procedure specified in the clause and the licence granted shall be valid for five years and shall be renewed thereafter in accordance with the procedure specified in the clause.

Clause 75.—This clause provides the provisions relating to appeals. A person aggrieved by the decision of the designated authority refusing to grant or renew a licence or cancelling or suspending a licence may, within the prescribed time and with prescribed fee, appeal to the appellate authority.

Clause 76.—This clause relates to permission to work by employees outside industrial premises. Such permission shall be granted by the State Government and the employer shall maintain the record of the work permitted to be carried on outside the industrial premises. The raw material by an employer or a contractor may be given to the labour outside the industrial area to make beedi or cigar or both at home.

Clause 77.—This clause provides the provisions relating to non-applicability of part V to self-employed persons in private dwelling houses. The provisions of the said part shall not apply to the owner or occupier of a private dwelling house, not being an employee of an employer, who carries on any manufacturing process in such private dwelling house with the assistance of the members of his family living with him in such dwelling house and dependent on him.

Clause 78.—This clause relates to prohibition of employment of certain persons in certain building or other construction work. The employer shall not allow the person who is deaf, of defective vision or has a tendency to giddiness to work in any operation of building or other construction work as specified in the clause.

Clause 79.—This clause provides the provisions relating to approval and licensing of factories. The permission and licensing shall be made in accordance with the rules framed by the appropriate government

Clause 80.—This clause relates to liability of owner of premises in certain circumstances. The owner of the premises and occupier of the factories utilising common facilities shall jointly and severally be responsible for provision and maintenance of the common facilities and services as specified in the clause.

Clause 81.—This clause deals with power to apply the Code in certain premises. The provision of part VII of chapter XI of the proposed Code shall apply to any place wherein manufacturing process is carried on with or without the aid of power irrespective of the number of workers working in the factory by the appropriate government by notification.

Clause 82.—This clause relates to dangerous operations. In this respect, the appropriate government may make the rule relating to any factory or class or description of factories in which

manufacturing process is carried on in which exposes any of the persons employed in it to a serious risk of bodily injury, poisoning or disease as specified in the clause.

Clause 83.—This clause provides the provisions relating to constitution of site appraisal committee. The site appraisal committee constituted under this clause shall make its recommendation within a period of thirty days of the receipt of the application for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of such factory.

Clause 84.—This clause relates to compulsory disclosure of information by the occupier. The disclosure shall be in the manner provided by the State government in the rules and as specified in the clause.

Clause 85.—This clause provides the provisions relating to specific responsibility of the occupier in relation to hazardous process. Such responsibility of the occupier of a factory involving hazardous process relates *inter alia* to maintaining accurate and up-to-date health records.

Clause 86.—This clause provides the provisions relating to constitution of National Board to inquire into certain situations as specified in the clause. In such situation the Central Government may direct the National Board to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of the failure or neglect in the adoption of any measures or standards as per rules made by the State Government for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to the failure or neglect and for the prevention and recurrence of the extraordinary situations in future in the factory or elsewhere.

Clause 87.—This clause relates to emergency standards. The Central Government may direct the Directorate General Occupational Safety and Health formerly known as Directorate General of Factory Advice Service and Labour Institutes or any Institution authorised in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of the hazardous processes.

Clause 88.—This clause provides the provisions relating to permissible limits of exposure of chemicals and toxic substances. The maximum permissible limits in any factory shall be of the value as may be provided in the rules made by the State Government.

Clause 89.—This clause relates to right of workers to warn about imminent danger. In the case of reasonable apprehension of imminent danger as specified in the clause the workers may bring the same in the notice of the occupier, agent, manager, or any other person who is in-charge of the factory or the person concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector-cum-Facilitator. The clause also provides regarding the action to be taken on such notice.

Clause 90.—This clause provides the provisions relating to appeal against the order of Inspector-cum-Facilitator in case of factory. The details regarding appeal shall be provided by the appropriate Government in the rules.

Clause 91.—This clause deals with the power to make rules to exemptas specified in the clause. The rules made by the appropriate Government shall specify the persons who hold positions of supervision or management or employed in a confidential position in a factory. Such rules may empower the Chief Inspector-cum-Facilitator to declare any person, other than a person so specified, as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector-cum-Facilitator, such person holds such position or is so employed, and the provisions of the proposed Code, shall not apply to any

person so specified or declared. The other details regarding the rules and exemptions are specified in the clause.

Clause 92.—This clause relates to facilities for the workers in plantation.

Clause 93.—This clause deals with the safety in plantation.

Clause 94.—This clause relates to general penalty for offences. Such offences are those offences which are not expressly provided under the other provisions of the proposed Code.

Clause 95.—This clause provides the provision relating to punishment for causing obstruction to Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator, etc.

Clause 96.—This clause provides the provisions relating to penalty for non-maintenance of register, records and non-filing of returns, etc.

Clause 97.—This clause provides the provisions relating to punishment for contravention of provisions of the proposed Code or any rules, regulation, or bye-laws, etc. It also provides enhanced punishment in case of repetition of such offences after conviction.

Clause 98.—This clause provides the provisions relating to punishment for falsification of records, etc.

Clause 99.—This clause provides the provisions relating to penalty for omission to furnish plans, etc., without reasonable excuse, the burden of proof of which lies on the person making the omission.

Clause 100.—This clause provides the provisions relating to punishment for disclosure of information. The details regarding the information have been specified in the clause.

Clause 101.—This clause provides the provisions relating to punishment for wrongfully disclosing results of analysis. The details of the disclosure have been specified in the clause.

Clause 102.—This clause provides the provisions relating to punishment for contravention of the provisions of duties relating to hazardous processes as specified in the clause.

Clause 103.—This clause provides the provisions relating to punishment for contravention of the provisions of duties relating to safety provisions resulting in an accident.

Clause 104.—This clause provides the provisions relating to punishment for working in contravention of any general or special order issued under the provisions of clause 38.

Clause 105.—This clause provides the provisions relating to punishment for failure to appoint manager in contravention of the provision of the clause 67.

Clause 106.—This clause deals with offences by employees.

Clause 107.—This clause provide the provisions relating to prosecution of owner, agent or manager of a mine as specified in the clause.

Clause 108.—This clause provides the provisions relating to exemption of owner, agent or manager of a mine or occupier of a factory from liability in certain cases. Such cases are that the owner, agent or manager or occupier proves to the satisfaction of the court that he has exercised due diligence to enforce execution of the proposed court Code or that the other person committed the offence in question without his knowledge, consent or connivance.

Clause 109.—This clause deals with offences by companies, etc., under the circumstances specified in the clause every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the

company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Clause 110.—This clause provides the provisions relating to limitation of prosecution and cognizance of offence under the proposed Code.

Clause 111.—This clause deals with power of officers of appropriate Government to impose penalty in certain cases. Such cases are offences under the proposed Code in which only penalty is provided.

Clause 112.—This clause provides the provisions relating to jurisdiction of a court for entertaining proceedings, etc., for offence. The court within the local limits of which the establishment is situated shall have the jurisdiction.

Clause 113.—This clause deals with power of the court to make order. Such order shall be in addition to the awarding punishment, requiring the offender within a period specified in the order (which may be extended by the Court from time to time on application made in this behalf) to take such measures as may be specified in the order for remedying the matters in respect of which the offence was committed.

Clause 114.—This clause contains the provisions relating to compounding of offences. Under the provision the compoundable offences are specified.

Clause 115.—This clause relates to Social Security Fund. The fund shall be established by the appropriate Government for the welfare of unorganized workers. The other details have been specified in the clause.

Clause 116.—This clause deals with delegation of powers. In the delegation the conditions, subject to which the delegation would be made, may be specified.

Clause 117.—This clause contains the provisions relating to onus as to age. It relates to the offences committed under the proposed Code involving an issue of the age of the person. The burden of onus is on the accused to prove that such person is not under such age.

Clause 118.—This clause contains the provisions relating to onus of proving limits of what is practicable, etc. This relates to the failure to comply with the duty to do something, it shall be for the person who is alleged to have failed to comply with the duty or requirement, to prove that it was not reasonably practicable or all practicable measures were taken to satisfy the duty or requirement.

Clause 119.—This clause relates to common licence for contractor, factories and to industrial premises of beedi and cigar work, etc.

Clause 120.—This clause provides the provision relating to effect of law and agreements inconsistent with the proposed Code. The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement or contract of service whether made before or after the commencement of this Code. The clause also saves the more favourable benefit of the employee. The guideline for interpretation is also provided in the clause.

Clause 121.—This clause deals with power of the appropriate Government to direct inquiry in certain cases. Such cases relate to event of the occurrence of an accident in an establishment which has caused or had the potentiality to cause serious danger to employees and other persons within, and in the vicinity of the workplace or whether immediate or delayed, or any occupational disease as specified in the third Schedule.

Clause 122.—This clause relates to publication of reports. Such reports are the reports, submitted to the appropriate Government by the National Board or State Advisory Board or any extracts from any report submitted to it under the proposed Code.

Clause 123.—This clause deals with powers of Central Government to give directions to State Government for the implementation of the provisions of the proposed Code.

Clause 124.—This clause contains the provisions relating to general restriction on disclosure of information.

Clause 125.—This clause contains the provisions relating to barring of the Jurisdiction of civil courts in respect of the matters to which any provision of the proposed Code applies and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under the proposed Code.

Clause 126.—This clause relates to protection of a person from legal proceeding if action is taken in good faith in pursuance of the proposed Code.

Clause 127.—This clause deals with power to exempt in special cases as specified in the clause.

Clause 128.—This clause deals with power to exempt during public emergency as specified in the clause.

Clause 129.—This clause deals with power to exempt public institution. They are such institution, workshop or workplace where a manufacturing process is carried on and which are attached to a public institution maintained for the purposes of education, training, research or information, from all or any of the provisions of the proposed Code. The cases in which exemption shall not be granted are specified in the clause.

Clause 130.—This clause provide the provisions relating to a persons who is required to givenotice, etc., to any authority in respect of the provisions of the proposed Code shall be legally bound to do so within the meaning of section 176 of the Indian Penal Code, 1860.

Clause 131.—This clause deals with power of Central Government to amend the Schedule by way of addition, alteration or omission therein.

Clause 132.—This clause deals with power of Central Government to remove difficulties by the order published in the Official Gazette. Such order shall not be made after the expiry of two years from the date on which the proposed Code comes into force.

Clause 133.—This clause deals with power of appropriate Government to make rules subject to the condition of previous publication and by notification, for carrying out the purposes of the proposed Code.

Clause 134.—This clause deals with power of the Central Government to make rules subject to condition of previous publication and by notification, for carrying out the purposes of the proposed Code.

Clause 135.—This clause deals with power of the State Government to make rules subject to condition of previous publication and by notification, for carrying out the provisions of the proposed Code. Sub-clause (3) of the said clause provides that the Central Government may, by notification and in consultation with the State Government, make rules for the purposes of bringing uniformity, throughout the country, in occupational safety, health or such other matters as it considers necessary in respect of factories.

Clause 136.—This clause deals with power of Central Government to make regulations in relation to mines and dock work by notification in the Official Gazette which shall be consistent with the proposed Code.

Clause 137.—This clause relates to prior publication of rules, etc. The power to make rules, regulations, and bye-laws under the proposed Code shall be subject to the condition of the previous publication in the manner as specified in the clause.

Clause 138.—This clause deals with power to make regulations without previous publication. The matters in which such regulations shall be made are specified in the clause.

Clause 139.—This clause relates to bye-laws. The employer of a mine is empowered to make bye-laws as specified in the clause.

Clause 140.—This clause deals with the power of Central Government to make rules to regulate general safety and health of the persons residing in whole or part of India, in the event of declaration of an epidemic, pandemic or disaster, for such period as may be notified by the Central Government.

Clause 141.—This clause relating to laying of regulations, rules and bye-laws etc., before Parliament.

Clause 142.—This clause relating to laying of rules made by State Government before the State Legislature.

Clause 143.—This clause deals with the provisions relating to repeal and savings. The enactments which are being repealed are enumerated in the clause. Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed for the purposes under any of the provisions of the enactments repealed by the proposed Code, shall be deemed to have been appointed under the proposed Code for such purposes under the proposed Code. Certain actions under the repealed enactments have also been saved.

18.4 SUMMARY

The Occupational Safety, Health and Working Conditions Code, 2020, consolidates and streamlines 13 existing labour laws related to worker safety, health, and working conditions into a single, comprehensive code. It aims to improve worker well-being by regulating aspects like work hours, leave, and working conditions, while also establishing standards for welfare facilities and safety committees. The Code applies to establishments with 10 or more workers and to all mines and docks, and it includes provisions for inter-state migrant workers and women workers. The Code replaces 13 previous labour laws related to safety, health, and working conditions, including the Factories Act, 1948, and the Mines Act, 1952. It mandates a maximum eight-hour workday, with overtime pay at twice the normal rate. The code limits overtime to 125 hours per quarter and allows women to work at night with consent and subject to safety measures. Workers are entitled to one day of leave for every 20 days of work, and the Code also addresses the encashment of accumulated leave.

The Code specifies standards for a hygienic work environment, including clean drinking water, ventilation, and adequate lighting. It mandates welfare provisions like canteens, first aid, and crèches, with additional provisions for specific industries. The Code requires the formation of safety committees in establishments with 500 or more workers, comprising employer and employee representatives. It includes provisions for the welfare and working conditions of inter-state migrant workers. The Code empowers women to work in all establishments and at night with consent and safety measures. The Code establishes Occupational Safety and Health

Advisory Boards at the national and state levels to advise governments on related matters. The Code includes penalties for violations, with fines potentially reaching up to Rs. 2 to 3 Lakhs.

18.5 TEST YOUR KNOWLEDGE

1. Explain the occupational safety, health and working conditions code, 2020
2. State the objects and reasons behind new occupational safety, health and working conditions code, 2020
3. Discuss any five notes on clauses of occupational safety, health and working conditions code, 2020

18.6 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethinamohan, R., Phi Learning.

UNIT-19

EMPLOYEES' STATE INSURANCE ACT, 1948

(ESI ACT)

Unit Structure

- 19.1 Introduction
- 19.2 History
- 19.3 Provision of Employee State Insurance Act 1948
- 19.4 Functions of Employees State Insurance Act 1948
- 19.5 Benefits of Employees State Insurance Act 1948
- 19.6 Salient Features of Benefits of ESI Scheme
- 19.7 Atal Beemit Vyakti Kalyan Yojana (ABVKY)
- 19.8 Medical Colleges of Employees State Insurance Act 1948
- 19.9 Summary
- 19.10 Test Your Knowledge
- 19.11 Further Readings

19.0 OBJECTIVE OF UNIT

After going through this unit you will be understand about the following

- History and Provision of Employee State Insurance Act 1948
- Benefits and Functions of Employees State Insurance Act 1948
- Salient Features of Benefits of ESI Scheme and Atal Beemit Vyakti Kalyan Yojana (ABVKY)

19.1 INTRODUCTION

The promulgation of Employees' State Insurance Act, 1948(ESI Act), by the Parliament was the first major legislation on social Security for workers in independent India. It was a time when the industry was still in a nascent stage and the country was heavily dependent on an assortment of imported goods from the developed or fast developing countries. The deployment of manpower in manufacturing processes was limited to a few select industries such as jute, textile, chemicals etc. The legislation on creation and development of a full proof multi-dimensional Social Security system, when the country's economy was in a very fledgling state was obviously a remarkable gesture towards the socio economic amelioration of a workforce though limited in number and geographic distribution. India, notwithstanding, thus, took the lead in providing organized social protection to the working class through statutory provisions.

The ESI Act 1948, encompasses certain health related eventualities that the workers are generally exposed to; such as sickness, maternity, temporary or permanent disablement, Occupational disease or death due to employment injury, resulting in loss of wages or earning capacity-total or partial. Social security provision made in the Act to counterbalance or negate the resulting physical or financial distress in such contingencies, are thus, aimed at upholding human

dignity in times of crises through protection from deprivation, destitution and social degradation while enabling the society the retention and continuity of a socially useful and productive manpower.

19.2 HISTORY

The scheme was inaugurated in Kanpur on 24th February 1952 (ESIC Day) by then Prime Minister Pandit Jawahar Lal Nehru. The venue was the Brijender Swarup Park, Kanpur and Panditji addressed a 70,000 strong gathering in Hindi in the presence of Pt.Gobind Ballabh Pant, Chief Minister Uttar Pradesh; Babu Jagjivan Ram, Union Labour Minister; Raj Kumari Amrit Kaur, Union Health Minister; Sh.Chandrabhan Gupt, Union Food Minister and Dr.C.L.Katial, the first Director General of ESIC.

The scheme was simultaneously launched at Delhi as well and the initial coverage for both the centres was 1,20,000 employees. Our first prime Minister was the first honorary insured person of the Scheme and the declaration form bearing his signature is a prized possession of the Corporation.

It is important to mention here that it blossomed as the first social security scheme in 1944, when the Govt. of the day was still British. The first document on social insurance was "Report on Health Insurance" submitted to the Tripartite Labour Conference, headed by Prof. B.P.Adarkar, an eminent scholar and visionary. The Report was acclaimed as a worthy document and forerunner of the social security scheme in India and Prof. Adarkar was acknowledged as "Chhota Beveridge" by none other than Sardar Vallabhbhai Patel. Sir, William Beveridge, as all know, was one of the high priests of social insurance. The report was accepted and Prof. Adarkar continued to be actively associated with it till 1946. On his disassociation he strongly advocated management of the Scheme by an expert from ILO. In 1948 Dr. C.L.Katial, an eminent Indian doctor from London took over as the 1st Director General of ESIC and he steered the affairs of the fledgling Scheme till 1953.

Since the red letter day of 24th February in the annals of social security in India, there has been no looking back. A lighted lamp which is the logo of ESIC truly symbolises the spirit of the Scheme, lighting up lives of innumerable families of workers by replacing despair with hope and providing help in times of distress, both physical and financial.

The Employees State Insurance Act of 1948 was instituted with the target of getting monetary help in instances of infection, maternity, and disablement and for giving health advantages to workers of processing plants and foundations and their wards. Employees state insurance act 1948 is also abbreviated as an ESIC. After implementing the employee's state insurance act 1948, all the employee's funds are regulated according to the provisions written under the act. All its functioning is regulated by the ministry of labour and employment, a statutory body launched on 24th February 1952.

19.3 PROVISION OF EMPLOYEE STATE INSURANCE ACT 1948

Let's understand the provision of the employee state insurance act 1948. Employees' state insurance act is designed based on the ESI act, An Act to accommodate specific advantages to representatives in the event of an ailment, maternity and work injury and to make arrangements for specific issues in connection to them. The Social Legislation act aims to provide an amount in the form of compensation to the employees in case of any medical injury or emergency. The responsibility of this act is to pay compensation amount and compliances to the employee in case of any severe medical conditions.

The main motive behind the implementation of this act is to introduce the provisions and rules of the ESI act and to carry out all its functions smoothly in the entire nation.

19.4 FUNCTIONS OF EMPLOYEES STATE INSURANCE ACT 1948

Let's understand the functions of the employee state insurance act 1948.

- Employees, a state insurance act 1948, plays a major role in the welfare of many employees. The functions of this act are as follows:
- Under section 17 of the constitution, the employee's state insurance act 1948 can recruit staff members. Along with this, it can also provide gratuity and some other fund related benefits to the eligible staff members.
- According to the powers of this act, it can invest or take money from the central government sanction for providing better facilities to employees.
- The Employees state insurance act 1948, can recruit or hire the social security officers to implement practices of the act among the other bodies of India. These officers have the power to enforce the implementation of practices of this act.
- The Employee's state insurance act 1948 also collects some amount of money from the compensation of employees to regulate all its functioning and to facilitate other employees.
- The Director-General of employees states insurance act has the authority to make decisions for facilitating the act's implementation. He can also modify the implementation strategies according to the need.
- It is the responsibility of the employee's state insurance act 1948 to maintain the budget of all expenditures, which are done to provide compensation and other facilities to the employees.

19.5 BENEFITS OF EMPLOYEES STATE INSURANCE ACT 1948

Employees state insurance act 1948 comes into consideration for providing the compensation benefits to the employees. Along with this, it also has several benefits, which are catalogued below:

Medical Benefit: Along with this, the salary of those employees does not get deducted during the period of their treatment. They also get a certain percentage of compensation if any of their family members get any severe medical illness.

Maternity Benefit: It is the best benefit provided to the women by the employee's state insurance act 1948. Women who are pregnant get extra leave before and after their delivery. It means pregnant women are not required to join the office for some months before and after their delivery. They will receive their full salary during their maternity leave.

Disablement Benefit: Employees state insurance act 1948 also provides extra benefits to those who are differently abled. It provides extra reservations to disabled individuals of various categories.

Unemployment Benefits: Employees state insurance act 1948 also provides some monthly compensation to those unemployed and eligible to perform jobs. Along with this, it also provides loans to the persons who want to launch their startups. They can take the loans at lower interest under this act.

Insurance Benefits: Employees state insurance act 1948 provides insurance benefits to both government and private employees.

Benefits

19.6 SALIENT FEATURES OF BENEFITS OF ESI SCHEME

- All types of employees covered-regular, contractual, casual, temporary
- Admissible from day one of the employment.
- No medical examination necessary for registration.
- No upper age limit for coverage.
- Can avail primary, secondary and super-specialty treatment in respect of self/family.
- No ceiling on medical expenses. •Medical Benefit to retired I.P. and Spouse for Rs.10/- per month.
- Commuting accidents treated as employment injury.

The section 46 of the Act envisages following six social security benefits :-

1. **Medical Benefit :** Full medical care is provided to an Insured person and his family members from the day he enters insurable employment. There is no ceiling on expenditure on the treatment of an Insured Person or his family member. Medical care is also provided to retired and permanently disabled insured persons and their spouses on payment of a token annual premium of Rs.120/- .
2. **Sickness Benefit (SB) :** Sickness Benefit in the form of cash compensation at the rate of 70 per cent of wages is payable to insured workers during the periods of certified sickness for a maximum of 91 days in a year. In order to qualify for sickness benefit the insured worker is required to contribute for 78 days in a contribution period of 6 months.
 - **Extended Sickness Benefit (ESB):** SB extendable upto two years in the case of 34 malignant and long-term diseases at an enhanced rate of 80 per cent of wages.
 - **Enhanced Sickness Benefit :** Enhanced Sickness Benefit equal to full wage is payable to insured persons undergoing sterilization for 7 days/14 days for male and female workers respectively.
3. **Maternity Benefit (MB) :** Maternity Benefit for confinement/pregnancy is payable for Twenty Six (26) weeks, which is extendable by further one month on medical advice at the rate of full wage subject to contribution for 70 days in the preceding Two Contribution Periods.
4. **Disablement Benefit**
 - **Temporary disablement benefit (TDB) :** From day one of entering insurable employment & irrespective of having paid any contribution in case of employment injury. Temporary Disablement Benefit at the rate of 90% of wage is payable so long as disability continues.
 - **Permanent disablement benefit (PDB):** The benefit is paid at the rate of 90% of wage in the form of monthly payment depending upon the extent of loss of earning capacity as certified by a Medical Board

5. **Dependants Benefit (DB) :** DB paid at the rate of 90% of wage in the form of monthly payment to the dependants of a deceased Insured person in cases where death occurs due to employment injury or occupational hazards.
6. **Other Benefits :**
 - **Funeral Expenses :** An amount of Rs.15,000/- is payable to the dependents or to the person who performs last rites from day one of entering insurable employment.
 - **Confinement Expenses :** An Insured Women or an I.P. in respect of his wife in case confinement occurs at a place where necessary medical facilities under ESI Scheme are not available.

In addition, the scheme also provides some other need based benefits to insured workers.

- **Vocational Rehabilitation :** To permanently disabled Insured Person for undergoing VR Training at VRS.
- **Physical Rehabilitation :** In case of physical disablement due to employment injury.
- **Rajiv Gandhi Shramik Kalyan Yojana :** This scheme of Unemployment allowance was introduced w.e.f. 01-04-2005. An Insured Person who become unemployed after being insured three or more years, due to closure of factory/establishment, retrenchment or permanent invalidity are entitled to :-
 - Unemployment Allowance equal to 50% of wage for a maximum period of upto Two Years.
 - Medical care for self and family from ESI Hospitals/Dispensaries during the period IP receives unemployment allowance.
 - Vocational Training provided for upgrading skills - Expenditure on fee/travelling allowance borne by ESIC.

19.7 ATAL BEEMIT VYAKTI KALYAN YOJANA (ABVKY)

This scheme is a welfare measure for employees covered under Section 2(9) of ESI Act, 1948, in the form of relief payment upto 90 days, once in a lifetime. The Scheme was introduced w.e.f. 01-07-2018 on pilot basis for a period of two years initially. The scheme has now been extended upto 30 June 2022.

It has also been decided to enhance the rate of unemployment relief under the scheme to 50% of wages from earlier rate of 25% along with relaxation in eligibility conditions, provided the Insured Person should have been in insurable employment for a minimum period of one year immediately before her/his unemployment and should have contributed for not less than 78 days in the completed contribution period in 12 months immediately prior to unemployment.

In a significant relaxation, relief shall become due for payment after 30 days from date of unemployment and claim can be submitted directly to the designated ESIC Branch Office by the worker. Claims to get the relief can be made online at <https://www.esic.gov.in/> along with submission of the physical claim with an affidavit, photocopy of Aadhaar Card and Bank Account details to the designated ESIC Branch Office by post or in person.

Incentive to employers in the Private Sector for providing regular employment to the persons with disability :

- Minimum wage limit for Physically Disabled Persons for availing ESIC Benefits is Rs 25,000/-.
- Employers' contribution is paid by the Central Government for 3 years.

Convergence between ESIC and AB PM-JAY

The Employees' State Insurance Corporation (ESIC) has entered into a partnership with National Health Authority (NHA). This convergence between Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana (AB PM-JAY) and Employees' State Insurance Scheme (ESIS) will create an ecosystem wherein ESI beneficiaries will be able to access services at ABPM-JAY empanelled Hospitals and vice versa.

In the initial phase, a pilot was conducted in Ahmednagar, Maharashtra and Bidar, Karnataka wherein ESI beneficiaries of these districts got access to medical care services in PM-JAY empanelled hospitals.

On successful completion of this pilot project, the convergence of ESI Scheme with PM-JAY has been extended to 113 designated districts of 04 States i.e. Chhattisgarh, Karnataka, Madhya Pradesh and Maharashtra. ESI beneficiaries of these 113 designated districts will be able to access medical care services in PM-JAY empaneled hospitals. They can avail secondary and tertiary care from the PM-JAY empanelled hospitals without any ceiling.

19.8 MEDICAL COLLEGES OF EMPLOYEES STATE INSURANCE ACT 1948

Employees state insurance act 1948 provides different facilities to the employees. Along with this, it also regulates eight colleges throughout the country, in which it provides training to both employees and their officers. These are:

- ESIC Medical College and PGIMSAR: The different branches of this college are located in different parts of the country. It is located in the seven different states of India. These are Karnataka (Bengaluru), Tamil Nadu (Chennai), West Bengal (Kolkata), Haryana (Faridabad), and Telangana (Hyderabad), Karnataka (Gulbarga), Rajasthan (Jaipur).
- ESIC Medical College and Hospital: It is located in Patna, Bihar.

19.9 SUMMARY

Employees state insurance act 1948 is the legislative body of India which provides enormous benefits to the employees. The headquarters are located in New Delhi, from where the whole functioning of the act is regulated. The central government and the ministry of labour and employment together regulate the functioning of employees state insurance act 1948. According to the reports, the act runs with a budget of ₹ 80,000 crores. Within the 70 years after launching, this act had already provided numerous benefits to several employees of India and will continue to provide such benefits in future with more facilities.

19.10 TEST YOUR KNOWLEDGE

1. Outline the History of Employee State Insurance Act 1948?
2. What are the various Provision of Employee State Insurance Act 1948?
3. Explain the detailed Functions of Employees State Insurance Act 1948
4. What are the benefits of Employees State Insurance Act 1948?

5. Discuss the Salient Features of Benefits of ESI Scheme
6. Explain the Atal Beemit Vyakti Kalyan Yojana (ABVKY)

19.11 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethnamohan, R., Phi Learning.

UNIT-20

THE SHOPS AND ESTABLISHMENTS ACT

Unit Structure

- 20.1 Introduction
- 20.2 Features of Shops and Establishments Act:
- 20.3 Key Aspects of the Shops and Establishments Act:
- 20.4 Benefits of the Shop and Establishment Act
- 20.5 Limitation of Shop And Establishment Act 1948
- 20.6 Regulation of shop and establishment Act in Uttar Pradesh
- 20.7 Distinction from Factories Act
- 20.8 Summary
- 20.9 Test Your Knowledge
- 20.10 Further Readings

20.0 OBJECTIVE OF THE UNIT

After going through this unit you will be able to know about the shop and establishment act and its benefits.

You will also know its implementation and limitations.

20.1 INTRODUCTION

The Shops and Establishments Act, enacted by individual states in India, regulates the working conditions and employment terms for employees in shops and commercial establishments. It covers aspects like working hours, leave, wages, and other employment-related matters. While each state has its own specific act, the core principles are generally similar across states.

20.2 FEATURES OF SHOPS AND ESTABLISHMENTS ACT

Applicability: It applies to shops, commercial establishments, restaurants, hotels, theaters, and other places of public entertainment.

Registration: Businesses need to register under the Act within a specified timeframe (e.g., 30 days in Uttar Pradesh) after commencing operations.

Working Hours: The act regulates the maximum number of working hours per day and week, with provisions for overtime pay.

Leave and Holidays: It mandates paid leave, holidays, and weekly rest days for employees.

Other Employee Rights: The Act also covers aspects like wages, terms of service, child labour, women's rights, and working conditions.

Enforcement: The Labour Department of each state is responsible for implementing and enforcing the Act.

In Uttar Pradesh:

20.3 KEY ASPECTS OF THE SHOPS AND ESTABLISHMENTS ACT

Scope: The act applies to shops, commercial establishments, restaurants, theaters, and other places of public amusement or entertainment.

Working Hours: The act regulates the number of working hours per day and week, rest intervals, and provisions for overtime pay.

Leave and Holidays: It mandates annual leave, weekly holidays, and provisions for sick leave and other types of leave.

Wages and Payment: The act outlines guidelines for wage payment, including timely payment and deductions.

Conditions of Employment: It covers various aspects of employment, including hiring and termination procedures, as well as provisions for women and young workers.

Health and Safety: The act also addresses aspects like cleanliness, lighting, ventilation, and fire safety within the establishment.

Record Keeping: Employers are required to maintain registers and records related to employment and operations.

Enforcement: The Labour Department in each state is responsible for implementing and enforcing the act.

Important Considerations:

State-Specific Acts: While there is a model act, each state has its own specific legislation, so it's crucial to refer to the relevant state's act for detailed information.

Factory vs. Shop/Establishment: The Shops and Establishments Act differs from the Factories Act, which focuses on manufacturing environments with more stringent safety and health regulations.

Registration: Establishments covered by the act typically need to register under it.

Compliance: Businesses must comply with the provisions of the act to ensure fair working conditions and avoid penalties.

20.4 BENEFITS OF THE SHOP AND ESTABLISHMENT ACT

The Shop and Establishment Act, enacted to regulate conditions of work and employment in shops and commercial establishments, offers several benefits to both employees and employers. These include provisions for working hours, leaves, wages, and protection against unfair dismissal, alongside registration and compliance requirements for businesses.

Benefits for Employees:

Regulated Working Hours: The Act sets limits on daily and weekly working hours, ensuring employees don't work excessive hours.

Mandatory Leaves and Holidays: Employees are entitled to paid leaves, including annual leave, weekly holidays, and potentially sick or casual leave, depending on the state's specific laws.

Wages and Compensation: The Act provides guidelines for timely wage payments and ensures employees receive compensation for overtime work.

Protection Against Unfair Dismissal: The Act often includes provisions for proper procedures and notice periods for termination of employment.

Maternity Benefits: Many states include provisions for maternity leave and benefits for female employees.

Rest Intervals: The Act mandates rest periods during work hours to prevent fatigue.

Protection of Children and Women: The Act restricts child labour and includes provisions for women's employment, such as restrictions on night shifts and ensuring safe working conditions.

Benefits for Employers:

Legal Compliance: Registering under the Shop and Establishment Act helps businesses comply with labour laws and avoid penalties.

Improved Employee Relations: By adhering to the Act's provisions, businesses can foster a more positive and productive work environment, leading to better employee morale and reduced disputes.

Clear Operating Guidelines: The Act provides clarity on opening and closing hours, record-keeping requirements, and other operational aspects.

Facilitates Business Operations: Registration under the Act can be necessary for opening bank accounts, obtaining loans, and attracting investment.

Streamlined Operations: The Act's provisions on record-keeping and reporting can help businesses streamline their operations and manage employee-related data more efficiently.

State-Specific Regulations: Businesses need to be aware that each state has its own version of the Act, and they must comply with the specific regulations of their respective state.

20.5 LIMITATION OF SHOP AND ESTABLISHMENT ACT 1948

The Shop and Establishment Act, 1948, regulates the working conditions in shops, commercial establishments, restaurants, and other businesses. While it aims to protect employee rights, it has certain limitations. One key limitation is that it doesn't apply to all establishments, particularly those covered by the Factories Act. Additionally, the act's effectiveness can vary across states due to differing interpretations and enforcement mechanisms.

Here's a more detailed breakdown of the limitations:

1. Limited Applicability:

Exclusion of Factories: The Act explicitly excludes factories, which are governed by the Factories Act, 1948.

State-Specific Variations: The act is a state-level law, leading to variations in its implementation and enforcement across different states.

Varying Applicability: Some states may have specific exemptions or modifications to the Act, affecting its applicability to certain types of establishments or businesses.

Evolving Nature of Work: The rise of digital platforms and remote work arrangements has created challenges for the Act's applicability in the modern context.

2. Enforcement Challenges:

Insufficient Inspections: The effectiveness of the Act relies on regular inspections and enforcement by state authorities. However, limited resources and manpower can hinder effective implementation, particularly in smaller towns and rural areas, according to the Maharashtra Shops & Establishments Act, 1948.

Penalties: While penalties exist for non-compliance, they may not always be sufficient to deter violations, especially for larger establishments.

Lack of Awareness: Many employers and employees may be unaware of their rights and obligations under the Act, leading to poor compliance.

3. Outdated Provisions:

Focus on Traditional Work: The Act was enacted before the widespread adoption of technology and digital platforms, and its provisions may not fully address the challenges of modern work arrangements.

Need for Modernization: There's a growing need to update the Act to reflect the changing nature of work, including gig work, remote work, and the use of online platforms.

4. Disputes and Grievances:

Limited Redressal Mechanisms: The Act provides limited mechanisms for resolving disputes between employers and employees.

Time-Consuming Processes: Resolving disputes through existing channels can be time-consuming and costly for both parties.

20.6 REGULATION OF SHOP AND ESTABLISHMENT ACT IN UTTAR PRADESH

The Uttar Pradesh Shops and Commercial Establishments Act, 1962 regulates businesses in the state. It requires registration of all shops and commercial establishments within the state. The Act aims to ensure fair working conditions and protect employee rights.

20.7 DISTINCTION FROM FACTORIES ACT

The Shops and Establishments Act primarily covers commercial activities like retail, wholesale, and service-oriented businesses. Factories Act, 1948 specifically regulates manufacturing units and industrial establishments. The Factories Act focuses on safety, health, and welfare measures within the manufacturing environment.

20.8 SUMMARY

The Shop and Establishments Act is a state-specific law in India that regulates working conditions in shops and commercial establishments. It covers various aspects like wages, working hours, leave, and other service conditions, aiming to protect employee rights. Each state has its own version of the Act, though the core provisions are generally consistent. Essentially, the Shop and Establishments Act aims to create a fair and regulated work environment for employees in shops and commercial establishments across India.

20.9 TEST YOUR KNOWLEDGE

1. What are the salient features of shops and establishments Act?

2. Discuss the key aspects of the Shops and Establishments Act:
3. What are the benefits of the Shop and Establishment Act
4. Outline the limitation of Shop And Establishment Act 1948
5. Discuss the regulation of shop and establishment Act in Uttar Pradesh

20.10 FURTHER READINGS

- Human Resource Management, Dr Gaurav Sankalp, Sahitya Bhavan Publication Agra
- Industrial Relations And Labour Laws, Gupta Cb (Dr), Kapoor N.D., Tripathi Pc, Sultan Chand & Sons
- Industrial Relations And Labour Welfare : Text And Cases, Sivarethinamohan, R., Phi Learning.

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