

INDUSTRIAL AND LABOUR RELATIONS

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Unit I

Introduction

Industrial Relations (IR) is the study of the laws, conventions and institutions that regulate 'the workplace'. It is a fundamentally important aspect of our way of life, our culture and our society. Industrial relations means different things to different people. The following illustration depicts how IR shapes our working life, our society and the national economy.

As workers, we associate Industrial Relations with Unions, Industrial Awards, and labour laws that set the conditions under which we work. This includes our pay, safety, employment security and opportunities for training. 150 years ago people worked 6 days a week, 12 hours a day or more, and there were no provisions for sick pay or holiday pay. There was no protection for children who were often a form of cheap labour, or worse, were sold into slavery. As a society we have come a long way since, and this is largely due to the formation and actions of labour unions.

The modern day employer attaches great importance to maintaining good industrial relations as a cornerstone of business growth and success. Industrial relations, for the employer, is about negotiations between workers and business owners/managers that lead to increased productivity and improved product quality in exchange for better pay and conditions of employment for workers. These negotiations between business owners/managers and their workers is often referred to as enterprise bargaining. The reduction of conflict between workers and business management is also a highly desirable objective in Industrial Relations.

Whether we have good jobs and how we work has a fundamental effect on the quality of our lives. Unemployment causes social isolation and economic deprivation. When there is high levels of unemployment, there is social tension and upheaval. Too much employment has its own set of woes. People who work long hours often suffer from health issues and family problems. There is a need to strike a work-life balance to ensure a healthy, happy and productive populations.

Industrial relations is a major factor in managing the economy. As a nation we compete in the global marketplace for goods and services. If the workforce is inefficient and wage demands

are too high, then the cost of our goods and services is greater and consequently we are less competitive in the global marketplace (see more about Globalisation). Governments create laws and policies that affect Industrial Relations and thereby influence the pay and conditions of work for workers.

History

Industrial relations has its roots in the industrial revolution which created the modern employment relationship by spawning free labor markets and large-scale industrial organizations with thousands of wage workers. As society wrestled with these massive economic and social changes, labor problems arose. Low wages, long working hours, monotonous and dangerous work, and abusive supervisory practices led to high employee turnover, violent strikes, and the threat of social instability. Intellectually, industrial relations was formed at the end of the 19th century as a middle ground between classical economics and Marxism, with Sidney Webb and Beatrice Webb's *Industrial Democracy* (1897) being the key intellectual work. Industrial relations thus rejected the classical econ.

Institutionally, industrial relations was founded by John R. Commons when he created the first academic industrial relations program at the University of Wisconsin in 1920. Another scholarly pioneer in industrial relations and labor research was Robert F. Hoxie. Early financial support for the field came from John D. Rockefeller, Jr. who supported progressive labor-management relations in the aftermath of the bloody strike at a Rockefeller-owned coal mine in Colorado. In Britain, another progressive industrialist, Montague Burton, endowed chairs in industrial relations at Leeds, Cardiff and Cambridge in 1930.

Beginning in the early 1930s there was a rapid increase in membership of labor unions in America, and with that came frequent and sometimes violent labor-management conflict. During World War II these were suppressed by the arbitration powers of the National War Labor Board.

However, as World War II drew to a close and in anticipation of a renewal of labor-management conflict after the war, there was a wave of creations of new academic institutes and degree programs that sought to analyze such conflicts and the role of collective bargaining. The most known of these was the Cornell University School of Industrial and Labor Relations, founded in

1945. But counting various forms, there were over seventy-five others. These included the Yale Labor and Management Center, directed by E. Wight Bakke, which began in 1945. An influential industrial relations scholar in the 1940s and 1950s was Neil W. Chamberlain at Yale and Columbia Universities. The discipline was formalized in the 1950s with the formation of the Oxford School by Allan Flanders and Hugh Clegg.

Industrial relations was formed with a strong problem-solving orientation that rejected both the classical economists' laissez faire solutions to labor problems and the Marxist solution of class revolution. It is this approach that underlies the New Deal legislation in the United States, such as the National Labor Relations Act and the Fair Labor Standards Act.

Concept of Industrial Relations

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

Industrial relations are the relationships between employees and employers within the organizational settings. The field of industrial relations looks at the relationship between management and workers, particularly groups of workers represented by a union. Industrial relations are basically the interactions between employers, employees and the government, and the institutions and associations through which such interactions are mediated.

The term industrial relations has a broad as well as narrow outlook. Originally, industrial relations was broadly defined to include the relationships and interactions between employers and employees. From this perspective, industrial relations covers all aspects of the employment relationship, including human resource management, employee relations, and union-management (or labor) relations. Now its meaning has become more specific and restricted. Accordingly, industrial relations pertains to the study and practice of collective bargaining, trade unionism, and labor-management relations, while human resource management is a separate, largely

distinct field that deals with nonunion employment relationships and the personnel practices and policies of employers.

The relationships which arise at and out of the workplace generally include the relationships between individual workers, the relationships between workers and their employer and the relationships between employees. The relationships employers and workers have with the organizations are formed to promote their respective interests, and the relations between those organizations, at all levels. Industrial relations also includes the processes through which these relationships are expressed (such as, collective bargaining, workers' participation in decision-making, and grievance and dispute settlement), and the management of conflict between employers, workers and trade unions, when it arises.

Importance of Industrial Relation

1. Foster Industrial Peace:

Under the mechanism of IR, both employees and managers discuss the matter and consult each other before initiating any actions. Doubts, if any, in the minds of either party are removed. Thus, unilateral actions that prop confusion and misunderstanding disappear from the scene. In this way, IR helps create a peaceful environment in the organisation. Peace, in turn, breeds prosperity.

2. Promote Industrial Democracy:

Industrial democracy means the government mandated worker participation at various levels of the organisation with regard to decisions that affect workers. It is mainly the joint consultations, that pave the way for industrial democracy and cement relationship between workers and management. This benefits the both. The motivated workers give their best and maximum to the organisation, on the one hand, and share their share of the fruits of organisational progress jointly with management, on the other.

3. Benefit to Workers:

IR benefits workers in several ways. For example, it protects workers against unethical practices on the part of management to exploit workers by putting them under inhuman working conditions and niggardly wages. It also provides a procedure to resolve workers' grievances relating to work.

4. Benefit to Management:

IR protects the rights of managers too. As and when workers create the problem of indiscipline, IR provides managers with a system to handle with employee indiscipline in the organisation.

5. Improve Productivity:

Experiences indicate that good industrial relations serve as the key for increased productivity in industrial organisations. Eicher Tractors, Alwar represents one such case. In this plant, productivity went up from 32 per cent to 38 per cent between 1994 and 1997. This increase is attributed to the peaceful IR in the plant.

Similar other success stories abound in the country. As reported by V.S.P. Rao, Sundaram Fasteners (A TVS group company which begged the prestigious GM award for the fourth successive year in 1999 as a quality supplier of radiator caps) is well known for zero breakdowns, zero accidents and zero defects. Company did not lose even a single day due to strike. The per-employee productivity is comparable to the best in the world. One study rates the company among the 20 most competitive companies in the Asia.

Approaches To IR

The scenario of Industrial Relations(IR) is perceived differently by different people. For some, Industrial Relations is related to class conflict, others perceive it in terms of mutual co-operation and still others understand it in terms of competing interests of various groups. HR managers are expected to understand these varying approaches because they provide the theoretical underpinnings for much of the role of HRM.

The three popular approaches to Industrial Relations are Unitary approach, pluralistic approach, and Marxist approach.

Unitary Approach

Under unitary approach, Industrial Relations is grounded in mutual co-operation, individual treatment, team-work and shared goals. Work place conflict is seen as a temporary aberration, resulting from poor management, from employees who do not mix well with the organization's culture. Unions co-operate with the management and the management's right to manage is accepted because there is no 'we-they' feeling. The underlying assumption is that everyone benefits when the focus is on common interest and promotion of harmony. Conflict in the form of strikes is not only regarded as unnecessary but destructive.

Advocates of the unitary approach emphasize on a reactive Industrial Relations strategy. They seek direct negotiations with employees. Participation of government, tribunals and unions are not sought or are seen as being necessary for achieving harmonious employee relations.

The unitary approach is being criticized as a tool for seducing employees away from unionism and socialism. It is also criticized as manipulative and exploitative.

Pluralistic Approach

The pluralistic approach totally departs from the unitary approach. The pluralistic approach perceives:

1. Organizations as coalitions of competing interests, where the management's role is to mediate amongst the different interest groups.
2. Trade unions as legitimate representatives of employee interests.
3. Stability in Industrial Relations as the product of concessions and compromises between management and unions

Legitimacy of the management's authority is not automatically accepted. Conflict between the management and workers is understood as inevitable and, in fact, is viewed as conducive for innovation and growth. Employees join unions to protect their interests and influence decision-making by the management.

Unions thus balance the power between the management and employees. In the pluralistic approach, therefore, a strong union is not only desirable but necessary. Similarly, society's interests are protected by state intervention through legislation and industrial tribunals which provide orderly process for regulation and resolution of conflict.

The theories on pluralism were evolved in the mid-sixties and early seventies when England witnessed a resurgence of industrial conflicts. However, the recent theories of pluralism emanated from British scholars, and in particular from Flanders and Fox. According to pluralists, industrial conflict is inevitable and it needs to be contained within the social mechanism of collective bargaining, conciliation and arbitration.

Marxist Approach

Marxists, like the pluralists, regard conflict between employers and employees as inevitable. However, pluralists believe that the conflict is inevitable in all organizations. Marxists see it as a product of the capitalist society.

Trade unions are seen both as labour reaction to exploitation by capital, as well as a weapon to bring about a revolutionary social change. Concerns with wage-related disputes are secondary. Trade unions focus on improving the position of workers within the capitalist system and not to overthrow. For the Marxists, all strikes are political.

Besides, Marxists regard state intervention via legislation and the creation of industrial tribunals as supporting management's interest rather than ensuring a balance between the competing groups. This view is in contrast to the belief of the pluralists who argue that state intervention is necessary to protect the overall interest of society.

To Marxists, the pluralist approach is supportive of capitalism, the unitary approach is anathema. Consequently, enterprise bargaining, employee participation, co-operative work culture, and the like which help usher in cordial Industrial Relations are not acceptable to Marxists. Such initiatives are regarded as nothing more than sophisticated management techniques designed to reinforce management control and the continuation of the capitalist system.

Methods to develop sound Industrial Relation

1. Developing Trust between Labour and Management:

Research studies report that trust between labourers and managers serves as a foundation for developing sound IR in an organisation.

Among others, there may be two most effective ways to create trust between the IR parties:

- (i) To build competence in both labourers and managers, and
- (ii) To develop and practice right human resource practices in the organisation. In fact, it is trust only that binds labour and management together.

2. Existence of Sound and Democratic Trade Unions:

One another prerequisite for a sound IR is the existence of sound and democratic trade unions to bargain with management. It is the sound and democratic trade union that can protect the employee's interest in terms of wages, benefits, working conditions, job security and so on. These make employees satisfied and satisfaction permits no alibis and grievance.

3. Maintenance of Industrial Peace:

Peace promotes prosperity and prosperity supports happiness. In an industrial organisation, peace can be established through several ways. To mention a few, establish machinery for the prevention and settlement of industrial disputes. Such machinery should include both legislative and non-legislative measures. Arm the Government with appropriate powers to settle the industrial disputes wherever necessary.

Make provisions for bipartite and tripartite committees for evolving personnel policies, code of conduct, code of discipline, etc. Create implementation and evaluation committees for looking into collective bargaining agreements, court orders and judgments and violations of statutory provisions of the various laws.

4. Continuous Feedback and Monitoring:

Feedback serves as an input for improvement in all types of activities and so in IR as well. A properly devised feedback mechanism enables the HR managers to spot the grey areas in IR system and, then, take proactive actions to solve the problems before these assume alarming proportions. Nipping the problems at the bud is better because, sometimes, a seemingly small problem if not solved culminates to a complex and serious one later on.

5. Professional Approach:

Understanding human behaviour has ever been a complex phenomenon. And the same has become more so in case of modern knowledge workers. This underlines the need for handling with employees, or say, IR by the persons having professional competence and approach in the subject. These persons need to be well versed with whole gamut of employee/human behaviour at work.

In other words, these persons must know why employees behave as they behave at work place. Besides, they should also have a problem -solving approach to tackle with the employee problems in the organisations.

Trade union

A **trade union** or **trades union**, also called a **labour union** is an organization of workers who have come together to achieve common goals such as protecting the integrity of its trade, improving safety standards, achieving higher pay and benefits such as health care and retirement, increasing the number of employees an employer assigns to complete the work, and better working conditions. The trade union, through its leadership, bargains with the employer on behalf of union members and negotiates labour contracts with employers. The most common

purpose of these associations or unions is "maintaining or improving the conditions of their employment". This may include the negotiation of wages, work rules, complaint procedures, rules governing hiring, firing and promotion of workers, benefits, workplace safety and policies.

Unions may organize a particular section of skilled workers a cross-section of workers from various trades or attempt to organize all workers within a particular industry .The agreements negotiated by a union are binding on the rank and file members and the employer and in some cases on other non-member workers. Trade unions traditionally have a constitution which details the governance of their bargaining unit and also have governance at various levels of government depending on the industry that binds them legally to their negotiations and functioning.

Originating in Great Britain, trade unions became popular in many countries during the Industrial Revolution. Trade unions may be composed of individual workers, professionals, past workers, students, apprentices or the unemployed. Trade union density, or the percentage of workers belonging to a trade union, is highest in the Nordic countries.

Definition

Trade Union Act 1926 [Sec. 2(h)]: Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions.

Sydney and Beatrice Web have defined Trade Union as a “Continuous association of wage earners for the purpose of maintaining or improving the conditions of their working lives.”

G.D.H. Cole defines Trade Union as “an association of workers in one or more occupations and association carried on mainly for the purpose of protecting and advancing the member’s economic interests in connection with their daily work”.

Objectives of Trade Union:

Trade union is a voluntary organization of workers relating to a specific trade, industry or a company and formed to help and protect their interests and welfare by collective action. Trade

union are the most suitable organisations for balancing and improving the relations between the employees and the employer. They are formed not only to cater to the workers' demand, but also for imparting discipline and inculcating in them the sense of responsibility. They aim to:-

- Secure fair wages for workers and improve their opportunities for promotion and training.
- Safeguard security of tenure and improve their conditions of service.
- Improve working and living conditions of workers.
- Provide them educational, cultural and recreational facilities.
- Facilitate technological advancement by broadening the understanding of the workers.
- Help them in improving levels of production, productivity, discipline and high standard of living.
- Promote individual and collective welfare and thus correlate the workers' interests with that of their industry.
- To take participation in management for decision-making in connection to workers and to take disciplinary action against the worker who commits in-disciplinary action.

Characteristics of Trade Unions

1. Association of employees:

A trade union is essentially an association of employees belonging to a particular class of employment, profession, trade or industry. For example, there are unions for teachers, doctors, film, artistes, weavers, mine workers and so on.

2. Voluntary Association:

An employee joins the trade union out of his free will. A person cannot be compelled to join a union.

3. **Permanent Body:**

A trade union is usually a permanent body. Members may come and go but the trade union remains.

4. **Common Interest:**

The member of a trade union have certain matters of common interest-job security, better pay and working conditions and so on, which bring them together.

5. **Collective Action:**

Even when an individual employee has any grievance over certain management decisions, the matter is sorted out by the intervention of the trade union Employees are able to initiate collective action to solve any problem concerning any particular employee or all the employees.

6. **Rapport with the Management:**

The trade union seeks to improve relations between the employees and employers. The officials of the trade union hold talks with the members of the management concerning the problems of the employees in order to find an amicable solution. It is thus possible for the employees to have better rapport with the management.

Growth of Trade Unions in India

It was not until the close of First World War, that the modern trade Union movement really took permanent roots in Indian Soil. The establishment of Bombay Mill Hands' Association is considered as the first phase of the trade union movement in India. In 1905, the Printers Association of Calcutta and Dock Union Board in Bombay were formed.

There was labor unrest in India at the end of the First World War. In several industries, the workers went on strikes to secure wage increases. The Russian Revolution and the Industrial

Labor Organization have inspired the Indian laborers to launch trade unions like the Spinners Union and Weaver's Union which had been established in Madras and Ahmedabad respectively.

But the important step in the history of Indian trade unionism was the foundation of All India Trade Union Congress in 1920. There had been a steady progress of trade union movement in India. However, the decision of the Madras High Court that the formation of trade union is illegal stood in the way of its development.

In 1926, the Trade Unions Act was enacted to give legal recognition to the different trade unions. The said Act also conferred certain privileges on the registered trade unions in an industrial unit. The Trade Unions Act has made it compulsory on trade unions to use their funds for workers interests and to prescribe a fee of at least 25 paise per works. Most of the members of the executive committee of a trade union must be employed in the factory.

In 1930, the climate was not favorable to the growth of trade Union movements in India. The prosecution of the communists involved in Meerut conspiracy case and the failure of Bombay Textile strike of 1929 retarded the trade union movement. Moreover the serious economic depression was added with it, during the period.

In the next phase, the Second World War gave a great impetus to the trade union movement in India. The rising cost of living forced laborers to organize themselves into trade unions. At the same time the Second World War split the trade union leaders on the question of participating in the war. Industrial unrest was also increased during this period. As a result; there was a marked increase in both the number of trade unions and of organized workers.

With independence and partition, the country was plunged into growing unemployment. A series of strikes occurred, in the country. The All India Trade Union Congress was split up as a result of which the Indian National Trade Union Congress (INTUC) was formed in 1947 under the control of congress party. The Hind Mazdoor Sabha (HMS) was formed by the socialist Party in 1948, and United Trade Union congress (UTUC) was formed in 1949. Recently, Centre of Indian Trade Unions (CITU) has been formed by the Communist Party (Marxists).

There are more than fourteen thousand registered trade unions in India. The steady growth of trade unions in India is due to the political consciousness among the laborers as well as the governmental measures to facilitate collective bargaining through appropriate legislation.

Classification of Theories of Trade Union

1. Revolutionary Theory:

The revolutionary approach/theory of trade union is developed by Karl Marx “This theory is also known as “the theory of class war and dialectical materialism”. According to Marx, trade union was the foremost organising centre to provide locus for streamlining the forces of working classes The trade unions are, for Marx, the instruments to overthrow capitalism.

These are, thus, prime instruments of the class struggle between proletarian workers and capitalist businessmen. Marx advocated that the working class must not divert itself from its revolutionary programme because it is labour struggle only that can abolish capitalism. To Marx, workers’ emancipation involves abolition of capitalism

2. Evolutionary Theory:

This theory also known as “theory of industrial democracy” was enunciated by Sydney and Beatrice Webbs. To Webbs, trade unionism is an extension of the principle of democracy in the industrial sphere. In other words, trade unionism is not an instrument to overthrow the capitalism, but a means of equalizing the bargaining power of labour and capital.

Trade unionism provides a means by which workers overcome managerial dictatorship, on the one hand, and express their voice in the determination of the conditions under which they have to work, on the other.

3. Theory of Industrial Jurisprudence:

According to S. H. Slitcher the propounder of the “Theory of Industrial Jurisprudence”, workers individually fail in bargaining with employers for protecting their interests. In his view, trade

unionism served as a means for workers to protect them in work. Such an approach of trade unionism, Slitcher termed as “a system of industrial jurisprudence”.

4. Rebellion Theory:

To Frank Tannenbaum, the propounder of “Rebellion Theory”, trade unionism is a spontaneous outcome in the growth of mechanisation. He believes that the use of machines leads to exploitation of workers. Thus, machine is the cause and labour movement, i.e., trade unionism is the result. In other words, trade unionism is a rebellion approach against mechanisation automatization of industrial society to protect workers’ interest in the enterprise.

5. The Gandhian Approach:

The Gandhian approach of trade unionism is based on “class collaboration rather than class conflict and struggle”. The idea to take worker’s due share from capitalist by reform and self-consciousness among workers led to the emergence of trade unionism. Thus the Gandhian approach of trade unionism is not only related to material aspect but also moral and intellectual aspects.

Gandhi emphasised that the direct aim of a trade unionism is not, in the last degree political. Instead, its direct aim is internal reform and also evolution of internal strength. Also, trade unionism, according to the Gandhian approach, is not anti-capitalistic as is generally viewed.

Functions of Trade Unions:

(i) Fraternal or mutual-help functions; and

(ii) Militant or fighting functions.

The fraternal functions include organisation of indoor and outdoor games, dramatic clubs, arranging of lectures, running of schools, hospitals, etc. All these are intended to promote the general welfare of the working classes through their own efforts.

The militant functions of the unions refer to the struggle that they make against the employers for getting higher wages or for getting their grievances redressed. Strike is the weapon that they wield. This is a weapon of last resort. Sometimes the employers take up a very unreasonable and uncompromising attitude. No alternative is then left to the workers except to fight for their rights. Thus a strike becomes inevitable.

Structure of Trade Unions in India

In India, the structure of trade union consists of three levels: plant/shop or local, the state and the centre. It is generally from the central level that the ideology of the important central federations of labour in India percolates down to the state and local levels. Every national or central federation of labour in India has state branches, state committees or state councils, from where its organization works down to the local level.

There are two types of organizations to which the trade unions in India are affiliated:

1. National Federations, and
2. The Federations of Unions

Here a brief discussion of this trade union form is given.

1. National Federations

The National Federations have all the trade unions in a given industry as their affiliated members. Every trade union, irrespective of the industry to which it belongs, can join a general national federation. Such federations are the apex of trade union policies and national character. The central union organizations are national federations of labour based on different political ideologies. Because of their political leanings, the affiliated trade unions in the field of labour relations follow either a militant policy or a policy of cooperation with the employers and the government, or a policy of continuous strife and litigation. The trade union leadership to these national organizations is generally provided by the politicians. Such leaders are found leading a dozen or more unions in a particular state.

These unions may be in the petroleum industry, the transport industry, electricity supply undertakings or craft unions, such as the rickshaw pullers' union or taxi drivers' union. Some of the trade union leaders are MPs and MLAs.

The national/central federations are empowered to decide the question of jurisdiction of the various local and national unions. A majority of these federations allow their affiliates to bargain independently with their respective employers. The federations only act as coordinating authorities for different unions under their control. They also select delegates to represent workmen in international conferences organized by the International Labour Organisation or the International Confederation of Free Trade Unions. The all-India federation of trade unions has a regular structure. For example: The INTUC consists of a central organization, affiliated unions, industrial federation, regional branches and councils functioning under the direct control or supervision of the central organization, the assembly of delegates, the general council and the working committees.

The INTUC functions through its affiliated unions, delegates, assembly, and general council (including office-bearers), the working committees of the general council and the Pradesh bodies. The UTUC consists of the general body (delegates' assembly) general council, and the working committee of general council.

The Hind Mazdoor Sabha (HMS) works through the general council, the working committee and affiliated organization.

2. Federations of Unions

These are combinations of various unions for the purpose of gaining strength and solidarity. They can resort to concerted action, when the need for such action arises, without losing their individuality. Such federations may be local, regional, state, national and international. There are a few organizations which are local in character, such as the Bharatiya Kamgar Sena, the Labour Progressive Federation, Chennai, the National Front of Indian Trade Unions and the Co-ordinating Committee of Free Trade Unions.

Many Unions are affiliated to one or the other type of the following central organizations of workers:

- a) The Indian National Trade Union Congress
- b) The All-India Trade Union Congress
- c) The Hind Mazdoor Sabha
- d) The United Trade Union Congress
- e) The Centre of India Trade Unions
- f) Bharatiya Mazdoor Sangh
- g) The National Front of India Trade Unions
- h) The United Trade Union Congress (LS)
- i) The National Federation of Independent Trade Unions
- j) The Trade Union Co-ordination Committee
- k) Indian Confederation of Labour
- l) Hind Mazdoor Kisan Panchayat
- m) National Labour Organization

Problems of the Trade Union Movement in India

The shortcomings or the weakness of the trade union movement in India are as follows:

1. Lack of balanced growth
2. Low membership
3. Poor financial position
4. Political control
5. Multiplicity of unions
6. Inter-union rivalry
7. Lack of able leaders
8. Lack of recognition
9. Opposition from employers
10. Indifferent attitude of members

1. Lack of Balanced Growth

Trade unions are often associated with big industrial houses. A vast majority of the working population is without any union backing. The entire agricultural sector is highly unorganized in India. The agricultural workers are subject to all kinds of exploitation. The same is true with respect to those working in small scale and cottage industries. Lack of balanced growth of trade unions in all sectors is one of the major weakness of the trade union movement in India.

2. Low Membership

Trade unions, with the exception of few have low membership. This is because many employees are not willing to join unions although they are ready to enjoy the benefits arising out of the union actions. The reasons for the hesitation of employees to join unions include, among others, the need to take part in strikes and such other programmes, fear of pay cut and fear of punishment.

3. Poor financial Position

Low membership is one of the reasons for the poor financial position of the unions. Moreover, the subscription payable by every member is kept low. Some members may not even make a prompt payment of the small amount of subscription. These are also not very many sources from which unions can get funds. They may probably depend on contributions from philanthropists. The poor financial position can only weaken the trade union movement.

4. Political Control

Most popular trade unions in India are affiliated to certain political parties. These political parties are only keen on making every grievance of the working class as political issue to attain political gains. As a result the problem only gets wide publicity and remains unsolved.

5. Multiplicity of Unions

Often there exists more than one union within the same industry each backed by a political party. These various unions have conflicting ideology. If one union comes out with a strike proposal

another union may work against it. As a result, none of the unions is actually able to solve the problems of the workers.

6. Inter-Union Rivalry

The existence of many unions within a particular industry paves way for what is called inter-union rivalry. These unions do not work together for the cause of the workers. Each union may adopt a different approach to the problem. The inter-union rivalry may become a more serious problem of the workers. As a result, the employees are unable to derive the benefits of collective bargaining.

7. Lack of able Leaders

Another barrier to the growth of trade unions is the lack of able leaders. Some union leaders give a strike call even for petty problems that can easily be resolved through talks. On the other hand, there are leaders who have secret pact with the management. They get bribes from the government and work against the interests of the employees. Some leaders don't convene a meeting of the general body at all even when a crisis develops. They take unilateral decisions that are thrust on the employees.

8. Lack of recognition

Most of the management are not prepared to recognize trade unions. This happens because of any one of the following reasons.

1. The existence of low membership that reduces the bargaining power of the union.
2. The existence of more unions within the same industry.
3. Inter-union rivalry.
4. The indifferent attitude of the employees themselves towards trade unions.

9. Opposition from employers

Apart from the fact that most employers are not prepared to recognize trade unions. They also do not let their employees to form a union. The employers are able to achieve by adopting certain

punitive measures like intimidating employees, victimizing union leaders, initiating disciplinary action against employees indulging in union activities and so on.

Some employers also start rival unions with the support of certain employees. Sometimes, they may go to the extent of bribing union leaders to avert a strike or such similar show of protest by employees. The employers fail to understand that the union enables the employees to express their grievances in a democratic manner and can also be used as a means of promoting better labour management relationships.

10. Indifferent Attitude of the Members

Union leaders alone cannot be blamed for the weakness of the trade union movement. The indifferent attitude of the members of certain unions is also a barrier. Some members do not even make a prompt payment of the subscription amount. The treasurer of the union has to go behind them, remind and persuade them to pay the subscription that is often a very small amount.

There are not members who do not attend the general body meetings nor do they bother to know what is discussed in such meetings. There are still others who do not take part at all in any of the programmes of the union organized to press the demands of the employees like slogan shouting procession, demonstration, hunger strike etc. Members generally expect the office-bearers to do all that is necessary to achieve the demands.

Measures to strengthen Trade Unions

The following are some of the measures that can be adapted to strength trade union.

1. Improve financial position

The poor financial position of the trade union does not permit it to undertake certain activities. For example it requires fund to print pamphlets and booklets, to prepare banners and placards, to enable the officer-bearers to travel to different places to mobilize support and so on in the processes of working for the cause of the employees. The first corrective action that is necessary is to improve the financial position of every trade union. The following steps may be taken in this regard.

- a) The amount of subscription must be increased in tune with the increase in the cost of operations.
- b) The members must be persuaded to make prompt payment of the subscription
- c) Donations may be sought for from philanthropists.

2. Increase Membership

Steps must be taken to increase then membership of trade unions. The employees must be enlightened on the importance of cooperation and collective bargaining. This must be done on a continuous basis or till such time the employees take the decision to join the union. The office bearers must take the initiative to make the employers understand. The philosophy of “United We Stand and Divided We Fall”

3. Get rid of Political Affiliation

When trade unions have political affiliation, the political parties make an attempt to use the power of unions to their own political gains. It is therefore important that our unions free themselves from political control. When the employees have certain genuine demands, they must represent the same to their employers through able leaders who are none other than their own fellow workmen. No attempt should be made to politicalise any issue.

4. Multiple Union

The existence of many trade unions within the same industry only reduces the power of collective bargaining. Every such union works to its own goals. The general interests and well being of the employees thus are ignored. It is therefore necessary to make efforts to bring all the employees under one union. Every employee working in any industry must be made to realize the importance of trade union recognition. He must come forward to join the union willingly. Once the support of the employees is received; the next step is to make all possible efforts to persuade every management to recognize the trade union.

Unit II

Industrial Relations

Industrial relations is a multidisciplinary field that studies the employment relationship. Industrial relations is increasingly being called employment relations or employee relations because of the importance of non-industrial employment relationships; this move is sometimes seen as further broadening of the human resource management trend. Indeed, some authors now define human resource management as synonymous with employee relations. Other authors see employee relations as dealing only with non-unionized workers, whereas labor relations is seen as dealing with unionized workers. Industrial relations studies examine various employment situations, not just ones with a unionized workforce.

Definition of Industrial Relations

Industrial relation is defined as relation of Individual or group of employee and employer for engaging themselves in a way to maximize the productive activities.

In the words of Lester, “Industrial relations involve attempts at arriving at solutions between the conflicting objectives and values; between the profit motive and social gain; between discipline and freedom, between authority and industrial democracy; between bargaining and co-operation; and between conflicting interests of the individual, the group and the community.

According to Bruce E. Kaufman "To a large degree, most scholars regard trade unionism, collective bargaining and labor-management relations, and the national labor policy and labor law within which they are embedded, as the core subjects of the field."

According to Dale Yoder’, IR is a designation of a whole field of relationship that exists because of the necessary collaboration of men and women in the employment processes of Industry”.

Armstrong has defined IR as “IR is concerned with the systems and procedures used by unions and employers to determine the reward for effort and other conditions of employment, to protect

the interests of the employed and their employers and to regulate the ways in which employers treat their employees”

In the opinion of **V. B. Singh** “Industrial relations are an integral aspect of social relations arising out of employer-employee interaction in modern industries which are regulated by the State in varying degrees, in conjunction with organised social forces and influenced by the existing institutions. This involves a study of the State, the legal system, and the workers’ and employers’ organizations at the institutional level; and of the patterns of industrial organisation (including management), capital structure (including technology), compensation of the labour force, and a study of market forces all at the economic level”.

Encyclopedia Britannica defined IR more elaborately as “The concept of industrial relations has been extended to denote the relations of the state with employers, workers, and other organisations. The subject, therefore, includes individual relations and joint consultation between employers and workers at their places of work, collective relations between employers and trade unions; and the part played by the State in regulating these relations”.

Thus, IR can now safely be defined as a coin having two faces: co- operation and conflict. This relationship undergoes change from thesis to antithesis and then to synthesis. Thus, the relationship starting with co-operation soon changes into conflict and after its resolution again changes into cooperation. This changing process becomes a continuous feature in industrial system and makes IR concept as dynamic and evolving one.

Features of Industrial Relations

- Industrial Relation do not emerge in vacuum they are born of employment relationship in an industrial setting. Without the existence of the two parties, i.e., labour and management, this relationship cannot exist.
- It provides the environment for industrial relations.

- Industrial Relations are characterized by both conflict and co-operations.
- The focus of Industrial Relations is on the study of the attitudes, relationships, practices and procedures developed by the contending parties to resolve or at least minimize conflicts.

Objectives of Industrial Relations

- Labor Relations, i.e. relations between union and management.
- Employer-employees relations, i.e. relations between management and employees.
- Group relations, i.e. relations between various groups of workmen.
- Community or Public relations, i.e. relations between industry and society.
- Promotions and development of healthy labor-management relations.
- Maintenance of industrial peace and avoidance of industrial strife.
- Development of true industrial Democracy.

Reasons for poor IR

1. Economic Causes.
2. Organisational Causes.
3. Social Causes.
4. Psychological Causes.
5. Political Causes.

1. Economic Causes:

Poor wages and poor working conditions are the main reasons for unhealthy relations among management and labour. Unauthorized deductions from wages, lack of fringe benefits, absence of promotional opportunities, dissatisfaction with job evaluation and performance appraisal methods, faulty incentive schemes are other economic causes.

2. Organisational Causes:

Faulty communication system, dilution of supervision and command, non-recognition of trade unions, unfair practices, violation of collective agreements and standing orders and labour laws are the organisational causes of poor relations in industry.

3. Social Causes:

Uninteresting nature of work is the main social cause. Factory system and specialisation have made worker a subordinate to the machine. Worker has lost sense of pride and satisfaction in the job. Tensions and conflicts in society break up of joint family system, growing intolerance have also led to poor employer-employee relations. Dissatisfaction with job and personal life culminates into industrial conflicts.

4. Psychological Causes:

Lack of job security, poor organisational culture, non- recognition of merit and performance, authoritative administration and poor interpersonal relations are the psychological reasons for unsatisfactory employer- employee relations.

5. Political Causes:

Political nature of trade unions, multiple unions and inter-union rivalry weaken trade union movement. In the absence of strong and responsible trade unions, collective bargaining becomes ineffective. The union's status is reduced to a mere strike committee.

Ways to improve Industrial Relation

Strong and Stable Union:

A strong and stable union in each industrial enterprise is essential for good industrial relations. The employers can easily ignore a weak union on the plea that it hardly represents the workers. The agreement with such a union will hardly be honored by a large section of workforce. Therefore, there must be strong and stable unions in every enterprise to represent the majority of workers and negotiate with the management about the terms and conditions of service.

Mutual Trust:

Both management and labor should help in the development of an atmosphere of mutual cooperation, confidence and respect. Management should adopt a progressive outlook and should recognize the rights of workers. Similarly, labor unions should persuade their members to work

for the common objectives of the organization. Both the management and the unions should have faith in collective bargaining and other peaceful methods of settling disputes.

Workers' Participation in Management:

The participation of workers in the management of the industrial unit should be encouraged by making effective use of works committees, joint consultation and other methods. This will improve communication between managers and workers, increase productivity and lead to greater effectiveness.

Mutual Accommodation

The employers must recognize the right of collective bargaining of the trade unions. In any organization, there must be a great emphasis on mutual accommodation rather than conflict or uncompromising attitude. One must clearly understand that conflicting attitude does not lead to amicable labor relations; it may foster union militancy as the union reacts by engaging in pressure tactics. The approach must be of mutual "give and take rather than "take or leave." The management should be willing to co-operate rather than blackmail the workers.

Sincere Implementation of Agreements

The management should sincerely implement the settlements reached with the trade unions. The agreements between the management and the unions should be enforced both in letter and spirit. If the agreements are not implemented then both the union and management stop trusting each other. An environment of uncertainty is created. To avoid this, efforts should be made at both ends to ensure the follow up of the agreements.

Sound Personnel Policies:

The following points should be noted regarding the personnel policies. The policies should be:

- Formulated in consultation with the workers and their representatives if they are to be implemented effectively.
- Clearly stated so that there is no confusion in the mind of anybody.
- Implementation of the policies should be uniform throughout the organization to ensure fair treatment to each worker.

Government's Role:

The Government should play an active role for promoting industrial peace. It should make law for the compulsory recognition of a representative union in each industrial unit. It should intervene to settle disputes if the management and the workers are unable to settle their disputes. This will restore industrial harmony.

Progressive Outlook:

There should be progressive outlook of the management of each industrial enterprise. It should be conscious of its obligations and responsibilities to the owners of the business, the employees, the consumers and the nation. The management must recognize the rights of workers to organize unions to protect their economic and social interests.

Industrial Dispute

According to Sec. 2 (k) of the Industrial Dispute Act, 1947, "Industrial dispute means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person"

Causes of Industrial Disputes:

- (i) Economic causes, and
- (ii) Non-economic causes.

Economic causes include:

- (i) Wages,
- (ii) Bonus,
- (iii) Dearness allowance,
- (iv) Conditions of work and employment,
- (v) Working hours,
- (vi) Leave and holidays with pay, and
- (vii) Unjust dismissals or retrenchments.

Non-economic causes include:

- (i) Recognition of trade unions,
- (ii) Victimization of workers,

- (iii) Ill-treatment by supervisory staff,
- (iv) Sympathetic strikes,
- (v) Political causes, etc.

Forms of Industrial Disputes

1. Strike:

Non acceptance of employees' demand leads them to stop the work and proceed on strike. Strike is the last and important weapon with the employee which is used when all hopes of fulfillment of their demand are shattered and there is no way left to them but to resort to strike. Strike is initiated and supported by the employee union. It is stopping of work by the employees or a group of employees undertaken to pressurize the management to accept their demands. It can continue for any number of days. It is a complete cessation of work by the employees. Strikes can be of following types.

(a) Economic Strike:

Economic strike is one which is undertaken by the members of the trade union for fulfillment of their economic demands such as rise in wages, bonus, and other facilities such as health, education, food at concessional rates etc. and other conditions of work

(b) General Strike:

General strike is one which is undertaken by all the employees belonging to all unions and in regions in the entire industry. General strike is resorted to by the employees for fulfillment of common demands. It can be an extension of sympathetic strike.

(c) Sympathetic Strike:

It is the strike undertaken by the members of one union to support the demands of striking employees of the other union. This is undertaken to express sympathy with the striking

employees and their demands. If this sympathy strike is extended further it can take the form of general strike. This is also known as token strike.

(d) Sit Down Strike:

It is the strike when employees stop working but do not leave the place of work. They sit at the place of work. This form of strike is also known as pen down or tools down strike. They do not interfere in the work but they themselves do not work at all.

(e) Go slow Strike:

The strike where employees do not stop work but do not work with enthusiasm. The speed of their work is very slow which results in low output. They are doing this in an organized way. This puts employers under pressure which is the object of strike.

2. Gherao:

Gherao means to surround. The members of the union surround the Chief executive and do not allow him to leave the place where he is surrounded or gheraoed. Usually this place is his office. They create a human chain around him restricting him to move. Gheraos are very common means of protest. Any group can do this any time if they are dissatisfied. It should take the violent turn.

3. Lock Out:

Lock out is resorted to by the employers to put pressure on their employees. Lock out is undertaken by the employers to force the employees to resume work on the terms and conditions of employers. Lock out is an extreme step taken by the employers to curb the militant activities of the unions. At times it becomes a trial of strength between the employers and employees.

4. Picketing:

Picketing is a method resorted to by the employees to attract attention of common men to the fact that there exists a dispute between the management and employees. Picketing is dissuading the

employees from reporting to work by some men at the gate of the place of work. Picketing is legal activity to exhibit protest. It is not violent activity.

5. Boycott:

The workers may boycott use of company's product. They may request the general public also to do so. This adversely affects the sale of company's product. To get rid of the ill effects it may think of accepting the demands of the employees.

All the forms of disputes strike, bandhs, lock out etc. adversely affect the industrial growth and enterprises have to suffer a lot. Employees and management should settle the disputes amicably without resorting to any of the above forms. As far as possible a care should be taken that the things should not so worsen that employees to proceed on strikes etc. Good industrial relations is the key to success and growth where both the parties gain, no one is to lose anything.

Methods of Settling Industrial Disputes

After Independence, Government of India passed the Industrial Disputes Act 1947, under which machinery for the prevention and settlement of disputes has been outlined. These provisions are as under:

(A) Machinery for Prevention of Industrial Disputes

Prevention is better than cure. The Government has incorporated in the Act for preventing the disputes. The main purpose of such measures is to prevent the disputes before they arise.

(B) Machinery for Settlement of Disputes

If the dispute could not be prevented on voluntary basis and do arise, the Industrial Disputes Act 1947 provides several provisions for settling the disputes, such provisions are

(1) Conciliation Officer

'The appointment of conciliation officer is made by the State Government for a particular region or industries in the state. The main duty of these officers is to bring the two parties together and help them resolve their differences. They can do everything to settle the dispute between the two parties amicably. He is bound to take decision within 14 days or such period as extended by the state Government from the date of registration of dispute. If the dispute is settled through his good offices and an agreement is reached, he should send a report to the government along with a memorandum of settlement' signed by the parties to the dispute. In case, the dispute is not settled he should inform the Government about his failure, steps taken and the reasons for not being successful.

(2) Conciliation Board

In case, the conciliation officer fails to resolve the dispute, the Government appoints a board of conciliation on ad hoc basis for a particular dispute consisting of a chairman and two to four persons representing the Employer and the employees to bring the parties to disputes to sit together and thrash out their differences as referred to by the Government. The board reports the Government about the success or failure to bring about a settlement within 2 months from the date of reference of the dispute.

(3) Court of Inquiry

Whenever an industrial dispute remains unresolved by the conciliation officer and the board of conciliation, the matter is referred to a court of inquiry. The court may consist of one or more independent persons. It will investigate the whole dispute and submit its report to the Government on the matters referred to it ordinarily within 6 months from the date of commencement of inquiry.

If settlement is not arrived at by the efforts of the above machinery, a three-tier machinery for compulsory adjudication is provided under the act. These are three types of semi-judicial bodies,

i.e., labour courts, industrial tribunals and National Tribunals.

(4) Labour Courts

Such courts have been set up by the state Governments to go into the disputed orders of the employers dismissal, discharge and suspensions of employees by the management, legality or otherwise of any order passed by an employer under the standing order, withdrawal of any concession or privilege, legality or otherwise of any strike or lockout etc. These courts will award decision and send report to the Government.

(5) Industrial Tribunals

The state Government has been empowered to appoint as many industrial tribunals as it thinks proper, for the adjudication of disputes selecting to wages, hours of work and rest, intervals, leave with pay, holidays, compensatory discipline, retrenchment, Closure of establishment etc. The tribunal will consist of a person of rank of a high court judge. The adjudication of these tribunals is binding on both the parties.

(6) National Tribunal

Such tribunals are set up by the Central Government for the adjudication of industrial disputes which involves questions of national importance or which affect industrial establishments situated in more than one state. It gives decisions on matters referred to it by the Central Government. If any matter is referred to the National Tribunal by the Central Government, the labour courts and industrial courts are barred from entertaining such disputes and if any such dispute is pending before labour courts or tribunals, shall be deemed to be quashed.

Labour Grievance

A **grievance** is a formal complaint that is raised by an employee towards an employer in the workplace. There are many reasons as to why a grievance can be raised, and also many ways to go about dealing with such a scenario. Reasons for filing a grievance in the workplace can be as a result of, but not limited to, a breach of the terms and conditions of an employment contract, raises and promotions, or lack thereof, as well as harassment and employment discrimination.

According to Sean C. Doyle, in his work titled, *The Grievance Procedure: The Heart of the Collective Agreement*, the grievance process takes on certain secondary roles in countries such as Canada, United States and the United Kingdom that can include, but are not limited to, "a mechanism for the extension of the relationship between the parties, a union tactic to pressure management for strategic purposes, a diagnostic device to uncover underlying problems in the workplace, a mechanism for individual employees or union officials to challenge management over a range of working conditions, or even a forum for the communication of information".

A grievance between an employee and employer can be dealt with either informally or formally, and sometimes both approaches are taken in search of a resolution. In the informal approach, an employee can informally bring forth a concern promptly to his or her employer. Here a discussion or similar between the two parties can result in a mutually agreed upon resolution. In the case that this step fails or is skipped altogether, a grievance can be raised formally, where formal meetings and options for appeals become available.

Workplaces that have trade union representation often file a grievance with an employer on behalf of an individual employees request. According to the Union of Northern Workers, "Grievances are filed by the union on behalf of its members. Most of the grievances filed by unions are filed on behalf of individual employees (individual grievances) or on behalf of a group of employees (group grievances). A third type of grievance is the policy grievance which deals with issues that affect all employees".

Features of Grievance:

1. A grievance refers to any form of discontent or dissatisfaction with any aspect of the organization.
2. The dissatisfaction must arise out of employment and not due to personal or family problems.
3. The discontent can arise out of real or imaginary reasons. When employees feel that injustice has been done to them, they have a grievance. The reason for such a feeling may be valid or invalid, legitimate or irrational, justifiable or ridiculous.

4. The discontent may be voiced or unvoiced, but it must find expression in some form. However, discontent per se is not a grievance. Initially, the employee may complain orally or in writing. If this is not looked into promptly, the employee feels a sense of lack of justice. Now, the discontent grows and takes the shape of a grievance.

5. Broadly speaking, thus, a grievance is traceable to be perceived as non-fulfillment of one's expectations from the organization.

Causes of Grievances:

Grievances may occur due to a number of reasons:

1. Economic:

Employees may demand for individual wage adjustments. They may feel that they are paid less when compared to others. For example, late bonus, payments, adjustments to overtime pay, perceived inequalities in treatment, claims for equal pay, and appeals against performance-related pay awards.

2. Work environment:

It may be undesirable or unsatisfactory conditions of work. For example, light, space, heat, or poor physical conditions of workplace, defective tools and equipment, poor quality of material, unfair rules, and lack of recognition.

3. Supervision:

It may be objections to the general methods of supervision related to the attitudes of the supervisor towards the employee such as perceived notions of bias, favoritism, nepotism, caste affiliations and regional feelings.

4. Organizational change:

Any change in the organizational policies can result in grievances. For example, the implementation of revised company policies or new working practices.

5. Employee relations:

Employees are unable to adjust with their colleagues, suffer from feelings of neglect and victimization and become an object of ridicule and humiliation, or other inter- employee disputes.

6. Miscellaneous:

These may be issues relating to certain violations in respect of promotions, safety methods, transfer, disciplinary rules, fines, granting leaves, medical facilities, etc.

Effects of Grievance:

Grievances, if not identified and redressed, may adversely affect workers, managers, and the organization.

The effects are the following:

1. On the production:

- a. Low quality of production
- b. Low productivity
- c. Increase in the wastage of material, spoilage/leakage of machinery
- d. Increase in the cost of production per unit

2. On the employees:

- a. Increase in the rate of absenteeism and turnover
- b. Reduction in the level of commitment, sincerity and punctuality
- c. Increase in the incidence of accidents

d. Reduction in the level of employee morale.

3. On the managers:

a. Strained superior-subordinate relations.

b. Increase in the degree of supervision and control.

c. Increase in indiscipline cases.

d. Increase in unrest and thereby machinery to maintain industrial peace.

Need for a Formal Procedure to Handle Grievances:

A grievance handling system serves as an outlet for employee frustrations, discontents, and gripes like a pressure release valve on a steam boiler. Employees do not have to keep their frustrations bottled up until eventually discontent causes explosion.

The existence of an effective grievance procedure reduces the need of arbitrary action by supervisors because supervisors know that the employees are able to protect such behavior and make protests to be heard by higher management. The very fact that employees have a right to be heard and are actually heard helps to improve morale. In view of all these, every organization should have a clear-cut procedure for grievance handling.

Grievance Handling Procedure

Step 1:

The employee, officer, and/or the Union representative shall present the grievance to the most immediate supervisor who has the authority to make adjustments in the matter within 14 days of the alleged grievance or knowledge thereof.

Step 2:

If a satisfactory settlement is not reached in Step 1 within three days following its completion, the employee, the Union and/or the Union representative may present the grievance to the department head. Upon the request of said department head, the grievance shall be in writing and shall state the grievant(s) names(s).

Step 3:

If a satisfactory settlement is not reached in Step 2 within five days of the date of submission of the written grievance to the Department Head, the employee, the Union Committee and/or the Union representative may present the grievance to the Director. The Director or his/her designee shall schedule a meeting to be held within fourteen days of the receipt of the grievance by the Director with the Union Committee and/or Union Representative for the purpose of attempting to resolve the grievance. The Director or his/her designee shall respond in writing within seven days of the date of the meeting. Time frames may be extended in writing by mutual agreement of the parties.

Step 4:

If the grievance is not resolved at Step 3 the Union may within 14 days after the Director's written response is due, serve written notice upon the employer that they desire to arbitrate the grievance and the Union may request the Federal Mediation and Conciliation Service to furnish a panel of five arbitrators. Within ten days of the receipt of the panel of arbitrators the parties shall select an arbitrator. The Union shall make the first and third strike and the employer the second and fourth strike of names. The remaining individual shall serve as arbitrator and hear the dispute. The decision of the arbitrator shall be final and binding upon the parties

Unit III

Collective Bargaining

Introduction

Collective bargaining is a process of negotiation between employers and a group of employees aimed at agreements to regulate working salaries, working conditions, benefits, and other aspects of workers' compensation and rights. The interests of the employees are commonly presented by representatives of a trade union to which the employees belong. The collective agreements reached by these negotiations usually set out wage scales, working hours, training, health and safety, overtime, grievance mechanisms, and rights to participate in workplace or company affairs.

The union may negotiate with a single employer (who is typically representing a company's shareholders) or may negotiate with a group of businesses, depending on the country, to reach an industry-wide agreement. A collective agreement functions as a labour contract between an employer and one or more unions. Collective bargaining consists of the process of negotiation between representatives of a union and employers (generally represented by management, or, in some countries such as Austria, Sweden and the Netherlands, by an employers' organization) in respect of the terms and conditions of employment of employees, such as wages, hours of work, working conditions, grievance procedures, and about the rights and responsibilities of trade unions. The parties often refer to the result of the negotiation as a collective bargaining agreement (CBA) or as a collective employment agreement (CEA)

Definition

Beatrice Webb, a famous socialist writer and speaker, is credited with the coinage of the term “Collective Bargaining”. Accordingly, collective bargaining takes place when a number of work-people enter into negotiation as bargaining unit with an employer or groups of employers with the object of reaching agreement on conciliations of employment for the work- people concerned.

Collective bargaining has been defined in the **Encyclopedia of social Sciences** as “a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert. The resulting bargaining is an understanding as to the terms or conditions under which a continuing service is to be performed. More specially, collective bargaining is the procedure by which an employer or employers and a group of employees agree upon the conditions of work”.

Collective bargaining has also been defined as the process of employer-union negotiation for the purpose of reaching agreement as to the terms and conditions of employment for a specified period.

The National Association of Manufactures has stated that in its simplest definition. Accordingly, the process of collective bargaining is a method by which management and labour may explore each other’s problems and view points, and develop a frame work of employment relations within which both may carry on their mutual benefit.

In a workers education manual issued by **the International Labour Office**, collective bargaining is defined as “negotiations about working conditions and terms of employment between employer, a group of employers or one or more employers’ organizations, on one hand, and one or more representative workers’ organizations on the other, with a view to reaching agreement”. Furthermore, it is stated to be “the terms of an agreement that serves as a code, defining the rights and obligations of each party in their employment relations with one another; it fixes a large number of detailed conditions of employment ; and during its validity none of the matters it deals with care in normal circumstances give grounds for a dispute, concerning on industrial worker”.

J.H.Richardson: Collective bargaining takes place when a number of work people enter into a negotiation as a bargaining unit with an employer or group of employers with the object of reaching an agreement on working conditions of the employees. Collective bargaining is a complex process. It involves psychology, politics and power.

Carrell and Heavrin: Collective bargaining is the continuous relationship between an employer and a designated labour organization representing a specific unit of employees for the purpose of negotiating written terms of employment.

According to **Tudwing Teller:** Collective bargaining is an agreement between a single employer and an association of employers on the one hand and a labour union on the other, which regulates the terms and conditions of employment.

Whatever definition may be accepted, the essence of collective bargaining, however, lies in the readiness of the parties to manifest the attitude of mutual acceptance. Collective bargaining deals with the emotions of people as well as with the logic of their interests.

When does collective bargaining occur?

Employees and employers engage in collective bargaining to negotiate new contracts and renegotiate existing contracts that have expired. In 2015 alone, an estimated five million men and women are engaged in the collective bargaining process. By one measure, more than 21,000 labor-management relationships engaged in collective bargaining during the 2014 fiscal year. Despite the amount of bargaining that occurs every year, only 7.4 percent of private sector employees and 39.2 percent of public sector employees are covered by a contract.

Who can collectively bargain?

The National Labor Relations Act (NLRA) grants most private sector employees the right to organize unions and collectively bargain. The Railway Labor Act (RLA) provides railway and airline employees the right to form unions and engage in collective bargaining. Between the NLRA and RLA, approximately 85 percent of all private sector employees hold collective bargaining rights. Some members of the private sector, including employees of very small businesses, agricultural workers, domestic workers, supervisors and independent contractors, do not have the right to engage in collective bargaining. Public sector collective bargaining rights are established by a patchwork of laws. Federal law offers many federal employees the right to engage in collective bargaining over a limited set of issues, and state laws govern the right of state and local government employees to engage in collective bargaining. As

of 2014, three states expressly prohibit collective bargaining for all public sector employees. The prohibition of bargaining is considered by Human Rights Watch to be in direct violation of international human rights law.

What topics can employees bargain over?

While the NLRA – the law that applies to most private sector employees – does not include a list of bargaining topics, the National Labor Relations Board (NLRB) and courts determine which subjects are covered by the NLRA. They divide bargaining subjects into three categories: mandatory, permissive, and illegal.

- Mandatory subjects, broadly speaking, relate to wages, hours, pensions, healthcare and working conditions. Employers cannot refuse to bargain over these subjects, and negotiations may continue to the point of mediation or strike.
- Permissive subjects are non-mandatory subjects of bargaining, meaning employers are not required to bargain over them. Use of union labels is an example of a permissive bargaining subject.
- Finally, illegal bargaining subjects are those that violate the NLRA, such as a closed-shop provision in a right to work state.

Characteristics of collective bargaining

1. Collective bargaining is a negotiation done by a group, initiated by the representatives of the group as opposed to individual action.
2. It is flexible and mobile and not fixed or static. It has fluidity and ample scope for compromise for a mutual give and take, before the final agreement is reached or the final settlement is arrived at.
3. It is a two party process. It is mutual give and take rather than take-it or leave-it method of arriving at the settlement of a dispute. Both parties are involved in it.

4. It is a continuous process which provides mechanism for continuing and organized relationship between management and trade union.
5. It is dynamic not static because it is a relatively new concept, and is growing, expanding and changing. In the past, it used to be emotional, turbulent and sentimental; but now, it is scientific, factual and systematic.
6. It is an industrial democracy at work; the government of labour with the consent of the governed the worker.
7. Negotiations form an important aspect of the process of collective bargaining i.e., there is considerable scope for discussion, compromise or mutual give and take in collective bargaining.
8. Collective bargaining is a process in the sense that it consists of a number of steps. It begins with the presentation of the charter of demands and ends with reaching an agreement, which would serve as the basic law governing labor management relations over a period of time in an enterprise.
9. Collective bargaining is a complementary process i.e. each party needs something that the other party has; labor can increase productivity and management can pay better for their efforts.
10. Collective bargaining tends to improve the relations between workers and the union on the one hand and the employer on the other.
11. Collective Bargaining enables industrial democracy to be effective. It uses cooperation and consensus for settling disputes rather than conflict and confrontation.
12. Collective bargaining takes into account day to day changes, policies, potentialities, capacities and interests. It is a political activity frequently undertaken by professional negotiators

Objectives:

The basic objective of collective bargaining is to arrive at an agreement between the management and the employees determining mutually beneficial terms and conditions of employment.

Collective bargaining has benefits not only for the present, but also for the future. The objectives of collective bargaining are:

1. To facilitate reaching a solution that is acceptable to all the parties involved.
2. To provide an opportunity to the workers, to voice their problems on issues related to employment.
3. To resolve all conflicts and disputes in a mutually agreeable manner.
4. To enhance the productivity of the organization by preventing strikes lock – out etc.
5. To develop a conducive atmosphere to foster good organizations relations.
6. To provide stable and peaceful organization (hospital) relations.
7. To prevent any conflict/disputes in the future through mutually signed contracts.

Classification of collective bargaining

According to Richard E. Walton and Robert B. Mckersie, a collective bargaining process generally consists of four types of activities

Distributive bargaining:

It involves haggling over the distribution of surplus. Under it, the economic issues like wages, salaries and bonus are discussed. In distributive bargaining, one party's gain is another party's loss. This is most commonly explained in terms of a pie. Disputants can work together to make the pie bigger, so there is enough for both of them to have as much as they want, or they can focus on cutting the pie up, trying to get as much as they can for themselves. In general, distributive bargaining tends to be more competitive.

Integrative bargaining:

This involves negotiation of an issue on which both the parties may gain, or at least neither party loses. For example, representatives of employer and employee sides may bargain over the better training programme or a better job evaluation method. Here, both the parties are trying to make

more of something. In general, it tends to be more cooperative than distributive bargaining. This type of bargaining is also known as cooperative bargaining.

Attitudinal structuring:

This involves shaping and reshaping some attitudes like trust or distrust, friendliness or hostility between workers and management. When there is a backlog of bitterness between both the parties, attitudinal restructuring is required to maintain smooth and harmonious industrial relations. It develops a bargaining environment and creates trust and cooperation among the parties.

Intra-organizational bargaining:

It generally aims at resolving internal conflicts. This is a type of maneuvering to achieve consensus with the workers and management. Even within the union, there may be differences between groups. For example, skilled workers may feel that they are neglected or women workers may feel that their interests are not looked after properly.

IMPORTANCE OF COLLECTIVE BARGAINING

Collective bargaining includes not only negotiations between the employers and unions but also includes the process of resolving labour-management conflicts. Thus, collective bargaining is, essentially, a recognized way of creating a system of industrial jurisprudence. It acts as a method of introducing civil rights in the industry, that is, the management should be conducted by rules rather than arbitrary decision making. It establishes rules which define and restrict the traditional authority exercised by the management.

Importance to employees

1. Collective bargaining develops a sense of self respect and responsibility among the employees.
2. It increases the strength of the workforce, thereby, increasing their bargaining capacity as a group.
3. Collective bargaining increases the morale and productivity of employees.

4. It restricts management's freedom for arbitrary action against the employees. Moreover, unilateral actions by the employer are also discouraged.
5. Effective collective bargaining machinery strengthens the trade unions movement.
6. The workers feel motivated as they can approach the management on various matters and bargain for higher benefits.
7. It helps in securing a prompt and fair settlement of grievances. It provides a flexible means for the adjustment of wages and employment conditions to economic and technological changes in the industry, as a result of which the chances for conflicts are reduced.

Importance to employers

1. It becomes easier for the management to resolve issues at the bargaining level rather than taking up complaints of individual workers.
2. Collective bargaining tends to promote a sense of job security among employees and thereby tends to reduce the cost of labour turnover to management.
3. Collective bargaining opens up the channel of communication between the workers and the management and increases worker participation in decision making.
4. Collective bargaining plays a vital role in settling and preventing industrial disputes.

Importance to society

1. Collective bargaining leads to industrial peace in the country
2. It results in establishment of a harmonious industrial climate which supports and helps the pace of a nation's efforts towards economic and social development since the obstacles to such a development can be reduced considerably.
3. The discrimination and exploitation of workers is constantly being checked.

4. It provides a method or the regulation of the conditions of employment of those who are directly concerned about them.

Principles of Collective Bargaining

The success of collective bargaining is based on certain principles. These principles are to be followed by the employers and unions. **Prof. Arnold. F. Campo** has laid down certain principles for union and management, for management and for union.

For both union and management

1. Collective bargaining process should give due consideration to hear the problems on both sides. This will develop mutual understanding of a problem which is more important for arriving at the solutions.
2. Both the management and union should analyze the alternatives to arrive at the best solution.
3. There must be mutual respect on both the parties. The management should respect the unions and the unions should recognize the importance of management.
4. Both the union and management must have good faith and confidence in discussion and arriving at a solution.
5. Collective bargaining required effective leadership on both sides, on the union side and management side to moderate discussions and create confidence.
6. In collective bargaining both the union and management should observe the laws and regulations in practice in arriving at a solution.
7. In all negotiations, the labour should be given due consideration – in wage fixation, in working conditions, bonus etc.

For management

1. Management should think of realistic principles and policies for labour regulations.
2. The recognitions of a trade union to represent the problems is more essential. If there are more than one union, the management can recognize on which is having the support of majority of workers.

3. Management should follow a policy of goodwill, and cooperation in collective bargaining rather than an indifferent attitude towards the union.
4. Managements need not wait for trade union to represent their grievances for settlement. Management can voluntarily take measures to settle grievances.
5. Managements should give due consideration to social and economic conditions of workers in collective bargaining.

For unions

1. Unions should avoid undemocratic practices.
2. Unions have to recognize their duties to the management also before emphasizing their demands.
3. Unions have to consider the benefits to all workers rather than a section of workers.
4. Strike lock-outs should be resorted to, only as a last measure. As far as possible they have to be avoided by compromise and discussion.

Advantages and Disadvantages of Collective Bargaining

Advantages

1. Collective bargaining gives workers a larger voice.

When workers are individuals, then it can be difficult to negotiate with an employer. Many non-union workers are faced with a “take it or leave it” type of offer. If an employee doesn’t take it, then the employer will hire someone who does. Collective bargaining allows workers to band together into larger groups, create a louder voice that can help provide one another with a mutually beneficial outcome.

2. Collective bargaining can improve a worker’s quality of life.

Collective bargaining agreements will usually result in a higher level of pay for a worker. There may also be improvements in the quality and cost of worker benefits. If neither is improved, then there is still the potential to improve the safety and working conditions that are found in the

workplace. These can all contribute to workers with a valid CBA enjoying a higher overall quality of life.

3. Collective bargaining creates enforcement consistency.

Non-union workers are often hired in an “at-will” status. Unless there is an issue with discrimination, whistle blowing, or some other legally protected reason, a worker can be fired at the pleasure of the employer. This means there is no real job security in such an arrangement. Not only does collective bargaining provide this security, but it also puts everyone\ on a level playing field. Each worker and the employer is bound by the negotiated contract.

4. Collective bargaining encourages cooperation.

Many jurisdictions require that negotiations on both sides of the aisle be done in good faith. Both sides are compelled to negotiate with one another for the benefit of both. For employees, there is the need to earn a fair paycheck and benefits in an environment that is safe. For employers, there is a need to have consistent productivity and incoming revenues so the organization can remain in business. This need for balance is what encourages cooperation.

5. Collective bargaining creates a binding result.

Both parties are bound to a collective bargaining agreement. It is a legal standard that can be used as part of a legal defense. If one side or the other is not performing to the stipulations that have been set forth in the contract, then they can be held responsible to them by the injured party. This provides an extra level of security for employees and employers so they can defend their positions.

6. Collective bargaining creates relationships.

Many unions bring in members from all over their community to become part of the bargaining team. Employers will often do the same thing. This creates open lines of communication between all offices and parties involved, which can create beneficial community relationships over time. This, in turn, could be used to create political capital, perform philanthropic work, or benefit communities in a variety of other ways.

7. Collective bargaining must represent every member of the unit.

The process of collective bargaining is not exclusionary. Every member of the bargaining unit must be represented during the negotiation process. That means everyone has an opportunity to have their desires heard and represented during the contract creation process. Those ideas might be eventually rejected, but they will still be heard. In some jurisdictions, even non-union workers have the right to be represented by the collective bargaining process as the results can impact their employment as well.

8. Collective bargaining can be changed.

Maybe there was a bad deal that was struck. The good news is that the contract can be eventually changed. It is extremely rare for a CBA to not have an end date. This means a list of wanted changes can be developed over time and then negotiated into a new future contract. Sometimes there may even be a provision to change a CBA within its operational time if both parties agree to do so.

Disadvantages

1. Collective bargaining comes at a cost.

There are numerous costs that are often not considered when looking at the process of negotiating a contract. Workers may be involved with the union negotiations, but may be forced to take vacation time to do so. There is the cost of lost productivity as both parties sit down to hammer out a deal. Many CBAs are lengthy and require time to read, which further reduces worker availability. Employer representatives become less productive as well because they are part of this process.

2. Collective bargaining may require a dues payment.

Many unions fund their activities by soliciting dues from their members. Some unions have an annual flat fee for representation, while others may charge up to 2.5% (and sometimes more) of a worker's salary every paycheck to generate revenues. Changes to a collective bargaining agreement may change the structure of the dues payment. Some workers may be exempt from

this payment and still receive representation, but that tends to be an exception more than a standard.

3. Collective bargaining requires governance duties.

Workers who are involved with the negotiating process have governance duties that are performed outside of the regular work duties. This means parents are asked to take time away from their children, spouses and partners spend more time away from one another, and sometimes these duties are unpaid positions. This can cause some people to add speed to the negotiation process, which can result in a poor contract being struck.

4. Collective bargaining may require everyone to be bound by the contract.

Even if you are a non-union worker, you might be bound by the stipulations that are in a contract. Managers and administrators can also be bound by these contracts, even if they are not personally benefitting from their terms and conditions. This can make it difficult for some employees to get their work done. It can also mean that some non-union workers might find their employment in jeopardy at the cost of unionized workers under some contracts, depending on local laws and regulations.

5. Collective bargaining is not always a process of fair representation.

A growing trend in the United States is to force unions to represent non-union and unionized workers equally. This means a union worker must pay dues to receive representation, but a non-union worker receives the same benefits without paying any dues. They can even benefit from the deals that are struck between a union and their employee without be represented at the table. It presents a situation where a minority can consume a majority of the available resources, which creates the possibility of the union eventually imploding.

6. Collective bargaining highlights personal differences.

Unions operate from a group perspective, so it is quite easy for an individual perspective to get lost in the shuffle. Individuals, however, are responsible for the negotiation process that occurs when a collective bargaining deal is being struck. Because there is a shift from group thinking to individualistic representation during this process, there can be differences or even divisions that

come up at the table which have never been discussed before. This can lead to feelings of betrayal for those that are present or targeted by those differences or divisions.

7. Collective bargaining can change the workplace environment.

Unionization is a politically-charged topic for many people and has been for some time. Many employers will actively discourage employees from taking steps to unionize. Union members may actively encourage workers to take the steps necessary to join the union. This creates an environment that is more than just uncomfortable. It means that the workplace might be more focused on who is or isn't a union member than being productive for the employer.

8. Collective bargaining doesn't guarantee a good deal for either party.

There are plenty of stories about unionized workplaces that highlight poor employee conduct and an employer's inability to remove problematic workers. There are also stories where a poor CBA from the union side limited worker abilities to fight for better wages or benefits. Without a quality negotiator and an observant supportive backing group, it is possible for one group to create a one-sided agreement that does not balance the needs of all.

The advantages and disadvantages of collective bargaining show that it can be a beneficial practice, but it must be one that all sides are ready to take on. If this process isn't taken seriously, someone can end up with a very bad deal and that won't help anyone over a long-term period of time.

The collective bargaining process comprises of five core steps:

1. Prepare:

This phase involves composition of a negotiation team. The negotiation team should consist of representatives of both the parties with adequate knowledge and skills for negotiation. In this phase both the employer's representatives and the union examine their own situation in order to develop the issues that they believe will be most important. The first thing to be done is to determine whether there is actually any reason to negotiate at all. A correct understanding of the

main issues to be covered and intimate knowledge of operations, working conditions, production norms and other relevant conditions is required.

2. Discuss:

Here, the parties decide the ground rules that will guide the negotiations. A process well begun is half done and this is no less true in case of collective bargaining. An environment of mutual trust and understanding is also created so that the collective bargaining agreement would be reached.

3. Propose:

This phase involves the initial opening statements and the possible options that exist to resolve them. In a word, this phase could be described as 'brainstorming'. The exchange of messages takes place and opinion of both the parties is sought.

4. Bargain:

Negotiations are easy if a problem solving attitude is adopted. This stage comprises the time when 'what ifs' and 'supposals' are set forth and the drafting of agreements take place.

5. Settlement:

Once the parties are through with the bargaining process, a consensual agreement is reached upon wherein both the parties agree to a common decision regarding the problem or the issue. This stage is described as consisting of effective joint implementation of the agreement through shared visions, strategic planning and negotiated change.

Functions of collective Bargaining

Prof. Butler has viewed the functions as:

1. a process of social change
2. a peace treaty between two parties
3. a system of industrial jurisprudence

1. Collective bargaining as a process of social change

Collective bargaining enhances the status of the working class in the society. Wage earners have enhanced their social and economic position in relation to other groups. Employers have also retained high power and dignity through collective bargaining.

2. Collective bargaining as a peace treaty

Collective bargaining serves as a peace treaty between the employers and employees. However the settlement between the two parties is a compromise.

3. Collective bargaining as an industrial jurisprudence

Collective bargaining creates a system of “Industrial Jurisprudence”. It is a method of introducing civil rights into industry. It establishes rules which define and restrict the traditional authority exercised by employers over their employees placing part of the authority under joint control of union and management.

In addition to the above, its functions include:

- Increasing the economic strength to employers and employees.
- Improving working conditions and fair wages.
- Maintaining peace in industry
- Prompt and fair redressal of grievances.

Necessary Conditions for Effective Collective Bargaining

1. Favorable Political and Social Climate:

That existence of a favorable political and social climate is a necessary condition for effective collective bargaining, is well confirmed by the history of collective bargaining worldwide. Collective bargaining has made headways in settling industrial disputes in the countries where it has been duly supported by the government and favored by the public. From this point of view, the political climate has not been much favorable for collective bargaining in India.

The reason is not far to seek. There has been a multiplicity of trade unions in the country sponsored by different political parties. These trade unions favour employees not based on the merit of issues involved in disputes but based on their differing political considerations. Added to these is a plethora of legal laws also creating unfavorable climate for collective bargaining in the country.

2. Trade Unions:

Like in a democratic country like ours, employees should have fundamental rights to form trade unions for protecting their interests. More the stronger the trade union f lie effective collective bargaining and vice versa. The employer should also recognize a trade union and its representatives.

3. Problem Solving Attitude:

Both the parties while negotiating should adopt a problem solving, or say compromising attitude to reach an agreement. Neither party should adopt an adamant or fighting aide. The negotiating teams should follow give and take approach. It means that one party may win concessions over the other depending upon their relative strengths.

4. Availability of Data:

Data and information serve as inputs for decision-making. Hence, the availability of required data serves as a pre-requisite tor successful collective bargaining. While the employer Ike available data required for collective discussion, their union representatives also must accept and trust on data supplied by the employer.

5. Continuous Dialogue:

Collective bargaining sometimes may not reach to an agreement. In- stead, there may be deadlock, or say bargaining impasse. In such case, dialogue must not end but continue with problem solving approach. Keeping the controversial issues aside for the time being may help narrow down disagreement and continue the dialogue. Possibility for agreement may increase with continuation of dialogue.

Workers Participation in Management

According to Keith Davis, “Workers’ participation refers to the mental and emotional involvement of a person in a group situation which encourages him to contribute to group goals and share in responsibility of achieving them”.

In the words of Mehtras “Applied to industry, the concept of participation means sharing the decision-making power by the rank and file of an industrial organisation through their representatives, at all the appropriate levels of management in the entire range of managerial action”.

Characteristics:

The following are the main characteristics of WPM:

1. Participation implies practices which increase the scope for employees’ share of influence in decision-making process with the assumption of responsibility.
2. Participation presupposes willing acceptance of responsibility by workers.
3. Workers participate in management not as individuals but as a group through their representatives.
4. Worker’s participation in management differs from collective bargaining in the sense that while the former is based on mutual trust, information sharing and mutual problem solving; the latter is essentially based on power play, pressure tactics, and negotiations.
5. The basic rationale for worker’s participation in management is that workers invest their labour and their fates to their place of work. Thus, they contribute to the outcomes of organization. Hence, they have a legitimate right to share in decision-making activities of organisation.

Aims and Objects of Workers’ Participation:

Workers’ participation is aimed at the following objectives:

1. Economic:

Workers' participation in industry improves relationship between workers and management and establishes better human relations. This leads to increased workers' efficiency thereby increasing productivity and output of the manufacturing unit. Workers' participation in management enthuse high morale which can be utilized for increasing production. High industrial productivity helps in attaining the economic objectives of the country.

2. Social:

Workers' participation in management increases the worker's status in society. He is considered as a respectable member of the society. He is the co-partner in the gains from production. It is reflected through industrial harmony and peace reducing industrial disputes.

3. Psychological:

Workers' participation in management has a positive impact on the behaviour of the workers. It instills sense of belonging to the organisation in the minds of the workers. It gives them self respect. They feel dignified and they behave in a responsible manner because they are the partners in decision making process. There are all psychological objectives to be attained by the organisation. The positive behaviour such as high morale, self motivation, increased efficiency is all exploited in increasing the productivity of the organisations.

5 levels of Management Participation or WPM:

Information participation:

It ensures that employees are able to receive information and express their views pertaining to the matter of general economic importance.

Consultative importance:

Here workers are consulted on the matters of employee welfare such as work, safety and health. However, final decision always rests with the top-level management, as employees' views are only advisory in nature.

Associative participation:

It is an extension of consultative participation as management here is under the moral obligation to accept and implement the unanimous decisions of the employees. Under this method the managers and workers jointly take decisions.

Administrative participation:

It ensures greater share of workers' participation in discharge of managerial functions. Here, decisions already taken by the management come to employees, preferably with alternatives for administration and employees have to select the best from those for implementation.

Decisive participation:

Highest level of participation where decisions are jointly taken on the matters relating to production, welfare etc.

Benefits of Workers' Participation in Management

1. Gives identity to an employee
2. Motivates employee
3. Self-esteem, job satisfaction and cooperation improves
4. Reduced conflicts and stress
5. More commitment to goals
6. Less resistance to change
7. Less labor problems
8. Better quality suggestions expected

Reasons for failure of Workers participation Movement in India:

1. Employers resist the participation of workers in decision-making. This is because they feel that workers are not competent enough to take decisions.

2. Workers' representatives who participate in management have to perform the dual roles of workers' spokesman and a co-manager. Very few representatives are competent enough to assume the two incompatible roles.
3. Generally Trade Unions' leaders who represent workers are also active members of various political parties. While participating in management they tend to give priority to political interests rather than the workers' cause.
4. Schemes of workers' participation have been initiated and sponsored by the Government. However, there has been a lack of interest and initiative on the part of both the trade unions and employers.
5. In India, labour laws regulate virtually all terms and conditions of employment at the workplace. Workers do not feel the urge to participate in management, having an innate feeling that they are born to serve and not to rule.
6. The focus has always been on participation at the higher levels, lower levels have never been allowed to participate much in the decision-making in the organizations.
7. The unwillingness of the employer to share powers with the workers' representatives, the disinterest of the workers and the perfunctory attitude of the government towards participation in management act as stumbling blocks in the way of promotion of participative management.

Measures for making Participation effective:

1. Employer should adopt a progressive outlook. They should consider the industry as a joint endeavor in which workers have an equal say. Workers should be provided and enlightened about the benefits of their participation in the management.
2. Employers and workers should agree on the objectives of the industry. They should recognize and respect the rights of each other.
3. Workers and their representatives should be provided education and training in the philosophy and process of participative management. Workers should be made aware of the benefits of participative management.

4. There should be effective communication between workers and management and effective consultation of workers by the management in decisions that have an impact on them.
5. Participation should be a continuous process. To begin with, participation should start at the operating level of management.
6. A mutual co-operation and commitment to participation must be developed by both management and labour.

Unit IV

The Factories Act 1948

Introduction

In India there are millions of industrial workers engaged in work in industrial units of various sizes and trades. These workers are exposed to various kinds of risks and health hazards in their work places. Even though there are stringent measures to enforce safety, a large number of industrial accidents occur every year resulting in loss of life or disablement of the workmen. Any loss of life or disablement has an adverse effect on the earnings of the workmen and their dependents. The Factories Act, 1948 was, therefore, enacted and came into force with the objective to provide adequate compensation to the affected persons. The Act extends to the whole of India and persons employed in factories, mines, plantation, and construction, mechanically propelled vehicles and in some hazardous occupations are covered under the provisions of the Act. It is an Act to consolidate and amend the law regulating labour in factories. Factories Act, 1948 has been enacted to consolidate and amend the law regulating the workers working in the factories. It extends to whole of India and applies to every factory wherein 20 or more workers are ordinary employed. Since the aim and object of the Act is to safeguard the interest of workers and protect them from exploitation, the Act prescribes certain standards with regard to safety, welfare and working hours of workers, apart from other provisions.

Objectives

The objectives of the Factories Act, 1948 are as follows:

- a) It protects the interest of the workmen.
- b) It ensures better working condition in the workplace.
- c) It prevents the employers from taking undue advantages on workmen because of their weaker bargaining power.
- d) It regulates the conditions of employment of young persons and women.
- e) It provides for safe and healthy working condition inside the factories.
- f) It requires the employer to take certain minimum steps for the welfare of the workers.

g) It ensures uniformity in the number of working hours and leave with wages.

Scope

The Act extends to whole of India including Jammu and Kashmir and covers all manufacturing processes and establishments falling within this definition of ‘factory’ as defined under Section 2(m) of the Act.

IMPORTANT DEFINITIONS

Adult

“Adult” means a person who has completed his eighteenth year of age. [Section 2(a)]

Adolescent

“Adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year. [Section 2(b)]

Calendar Year

“Calendar Year” means the period of twelve months beginning with the first day of January in any year. [Section 2(bb)]

Child

“Child” means a person who has not completed his fifteenth year of age. [Section 2(c)]

Competent Person

“Competent Person” in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to

(i) The qualifications and experience of the person and facilities available at his disposal; or

(ii) The qualifications and experience of the persons employed in such institution and facilities available therein.

With regard to the conduct of such tests, examinations and inspections and more than one person or institution can be recognised as a competent person in relation to a factory. [Section 2(ca)]

Hazardous Process

“Hazardous Process” means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution of the general environment;

Provided that the State Government may, by notification in the Official Gazette amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule. [Section 2(cb)]

Young Person

“Young Person” means a person who is either a child or an adolescent. [Section 2(d)]

Day

“Day” means under Section 2(e), a period of twenty-four hours beginning at mid-night. [Section 2(e)]

Week“Week” means a period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories. [Section 2(f)]

Power

“Power” means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. [Section 2(g)]

Prime Mover

“Prime” Mover means any engine, motor or other appliance which generates or otherwise provides power. [Section 2(h)]

Transmission Machinery

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

Machinery

The term includes prime-movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied. [Section 2(j)]

Factory

“Factory” includes any premises including the precincts thereof

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

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

But does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union or a railway running shed, or a hotel, restaurant or eating place. [Section 2(m)]

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

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

(i) Essential elements of a factory:

(1) There must be a premises.

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

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

The following are not covered by the definition of factory:

(i) Railway running sheds, (ii) mines, (iii) mobile units of armed forces, (iv) hotels, eating places or restaurants.

(ii) Meaning of words “premises and precincts”

The word “premises” is a generic term meaning open land or land with building or building alone. The term ‘precincts’ is usually understood as a space enclosed by walls. Expression ‘premises’ including precincts does not necessarily mean that the premises must always have precincts. It merely shows that there may be some premises with precincts and some premises

without precincts. The word 'including is not a term' restricting the meaning of the word 'premises', but is a term which enlarges its scope.

(iii) Manufacturing process is being carried on or ordinarily so carried on

The word ordinarily came up for interpretation in the case of Employers Association of Northern India v. Secretary for Labour U.P. Govt. The question was whether a sugar factory ceases to be a factory when no manufacturing process is carried on during the off-season. It was observed that the word 'ordinarily' used in the definition of factory cannot be interpreted in the sense in which it is used in common parlance. It must be interpreted with reference to the intention and purposes of the Act. Therefore, seasonal factories or factories carrying on intermittent manufacturing process, do not cease to be factories within the meaning of the Act.

(iv) Ten or twenty workers

The third essential content of 'factory' is that ten or more workers are employed in the premises using power and twenty or more workers are employed in the premises not using power. Where seven workers were employed in a premises where the process of converting paddy into rice by mechanical power was carried on and in the same premises, three persons were temporarily employed for repairs of part of the machinery which had gone out of order but the manufacturing was going on, it was held that since three temporary persons were workers, consequently there were ten workers working in the 'premises' and the premises is a factory (AIR 1959, AII. 794).

According to explanation to Section 2(m), all the workers in different relays in a day shall be taken into account while computing the number of workers.

Bombay High Court held that the fact that manufacturing activity is carried on in one part of the premises and the rest of the work is carried on in the other part of the premises cannot take the case out of the definition of the word 'factory' which says that manufacturing process can be carried on in any part. The cutting of the woods or converting the wood into planks is essentially a part of the manufacturing activity (*Bharati Udyog v. Regional Director ESI Corpn.*, 1982 Lab. I.C. 1644).

A workshop of Polytechnic Institution registered under the Factories Act imparting technical education and having power generating machines, was carrying on a trade in a systematic and organised manner Held, it will come under the definition of factory as defined under Section 2(m) read with Section 2(k) (1981 Lab. I.C. NOC 117).

Manufacturing Process

It means any process for

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water or sewage or any other substance; or
- (iii) generating, transforming, transmitting power; or
- (iv) composing types for printing, printing by letter-press, lithography, photogravure or other similar process, or book-binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage. [Section 2(k)]

Worker

“Worker” means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the Union. [Section 2(1)]

Occupier

Section 2(n) of the Act defines the term “occupier” as a person who has ultimate control over the affairs of the factory:

Provided that

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors, shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under (a) Sections 6, 7, 7A, 7B, 11 or 12; (b) Section 17 in so far as it relates to the providing the maintenance of sufficient and suitable lighting in or around the dock; (c) Sections 18, 19, 42, 46, 47 or 49 in relation to the workers employed on such repair or maintenance;

(2) The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be occupier for the purposes of any matter provided for by or under Sections 13, 14, 16 or 17 (save as otherwise provided in this proviso) or Chapter IV (except Section 27) or Sections 43, 44, or 45, Chapter VI, VII, VIII or IX or Sections 108, 109 or 110, in relation to (a) the workers employed directly by him, or by or through any agency, and (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

Therefore an employee of company or factory cannot be occupier. Proviso (ii) to Section 2(n) does not travel beyond scope of main provision and is not violative of Article 14 of Constitution of India. Proviso (ii) is not *ultra vires* main provisions of Section 2(n). No conflict exists between main provisions of Section 2(n) and proviso (ii).

Further, proviso (ii) to Section 2(n) read with Section 92, does not offend Article 21. Under Section 2(n)(iii), for the purpose of deciding who is an occupier of the factory, the test to be applied is who has ultimate control over its affairs in a government company, in fact the ultimate control lies with government though the company is separate legal entity by having right to manage its affairs. Persons appointed by central government to manage its affairs of factories (of government companies) were therefore deemed to be appointed as occupiers under the Act (*IOC v. CIF, LLJ II SC 1998 604*).

Exemption of occupier or manager from liability in certain cases

Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with an offence punishable under the Act to bring into the Court any other person whom he charges actual offender and also proves to the satisfaction of the Court that:

- (a) he has used due diligence to enforce the execution of this Act; and
- (b) that the offence in question was committed without his knowledge, consent or connivance, by the said other person.

The other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory. In such a case occupier or manager of the factory is discharged from liability.

The Section is an exception to principles of strict liability, but benefit of this would be available only when the requirements of this section are fully complied with and the court is fully satisfied about the proof of facts contemplated in (a) and (b) above.

The State Governments assume the main responsibility for administration of the Act and its various provisions by utilising the powers vested in them. Section 3 empowers the State Government to make rules for references to time of day where Indian Standard Time, being 5-1/2 hours ahead of Greenwich Mean-Time is not ordinarily observed. These rules may specify the area, define the local mean time ordinarily observed therein, and permit such time to be observed in all or any of the factories situated in the area.

The State Government assumes power under Section 4 of the Act to declare different departments to be separate factories or two or more factories to be single factory for the purposes of this Act. This power will be utilised by the State Government either on its own or on an application made to it by the occupier. But no order could be made on its own motion unless occupier is heard in this regard.

In case of public emergency, Section 5 further empowers the State Government to exempt by notification any factory or class or description of factories from all or any of the provisions of this Act except Section 67 for such period and subject to such conditions as it may think fit, however no such notification shall be made exceeding a period of three months at a time. Explanation to Section 5 defines public emergency as a situation whereby the security of India or of any part of the territory thereof is threatened whether by war or external aggression or internal disturbance.

The State Governments carry out the administration of the Act through:

- (i) Inspecting Staff
- (ii) Certifying Surgeons
- (iii) Welfare Officers
- (iv) Safety Officers.

(i) The Inspecting Staff

Appointment: Section 8 empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who possess prescribed qualifications.

Section 8(2) empowers the State Government to appoint any person to be a Chief Inspector. To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit [Section 8(2A)].

Every District Magistrate shall be an Inspector for his district. The State Government may appoint certain public officers, to be the Additional Inspectors for certain areas assigned to them [Section 8(5)].

The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the *Official Gazette*.

When in any area, there are more inspectors than one, the State Government may by notification in the *Official Gazette*, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

Inspector appointed under the Act is an Inspector for all purposes of this Act. Assignment of local area to an inspector is within the discretion of the State Government.

A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the court can legally take cognizance of an offence. Even assignment of areas under Section 8(6) does not militate in any way against the view that the Chief Inspector can file a complaint enabling the court to take cognizance. The Additional, Joint or Deputy Chief Inspectors or any other officer so appointed shall in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

Powers of Inspectors

Section 9 describes the powers of the Inspectors subject to any rules made in this behalf for the purpose of the Act. An Inspector may exercise any of the following powers within the local limits for which he is appointed:

1. He can enter any place which is used or which, he has reasons to believe, is used as a factory.
2. He can make examination of the premises, plant, machinery, article or substance. Inquire into any accident or dangerous occurrence whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry.
3. Require the production of any prescribed register or any other document relating to the factory. Seize, or take copies of any register, record of other document or any portion thereof.
4. Take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination.
5. In case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is in the circumstances necessary, for carrying out the purposes of this Act) and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination.

Production of documents

The Factories Act requires the maintenance of certain registers and records. Inspectors have been empowered to ask for the production of any such documents maintained under law, and the non-compliance of this has been made an offence.

(ii) Certifying Surgeons

Section 10 provides for the appointment of the Certifying Surgeons by the State Government for the purpose of this Act to perform such duties as given below within such local limits or for such factory or class or description of factories as may be assigned to Certifying Surgeon:

- (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories.

(iii) Welfare Officer

Section 49 of the Act imposes statutory obligation upon the occupier of the factory of the appointment of Welfare Officer/s wherein 500 or more workers are ordinarily employed. Duties, qualifications and conditions of service may be prescribed by the State Government.

(iv) Safety Officer

Section 40-B empowers the State Government for directing a occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein. The duties, qualifications and working conditions may be prescribed by the State Government.

Section 6 empowers the State Government to make rules with regard to licensing and registration of factories under the Act on following matters:

- (i) Submission of plans of any class or description of factories to the Chief Inspector or the State Government;

- (ii) Obtaining previous permission of the State Government or the Chief Inspector, for the site on which factory is to be situated and for construction or extension of any factory or class or description of factories. However, replacement or addition of any plant or machinery within prescribed limits, shall not amount to extension of the factory, if it does not reduce the minimum safe working space or adversely affect the environmental conditions which is injurious to health;
- (iii) considering applications for permission for the submission of plans and specifications;
- (iv) nature of plans and specifications and the authority certifying them;
- (v) registration and licensing of factories;
- (vi) fees payable for registration and licensing and for the renewal of licences;
- (vii) licence not to be granted or renewed unless notice specified under Section 7 has been given.

Automatic approval

If an application is made for the approval of site for construction or extension of the factory and required plans and specifications have been submitted by registered post to the State Government or the Chief Inspector and if no reply is received within three months from the date on which it is sent the application stands automatically approved [Section 6(2)]. Where the rules require the licensing authority to issue a licence on satisfaction of all legal requirements/record reasons for refusal. Licence could not be refused only on a direction from Government (*S. Kunju v. Kerala*, (1985) 2 LLJ 106).

Appeal against refusal to grant permission

If the State Government or Chief Inspector do not grant permission to the site, construction or extension of a factory, or to the registration and licensing of a factory, the applicant may within 30 days of the date of such refusal appeal to:

- the Central Government against the order of the State Government;
- the State Government against the order of any other authority.

NOTICE BY OCCUPIER

Section 7 imposes an obligation on the occupier of a factory to send a written notice, containing prescribed particulars, to the Chief Inspector at least 15 days before an occupier begins to occupy or use a premises as a factory and at least 30 days before the date of resumption of work in case of seasonal factories, i.e. factories working for less than 180 days in a year.

Contents of notice

A notice must contain following particulars:

- (1) The name and situation of the factory.
- (2) The name and address of the occupier.
- (3) The name and address of the owner of the premises or building (including the precincts, etc., thereof referred to in Section 93).
- (4) The address at which communication relating to the factory should be sent.
- (5) The nature of manufacturing process to be carried on in the factory during next 12 months.
- (6) The total rated horse power installed or to be installed in the factory which shall not include the rated horse power of any separate standby plant.
- (7) The name of the Manager of the factory for the purpose of this Act.
- (8) the number of workers likely to be employed in the factory.
- (9) Such other particulars as may be prescribed.

Notice where new manager is appointed

Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof, within seven days from the date on which such person takes over charge.

When there is no manager – occupier deemed as manager

During a period for which no person has been designated as Manager of a factory or during which the person designated does not manage the factory any person found acting as manager, will be the manager for the purposes of the Act. Where no such person is found the occupier should be deemed to be the manager of the factory.

GENERAL DUTIES OF THE OCCUPIER

Section 7A is inserted by the Factories (Amendment) Act, 1987, as under:

- (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
- (2) Without prejudice to the generality of the provisions of Sub-section (1) the matters to which such duty extends shall include:
 - (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
 - (b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
 - (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
 - (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

I. Rules relating to health of workers

Section 11 to 20 of the Act deal with the rules relating to health of workers. These rules are intended to ensure good working conditions in the factory. This Act requires the employer to provide the following facilities in every factory.

1) Cleanliness

Section 11 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance. The Act has laid down following provisions in the respect-

1. All the accumulated dust on floors, stair cases and passages in the factory shall be removed daily by sweeping or by any other effective method. Suitable arrangements should also be made for the disposal of such dust.
2. Once in every week, the floor should be thoroughly cleaned by washing with disinfectant or by some other effective method.
3. Effective method of drainage shall be made and maintained for removing water, to the extent possible, which may collect on the floor due to some manufacturing process.
4. To ensure that interior walls and roofs, etc. are kept clean, it is laid down that:
 - a) White wash or colour wash should be carried at least once in every period of 14 months;
 - b) Where surface has been painted or varnished, repaint or re varnish should be carried out once in every five years, if washable then once in every period of six months;

If the state government finds that a particular factory cannot comply with the above requirements due to its nature of manufacturing process, it may exempt the factory from the compliance of these provisions and suggest some alternative method for keeping the factory clean.

2) Disposal of waste and effluents

Every occupier of a factory shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal. Such arrangements should be in accordance with the rules, if any, laid down by the state government. If the state government has not laid down any rules in this respect, arrangements made by the occupier should be approved by the prescribed authority if required by the state government.

3) Ventilation and temperature

Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining adequate ventilation by the circulation of fresh air; and such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to their health. The state government has been empowered to lay down the standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof.

It is further provided that the walls and roofs shall be of such material and so designed that the temperature shall not be exceeded but kept as low as practicable.

The chief inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature specifying the measures which in his opinion should be adopted.

4) Dust and fume

There are certain manufacturing processes like chemical, textile or jute etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process. Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms. Wherever necessary, on exhaust appliances should be fitted as far as possible, to the point of origin of dust, fumes or other impurities. Such point shall also be enclosed so far as possible.

5) Artificial humidification

Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc. higher degree of humidity is required for carrying out the manufacturing process.

For this purpose, humidity of the air is artificially increased. This increase or decrease in humidity adversely affects the health of workers. Section 15(2) lays down that water used for artificial humidification should be either purified before use or obtained from a public supply or other drinking water.

6) Overcrowding

Overcrowding in the work-room not only affect the workers in their efficient discharge of duties but their health also. Section 16 has been provided with a view to prohibit the overcrowding in the work rooms to the extent it is injurious to the health of the workers.

Apart from this general prohibition a minimum of working space for each worker as 14.2 cubic meters of space per worker in every workroom to be provided.

7) Lighting

Every factory must provide and maintain sufficient and suitable lighting, natural, artificial or both in the work places or passing places of the factory. All the glazed windows and sky light" should be kept clean on both sides. Effective provisions should be made for the prevention of glare from sources of light or by reflection from a smooth or polished surface.

The State Government is empowered to lay down standard of sufficient and suitable lighting for factories for factories or for any manufacturing process.

8) Drinking Water

Every factory should make effective arrangements for sufficient supply of drinking water for all workers in the factory free from impurities water should be supplied at suitable points for the convenient of all workers. In case where more than 250 workers are ordinarily employed, effective arrangement should be made for cooling drinking water during hot weather.

9) Latrines and urinals

Every factory shall make suitable arrangement for the provisions of latrines and urinals for the workers in the prescribed standard. These should be conveniently situated and accessible to all workers during working hours; Separate arrangement shall b made for male and female workers; All latrines and urinals shall be kept in a clean and a sanitary conditions at all The floors, walls, sanitary pan, etc., or latrines and urinals shall be washed and cleaned with suitable detergents and/or disinfectants, at least once in every seven days.

10) Spittoons

Every factory should have sufficient number of spittoons situated at convenient places. These should be maintained in clean and hygienic conditions. The state Government is empowered to make rules regarding the type and number of spittoons, their location and standard of cleanliness.

II. Rules relating to the safety of workers

Section 21 to 40 of this Act provides a number of provisions to secure a very high standard of safety to the workers in a factory. It is an absolute and continuous duty of the occupier of a factory to comply with the safety provisions laid down in this Act.

Following are the safety provisions of the Factories Act.

1) Fencing of machinery

Fencing of machinery in use or in motion has been obligatory under section 21. This section requires that moving types of machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly maintained and kept in position while the parts of machinery are in motion or in use. Every prime mover and flywheel connected with the prime mover in all circumstances, whether in motion or not is required to be securely fenced. Every part of an electric generator, a motor or rotary converter and every dangerous part of any other machinery to be properly fenced in accordance Government rule.

This section does not contemplate a case when a worker is working on or near a machine in motion for the purpose of its examination or for carrying out the work of mounting, lubricating, cleaning, or adjusting the machine.

2) Safety Measures in case of work on or near machinery in motion

Section 22 lays down the procedure for carrying out examination or any part a while it is in motion. In case where the examination of a machinery while in motion necessary such examination or operation shall be carried out only by specially trained adult male worker wearing tight fitting clothing.

Without prejudice to any other provision of this Act relating to machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinion and all spur, worm and other toothed or friction gearing in motion with shall be securely fenced to prevent danger.

3) Restriction on woman or Young Person to Work a Such Machines

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

4) Employment of Young Persons on Dangerous Machines

Section 23 provides that no young person shall be required or allowed to work at any machine to which this section applied unless he has been fully instructed as to dangers arising in connection with the machine and the precautions to be observe and (a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

5) Striking gear and devices for cutting off power

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

6) Self-acting machines

Section 25 provides that no traversing part of a self-acting machine in any factory and no material carried thereon shall, be allowed to run on its outward or inward transverse within distance of forty five centimeters or 18 inches from any fixed structure which is not part of the machines. However, Chief Inspector may permit the continued use of a machine installed before the commencement of this Act, which does not comply with the requirements of this section, on such conditions for ensuring safety, as he may think fit to impose.

7) Casing of new machinery

Section 26 provides further safeguards for casing of new machinery of dangerous nature. In all machinery driven by power and installed in any factory after the commencement of the Act, every set of screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger.

8) Prohibition of employment of women and children near Cotton Openers

No child or women shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work. However, if the feed-end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of partition where the feed-end is situated.

9) Hoists and Lifts

Every hoist and lift shall be of good mechanical construction with sound material and adequate strength. It shall be properly maintained and thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination. Every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift.

The maximum safe working load shall be marked on every hoist or lift and no load greater than such load capacity shall be carried thereon.

The State Government may make rules in respect of lifting machines or any chain, or rope or lifting tackle used in factories. These rules shall prescribe further requirements to be complied with. Rules may also provide for exception from compliance with all or any of the requirements of this section where in its opinion such compliance is unnecessary or impracticable.

10) Revolving machinery

Section 30 of Act prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate (a) maximum safe working

peripheral speed for every grindstone or wheel (b) the speed of the shaft or spindle upon such shaft or spindle and the diameter of the pulley.

11) Pressure plant

This Act provides for taking effective measures to ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at a pressure above atmospheric pressure, does not exceed the limits. Effective steps shall be taken to ensure the safe working pressure of the machinery. The state Government may make rules to regulate such pressures on working and may also exempt any part of any plant or machinery from the provision of this section.

12) Floors, stairs and means of access

All floors, steps, stairs passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstruction and substances likely to cause persons to slip. To ensure safety, steps, stairs passages and gangways shall be provided with substantial handrails.

13) Pits, sumps, opening in floors etc.

In ever factory fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, construction, or contents the sources of danger shall be either securely covered or securely fenced. The State Government may exempt any factory from the compliance of the provisions of this section subject to such conditions as it may prescribe.

14) Excessive weights

No person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause injury to him. The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or any class or description of factories or carrying on any specified process.

15) Protection of eyes

The State Government by rules may require for providing the effective screens or suitable gaggles shall be provided for the protection of persons employed in any immediate vicinity or

any such manufacturing process carried on in any factory which involve the risk to the eyes by reason of exposure to excessive light.

16) Precautions against dangerous fumes, gases, etc.

No person shall be required or allowed to enter any room, tank, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be exploded. No person shall be required or allowed to enter any confined space as is referred above until all practicable measures have been taken to remove any gas, fume, vapour or dust, which may be present, so as to bring its level within the permissible limits.

17) Precautions in case of fire

In every factory all practicable measures shall be taken to outbreak of fire and its spread, both internally and externally and to provide and maintain all safe means of escape for all persons in the event of fire, and the necessary equipment and facilities for extinguishing fire. The State Government has necessary powers to make rules requiring the measures to be adopted to give effect to the above provisions.

18) Safety of Building & Machinery

If it appears to the Inspector of Factory that any building or a part of it is in such a condition detrimental to the health and welfare of workers, he may serve to the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date. They require carrying out such measure within a specified time.

19) Safety officer

In every factory, where 1000 or more worker are ordinarily employed or where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with duties and qualifications and conditions of services may be prescribed by State Government.

III. Rules Relating To Welfare Measures

Section 42 to 50 of the Act deals with the following provisions relate to the measures to be taken for the welfare of workers. The welfare are intended to provide a homely atmosphere in the place of work.

1) Washing facilities

Every factory should provide and maintain adequate and suitable washing facilities for its workers for the use of male and female. Such facilities should be separated and adequately screened. Such facilities should be conveniently accessible for all worker and be kept in a state of cleanliness. The State Government is empowered to make rules prescribing standards of adequate and suitable washing facilities.

2) Storing and Drying of Clothes

Section 43 empowers the State Government in respect of any factory or class or description of factories to make rules requiring the provision for suitable places for keeping clothing which are not worn during working hours, and for drying of wet clothing. The risk of theft must be taken into consideration while selecting a place for this purpose.

3) Facilities for sitting

There are certain operations, which can be performed by the workers involves standing position. This not only affects the health of a worker but also efficiency. Therefore, every factory shall provide and maintain suitable facilities for sitting, for those who work in standing positions, in order to take rest when they get intervals during the course of their work. If, in the opinion of the Chief Inspector, any work can be effectively performed in a sitting position, he may direct, in writing, the occupier of the factory, to provide such seating arrangements as may be practicable, for all workers. The State Government, may by a notification in the Official Gazette, declares that above provisions shall not apply to any specified factory or any manufacturing process.

4) First-aid appliances:

The following arrangements should be made every factory in respect of first-aid facilities during all the working hours.

- a) Provision of at least one first-aid box or cupboard, for every 150 workers ordinarily employed at any one time in the factory.
- b) It should contain with prescribed contents and nothing else should be stored in it.
- c) It should be properly maintained and readily accessible during all working hours.

A responsible person who holds a certificate in first-aid treatment, recognized by the State Government should be made the in-charge of such first-aid box. Where more than 500

workers are employed, an ambulance room of the prescribed size shall be provided and maintained with prescribed equipments under the control of Medical and Nursing Staff.

5) Canteens

The state Government may make rules requiring that in any specified factory wherein more than 250 workers are already employed, a canteen should be provided and maintained by the occupier for the use of workers. The canteen shall be suitably located and sufficiently lighted and ventilated. It should be equipped with necessary furniture, utensils, etc and operate on non-profit basis.

6) Shelters, rest rooms and lunch rooms

In every factory where more than 150 workers are ordinarily employed, the occupier should make adequate and suitable arrangements for shelters or rest rooms and lunch-rooms with provision of drinking water where the workers can take rest or eat meals brought by them. However any canteen, which is maintained in accordance with the provisions shall be regarded as part of the rest and lunch room. Where a lunch room exists no worker shall eat any food in the workplace.

7) Crèches

In every factory where in more than 30 women workers are ordinarily employed, the facility of suitable rooms should be provided and maintained for the use of children under the age of six years of such women. There should be adequate accommodation in such rooms. These places should be sufficiently lighted and ventilated and kept in clean and sanitary conditions. In case of children and infants required care, a training woman, should be made in charge of such rooms. Provisions for wash room, supply of milk, refreshment for children and facilities for feeding of children by their mother shall be made as per rules.

8) Welfare Officer

If any factory ordinarily 500 or more workers are employed, the employer shall appoint such welfare officers as may be prescribed. The State government may prescribe the duties, qualifications, etc. of the persons employed as welfare officer.

Employment of Young Persons in Factories

Provision 1. Prohibition of Employment of Young Children [Section 67]:

A child who has not completed his fourteenth year is prohibited from working in any factory. Under any circumstances, whatsoever, no exemption even in case of emergency can be allowed to overcome the provisions of this section.

This is an absolute prohibition and admits of no exception. It is the duty of the employer to ascertain the age of the children whom he allows to work in his factory. He cannot depend on the statement of the applicant.

A child is a person who has not completed his fifteenth year of age. As this section applies only to children below 14 years, it has obviously no application to children between the age of 14 and 15.

Provision 2. Non-Adult Workers to Carry Tokens [Section 68]:

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless he is given a certificate of fitness by a competent certifying surgeon. Such a certificate shall be in the custody of the manager of the factory. The young person shall carry while he is at work a token giving a reference to such a certificate.

Provision 3. Certificate of Fitness [Section 69]:

The certificate of fitness is granted by a certifying surgeon on the application of young person or a guardian. The application must be accompanied by a document signed by the manager of a factory that the young person will be employed therein if certified to be fit for work in a factory.

The application for the grant of the certificate of fitness can also be made by the manager of the factory in which the young person wishes to work. The certifying surgeon shall examine the young person and ascertain his fitness for work in a factory.

If the certifying surgeon is satisfied, he may grant or renew to such young person in the prescribed form:

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

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

The certifying surgeon must have personal knowledge of the proposed place of work and of the manufacturing process involved.

The certificate of fitness is valid only for a period of 12 months. It may be granted subject to such conditions as regard the nature of the work involved and periodical re-examination. The certificate may be revoked by a certifying surgeon if the holder of the certificate is no longer fit to work. Where certifying surgeon refuses to grant or renew a certificate or revokes a certificate, he shall state his reasons in writing for so doing.

Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recovered from the young person, his parent or guardian.

Provision 4. Effect of Certificate of Fitness Granted to Adolescent [Section 70]:

An adolescent who has been granted a certificate of fitness to work as an adult, would be deemed to be an adult and all provisions of the Factories Act relating to adult workers would apply to him.

No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.

Provided that the State Government may by notification in the Official Gazette, in respect of any factory or group or class or description of factories:

(i) Vary the limits laid down in this sub-section so that, no such section shall authorise the employment of any female adolescent between 10 P.M. and 5 A.M.

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

An adolescent who has not been granted a certificate of fitness to work in the factory as an adult shall be deemed to be a child for the purposes of the Act.

Provision 5. Working Hours for Children [Section 71]:

No Child can be employed or permitted to work in any factory:

(1) For more than four and a half hours in any day;

(2) During the night i.e., a period of at least twelve consecutive hours including the interval between 10 p.m. and 6 a.m.

(3) On any day on which he has already been working in any other factory.

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

Provision relating to weekly holidays for adults under section 52 will also apply to child workers. No child can be required or allowed to work in any factory on any day on which he has already been working in another factory.

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

Provision 6. Notice of Periods of Work for Children [Section 72]:

Every factory must display and correctly maintain a notice of periods work for children. Such notice should show clearly the periods during which children may be required or allowed to work. The periods shown in the notice shall be fixed beforehand as per section 61 regarding period of work for adults, but there shall be no contravention of the provisions of section 71.

Provision 7. Register of Child Workers [Section 73]:

The manager of every factory in which children are employed shall maintain a register of child workers showing:

- (a) The name of each child worker in the factory
- (b) The nature of his work
- (c) The group in which he is included
- (d) Where his group works on shifts, the relay to which he is allotted
- (e) The number of his certificate of fitness

No child worker shall be required or allowed to work in any factory unless his name other particulars have been entered in the register of child workers Section73 (1—A)

This register must be made available to the Inspector at all times during working hours or when any work is being carried on in a factory.

The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Provision 8. Hours of work to Correspond with Notice Under Section 72 and Register Under Section 73 [Section 74]:

No child shall be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made before hand against his name in the register of child workers of the factory.

Provision 9. Power to Require Medical Examination [Section 75]:

An inspector has power to server a notice on the manager of the factory asking him for the medical examination of the young person who works in a factory either without a certificate of fitness, or with a certificate of fitness but is no longer fit to work in that capacity.

Such a young person, shall not, if the inspector so directs, be employed or permitted to work in any factory until he has been granted certificate of fitness or fresh certificate of fitness as the case may be or has been certified by the certifying surgeon examining him not to be a young person.

Provision 10. Power to make Rules [Section 76]:

This section authorises the state Government to make rules:

- (a) Prescribing the forms of certificates of fitness to be granted to young persons, and the procedure for their issue
- (b) Prescribing the physical standards to be attained by children and adolescents working in factories
- (c) Regulating the procedure of certifying surgeons
- (d) Specifying other duties which the certifying surgeons may be required to perform in connection with the employment of young persons in factories.

Provision 11. Provisions relating to Safety of Young Persons:

The provisions relating to the safety of young persons are scattered through the Act, but for the convenience of the readers are summarised as under:

1. No young person shall be allowed to clean, lubricate, or adjust any part of the machinery while it is in motion if it is likely to expose him to risk of injury from any moving part (Section 22).

2. No young person shall work at any dangerous machine unless:

(a) He has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and

(b) He has received sufficient training in work at the machine or is under adequate supervision by a person who has a thorough knowledge and experience of the machine (Section 23).

3. No child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work. This prohibition may be relaxed in certain cases (Section 27).

4. Where the State Government declares any manufacturing process or operation in any factory as dangerous or injurious to the health of young person, it may make rules prohibiting or restricting the employment of young person in the operation (Section 87).

THE WORKMEN'S COMPENSATION ACT, 1923

The Act applies to any person who is employed otherwise than in a clerical capacity, in railways factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads and bridges, electricity generation, cinemas, catching or trading of wild elephants, circus, and other hazardous occupations and other employment specified in Schedule II to the Act, Under Section 2(3) of the Act, the State Governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the official gazette. The Act, however, does not apply to members serving in the Armed Forces of Indian Union, and employees covered under the provisions of the Employees' State Insurance Act as disablement and dependents' benefit is available under this Act.

Definition [Sec 2(1)]

"Dependent" means any of the following relatives of a deceased (dead) workman, namely :-

- (i) a widow, a minor legitimate or adopted son, and unmarried legitimate or adopted daughter, or a widowed mother; and
- (ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;
- (iii) if wholly or in part dependent on the earnings of the workman at the time of his death,
 - (a) a widower,
 - (b) a parent other than a widowed mother,
 - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor,
 - (e) a widowed daughter-in-law,
 - (f) a minor child of a pre-deceased son,
 - (g) a minor child of a pre-deceased daughter where no parent of the child is alive,or

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

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

"minor" means a person who has not attained the age of 18 years;

"partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Ram, who worked in a printing business, got his fingers cut off by accident. This is **"Partial Disablement"** as it reduces his capacity to work in any such employment of similar nature.

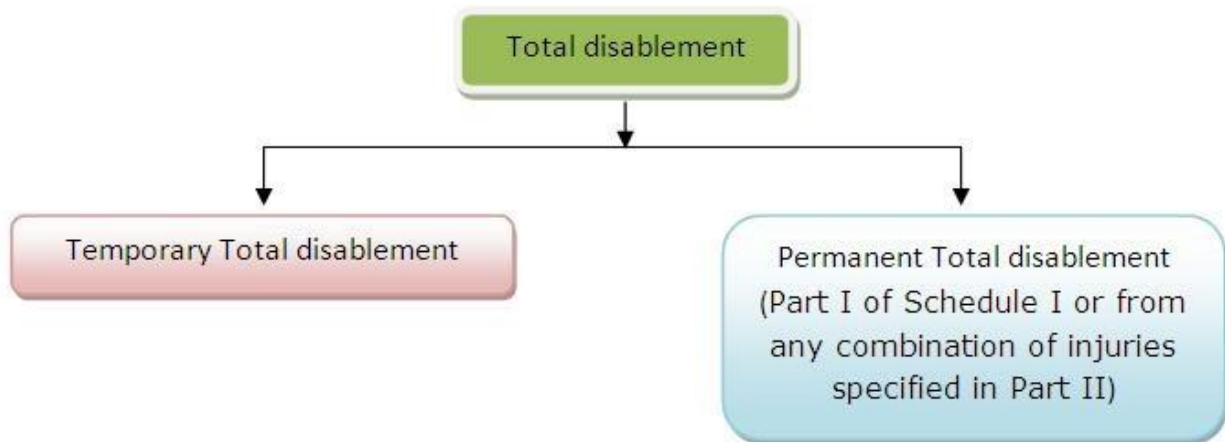
Every injury specified in Part II of Schedule I shall be deemed to result in **permanent partial disablement**.

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

Permanent total disablement shall be deemed to result from every injury specified in **Part I of Schedule I**, mentioned below

or

from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100% or more;



EMPLOYER'S LIABILITY FOR COMPENSATION. [Sec 3]

(1) If personal injury is caused to a employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Employer shall not be liable to pay compensation in the following situations [Sec 3 (1)]

- (a) Any injury which does not result in the total or partial disablement of the workman for a period exceeding 3 days, employer is not liable to pay the compensation.
- (b) Accidents caused due to,
 - (i) the workman having been at the time thereof under the influence of drink or drugs, (alcohol) or
 - (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
 - (iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen,

Occupational Diseases.[Sec 3]

An occupational disease is any chronic ailment that occurs as a result of work or occupational activity. It is an aspect of occupational safety and health. An occupational disease is typically identified when it is shown that it is more prevalent in a given body of workers than in the general population, or in other worker populations.

[Sec 3 (2)]

If any injury or disease is caused which is specified in Part A, B and C of Schedule III, it shall be deemed to have been an occupational disease or injury “arising out of and in the course of employment” enabling the employee to claim compensation.

Thus the Schedule III is divided in Part A, B & C in the following manner:—

If a employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein it shall be presumed that such disease is “occupational disease” peculiar to that employment. For this no length of service is prescribed.

If a employee is employed in any employment specified in Part B of Schedule III for a period of 6 months and attracts any disease specified therein, it shall be presumed that such disease is “occupational disease” peculiar to that employment.

If a employee is employed in any employment specified in Part C of Schedule III for a period as is prescribed by the Central Govt, attracts any disease specified therein as occupational disease, it shall be deemed to be an injury peculiar to that employment.

SCHEDULE 3

LIST OF OCCUPATIONAL DISEASES

S. No.	Occupational disease	Employment
1	2	3
PART A		
1	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) All work involving exposure to contracted in an occupation health or laboratory work;
		(b) All work involving exposure to veterinary work;
		(c) Work relating to handling animals, animal carcasses, part of such carcasses, or merchandise which may have been contaminated by animals or animal carcasses;
		(d) Other work carrying a particular risk of contamination.
2	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.
3	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
4	Poisoning by nitrous fumes.	All work involving exposure to the risk concerned.
5	Poisoning by organo phosphorus compounds.	All work involving exposure to the risk concerned.
PART B		
1	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
2	Diseases caused by mercury or its toxic compounds.	All work involving exposure to the risk concerned.
3	Diseases caused by benzene or its toxic homologues.	All work involving exposure to the risk concerned.
4	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues	All work involving exposure to the risk concerned.
5	Diseases caused by chromium, or its toxic compounds	All work involving exposure to the risk concerned.

6	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
7	Diseases caused by radioactive substances or radiations.	All work involving exposure to the substances and ionising action of radioactive ionising radiations.
8	Primary epitheliomatous cancer of the skin, caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk concerned.
9	Disease caused by the toxic halogen derivatives of hydrocarbons (of the aliphatic and aromatic series).	All work involving exposure to the risk concerned.
10	Diseases caused by carbon disulphide.	All work involving exposure to the risk concerned.
11	Occupational cataract due to infra-red radiations.	All work involving exposure to the risk concerned.
12	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
13	Skin diseases caused by physical, chemical or biological agents not included in other items.	All work involving exposure to the risk concerned.
14	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.
15	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenol or by the salts of such substances.	All work involving exposure to the risk concerned.
16	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
17	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
18	Occupational asthma caused by recognised sensitising agents inherent to the work process.	All work involving exposure to the risk concerned.
19	Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk concerned.
20	Diseases caused by nitroglycerine or other nitroacid esters.	All work involving exposure to the risk concerned.

21	Diseases caused by alcohols and ketones.	All work involving exposure to the risk concerned.
22	Diseases caused by asphyxiants carbon monoxide, and its toxic derivatives, hydrogen sulfide.	All work involving exposure to the risk concerned.
23	Lung cancer and mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
24	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk concerned.
25	Snow blindness in snow bound areas.	All work involving exposure to the risk concerned.
26	Disease due to effect of cold in extreme cold climate.	All work involving exposure to the risk concerned.
27	Disease due to effect of cold in extreme cold climate.	All work involving exposure to the risk concerned.
PART C		
1	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraosilicosis, asbestosis) and silico-tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2	Bagassosis.	All work involving exposure to the risk concerned.
3	Bronchopulmonary diseases caused by cotton, flax hemp and sisal dust (Byssinosis).	All work involving exposure to the risk concerned.
4	Extrinsic allergic alveolitis caused by the inhalation of organic dusts.	All work involving exposure to the risk concerned.
5	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to the risk concerned.
6	Acute Pulmonary Oedema of High Altitude.	All work involving exposure to the risk concerned.

AMOUNT OF COMPENSATION [Sec 4]

1. This section deals with how compensation is to be calculated for injured or deceased employee.
2. Calculation of the compensation is made on the monthly wage or salary of employee.
3. The amount of compensation varies from employee death, permanent total disablement, permanent partial disablement and temporary disablement.

1. Compensation in Case of Death:

- 50% of the Monthly Wage x Relevant factor as per the age of the worker
- Funeral expenses of Rs. 5000 is also payable
- The minimum amount payable is Rs. 120,000

2. Compensation in case of Permanent Total Disability (PTD)

- 60% of the Monthly Wage x Relevant factor as per the age of the worker
- Minimum amount payable in this case is Rs. 140,000

3. Compensation in case of Permanent Partial Disability (PPD)

- A percentage of the compensation payable under PTD. This percentage needs to be estimated based on the “extent of the reduction in earning capacity” of the worker.

4. Compensation in case of Temporary Disability (Total or Partial)

- 25% of the Monthly Wage of the Worker payable every half month
- The compensation is payable if the worker is disabled for more than three consecutive days
- The maximum tenure for the compensation is five years

THE EMPLOYEES STATE INSURANCE ACT (ESI ACT) 1948

Employees' State Insurance (abbreviated as ESI) is a self-financing social security and health insurance scheme for Indian workers. This fund is managed by the Employees' State Insurance Corporation (ESIC) according to rules and regulations stipulated there in the ESI Act 1948. ESIC is an autonomous corporation by a statutory creation under Ministry of Labour and Employment, Government of India. Employees' State Insurance Corporation (ESIC), established by ESI Act, is an autonomous corporation under Ministry of Labour and Employment, Government of India. As it is a legal entity, the corporation can raise loans and take measures for discharging such loans with prior sanction of the central government and it can acquire both movable and immovable property and all incomes from the property shall vest with the corporation. The corporation can set up hospitals either independently or in collaboration with state government or other private entities, but most of the dispensaries and hospitals are run by concerned state governments.

APPLICABILITY

Under Section 2(12) the Act is applicable to non-seasonal factories employing 10 or more persons.

Under Section 1(5) of the Act, the Scheme has been extended to shops, hotels, restaurants, cinemas including preview theatres, road-motor transport undertakings and newspaper establishments employing 10* or more persons. Further under section 1(5) of the Act, the Scheme has been extended to Private Medical and Educational institutions employing 10* or more persons in certain States/UTs.

The existing wage limit for coverage under the Act is Rs.21,000/- per month (w.e.f. 01/01/2017).

AREAS COVERED

The ESI Scheme is being implemented area-wise by stages. The Scheme has already been implemented in different areas in the following States/Union Territories of Indian Union

STATES

All the States except Manipur and Arunachal Pradesh.

UNION TERRITORIES

All union territories except Dadra & Nagar Haveli, Daman & Diu and Lakshadweep Islands. The scheme is notified in 325 complete Districts out of 393 Districts, where scheme was partially implemented and 89 Districts Headquarters out of non implemented Districts.

Definitions

- (a) "accounts officer" means the Financial Commissioner of the Employees' State Insurance Corporation or such other officer as may be specified in this behalf;
- (b) "Act" means the Employees' State Insurance Act, 1948 (43 of 1948);
- (c) "corporation" means Employees' State Insurance Corporation;
- (d) "emoluments" means pay, leave salary or subsistence grant if admissible and any remuneration of the nature of pay received in respect of deputation;
- (e) "employee" means a person appointed to or borne on the cadre of the staff of the corporation, other than persons on deputation;
- (f) "family" means-
 - (i) In the case of a male subscriber the wife or wives, parents, children, minor brothers, unmarried sisters, deceased son's widow and children and where no parent of the subscriber is alive, a paternal grandparent:
 - (ii) In the case of a female subscriber, the husband, parents, children, minor brothers, unmarried sisters, deceased son's widow and children and where no parent of the subscriber is alive, a paternal grandparent:
- (g) "fund" means the Employees' State Insurance Corporation General Provident Fund;
- (h) "leave" means any kind of leave recognized by the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959;

(i) "service" means service under the corporation;

(j) "year" means a financial year.

BENIFITS

1. Medical Benefit:

Medical benefit consists of "full medical care" including hospitalisation, free of cost, to the Insured Persons in case of sickness, employment injury and maternity.

2. Sickness benefit:

Sickness Benefit represents periodical cash payments made to an IP during the period of certified sickness occurring in a benefit period when IP requires medical treatment and attendance with abstention from work on medical grounds. Prescribed certificates are Forms 8,9,10,11 & ESIC-Med.13. Sickness benefit is roughly 50% of the average daily wages and is payable for 91 days during 2 consecutive benefit periods.

i) Temporary Sickness Benefit:

Sickness Benefit represents periodical cash payments made to an IP during the period of certified sickness occurring in a benefit period when IP requires medical treatment and attendance with abstention from work on medical grounds.

ii) Extended sickness Benefit:

In addition to 91 days of sickness benefit, insured persons suffering from certain long-term diseases are entitled to extended sickness benefit for 34 diseases. The list of diseases are enclosed in the Annexure.

iii) Enhanced Sickness Benefit:

The ESI Corporation has also extended additional cash incentive to insured persons to promote acceptance of sterilization method by providing sickness cash benefit equal to full wage for a

period of 7 days for vasectomy and 14 days for tubectomy. The period for which cash benefit is admissible is extended beyond the above limits in the event of any complications after Family Planning operations.

3. Maternity benefit:

The benefit is payable in cash to an insured woman for confinement / miscarriage or sickness arising out of pregnancy / confinement or premature birth of child or miscarriage. For confinement, the duration of benefit is 12 weeks, for miscarriage 6 weeks and for sickness arising out of confinement etc. 30 days. The benefit is allowed at about full wages.

4. Disablement benefit:

The Act provides for cash payment, besides free medical treatment, in the event of temporary or permanent disablement as a result of employment injury as well as occupational diseases. The rate of temporary disablement benefit is about 72% of the wages as long as the temporary disablement lasts. In case of total permanent disablement, the insured person will be given life pension at full rate i.e., about 72% of his wages, while in cases of partial permanent disablement a portion of it will be granted as life pension. Cases where daily pension is upto Rs.1.50, it is commutable.

5. Dependant's benefit

In case of death, as a result of employment injury, the dependants of an insured person are eligible for periodical payments. Pension at the rate of 40% more than the Standard Benefit Rate will be paid periodically to widow (s) and children in accordance with the prescribed share. An eligible son or daughter is entitled to dependant's benefit up to the age of 18 without any proof of education; the benefit is withdrawn if the daughter marries earlier.

6. Funeral Expenses:

Funeral benefit is a cash payment payable on the death of an insured person towards the expenses on his funeral, the amount not exceeding Rs.2,500/

7. OTHERS:

i) Rehabilitation allowance:

Disabled IPs who remain admitted in an Artificial Limb Centre for fixation or repair or replacement of the artificial limb are entitled to a rehabilitation allowance for each day on which they remain admitted at Artificial Limb Centre at double the Standard Benefit rate. This is not subject to any contributory condition.

ii) Vocational Rehabilitation:

This scheme has been designed to provide financial assistance to IPs who are referred to Vocational Rehabilitation Centre for training. Under the scheme, IPs aged not more than 45 years who are permanently disabled as a result of an employment injury (EI) with loss of earning capacity of not less than 40% and are not in gainful employment subsequent to EI are entitled to receive cash allowance equal to the expenditure charged by the Vocational Rehabilitation Centre or Rs.45/- per day whichever is more during his stay at the Vocational Rehabilitation Centre. Such IPs are also paid conveyance charges for the journey undertaken by them from their normal residence to the centre and back.

Contribution

E.S.I. Scheme being contributory in nature, all the employees in the factories or establishments to which the Act applies shall be insured in a manner provided by the Act. The contribution payable to the Corporation in respect of an employee shall comprise of employer's contribution and employee's contribution at a specified rate. The rates are revised from time to time. Currently, the employee's contribution rate (w.e.f. 1.1.97) is 1.75% of the wages and that of employer's is 4.75% of the wages paid/payable in respect of the employees in every wage period. For newly implemented areas, the contribution rate is 1% of wages of Employee and 3% payable by Employers for first 24 months(w.e.f. 06.10.2016) Employees in receipt of a daily average wage upto Rs.137/- are exempted from payment of contribution. Employers will however contribute their own share in respect of these employees.

Collection of Contribution

An employer is liable to pay his contribution in respect of every employee and deduct employees contribution from wages bill and shall pay these contributions at the above specified rates to the Corporation within 15 days of the last day of the Calendar month in which the contributions fall due. The Corporation has authorized designated branches of the State Bank of India and some other banks to receive the payments on its behalf.

The Employees Provident Funds & Miscellaneous Act, 1952

This act is an important piece of Labour Welfare legislation enacted by the Parliament to provide social security benefits to the workers. At present, the Act and the Schemes framed there under provide for three types of benefits:

- Contributory Provident Fund.
- Pensionary benefits to the employees / family members.
- Insurance cover to the members of the Provident Fund.

The object of the Act in 1952 was the institution of the compulsory contributory Provident Fund to the employees to which both the employee and the employer would contribute. The Employees' Provident Fund Scheme was accordingly framed under the Act and it came into effect from 1-11-1952. Initially the title of the Act was, "The Provident Fund Act 1952".

The provisions of the act extend to whole of India except the State of Jammu & Kashmir and also the State of Sikkim where it has not been notified so far after its annexation with the Union of India.

Applicability

All the establishments employing 20 or more persons (5 or more incase of Cinema Theatres) are brought under the purview of the Act from the very date of set up subject to fulfillment of other conditions. The provisions of the Act apply on its own force independently.

Those establishments which do not have the prescribed number of employees but willing to register themselves to provide the benefits of Provident Fund to their employees can register voluntarily with the Regional Provident Fund Office.

Definition of Wages

In this act, Wages means and includes Basic + Dearness Allowances, Cash value of food concession and Retaining allowances, if any.

Eligibility

- An employee at the time of joining the employment and getting wages up to Rs. 6,500/- is required to become a member.
- He / she is eligible for membership of fund from the very first date of joining a covered establishment.

Provident Fund Contribution

The provident fund contributions consist of contribution both by Employee and by Employer.

Employee Contribution

Provident fund contribution is recovered @ 12% of wages from employees who earn up to a maximum wage of Rs.6,500/- p.m. However, employees can contribute more than this statutory maximum which will be considered as Voluntary Contribution.

Employer Contributions

- Employer is also required to contribute towards provident fund; the deduction rate is same as employee's contribution i.e. 12% of the wages.
- Of this 12%, 3.67% goes to Provident Fund and the balance of 8.33% goes to Pension Fund.

Voluntary Contribution

- An employee can contribute voluntarily over and above the stipulated rate of PF contribution by opting for Voluntary PF scheme at any rate as he / she desires i.e up to 100% of Wages.
- However, the contribution to VPF should be a certain % of wages and not a fixed amount.
- But the employer is not bound to contribute at the enhanced rate.
- It is suggested that the enhancement can be done at the beginning of the financial year for comfort level of calculation.

Pension Fund - To avail pension benefit, the member

- should have completed 10 years of continuous service or he / she should have attained the age of 50 years or more
- He / She doesn't receive any other EPF pension
- The member will receive the Pension amount on a monthly basis after attaining the age of 58.
- If the employee does not fall in the above criteria, he can apply for withdrawal of Pension monies.

Employees Deposit-linked Insurance Scheme (EDLI)

- Apart from contributing to provident fund and pension fund, employer is also required to contribute towards Employee Deposit Linked Insurance Scheme.
- The rate of contribution is 0.5% of the wages.
- The employees need not contribute any thing towards this scheme.
- In case of death of a member, his / her nominee will get a maximum of Rs.60,000 from this scheme.

Administrative Charges

- The employer is also required to pay administrative charges at 1.10% of emoluments towards provident fund charges and 0.01% towards EDLI Scheme 1976.
- Employees need not contribute any thing towards these charges.

Remittance of Contribution

The employer is required to pay the contribution recovered from employees into the provident fund account on or before 15th of the following month, for example, if the contribution is deducted for the month of October 2008, it should be remitted on or before 15th of November 2008.

Annual Account Statement

After the close of each period of contribution (March to Feb), annual statements of accounts will be sent by PF Department to each member through the factory or other establishment where the member was last employed.

The statement of accounts in the fund will show

- Opening balance of contribution with interest of both employer and employee
- Amount contributed during the year by both employer and employee
- Interest earned on the contributions made during the current year
- Total of contributions by both employer and employee

Members should satisfy themselves as to the correctness of the annual statement of accounts and any error should be brought through the employer to the notice of the Provident Fund Office within 6 months of the receipt of the statement.

Withdrawal of Provident Fund and Pension Fund

A member is eligible to apply for withdrawing his provident fund and pension fund only after 2 months from the date of resignation, provided that he / she is not employed during the said 2 months.

The member should submit Form 19 to withdraw his provident fund dues on leaving service/retirement/termination.

To claim pension, the member is required to submit Form 10 C.

The member needs to fill in Forms 19 and 10c and get it signed from the previous employer and submit it to the provident fund office (in many cases, the employer will themselves help by submitting the forms).

Normally, it takes about 40 days to have the monies credited to the bank account of the member after submission of the relevant forms.

Taxability:

The withdrawals are exempt from tax if the concerned employee has rendered continuous service of more than 5 years. Otherwise, it would be taxable at the applicable slab rates.

Transfer of Provident Fund monies from previous employer to current employer

A resigned employee who joins another company is left with an option of transferring the PF monies from his previous PF account to the current PF account, by filling the Form 13.

Form 13-Application form for PF Fund Transfer

- When an employee joins new company and he wishes to transfer his previous company provident fund amount, he should inform the HR department or Accounts department of the new company.
- The employer will issue Form 13, in which the member has to fill the details of previous company like – name, address, provident fund account number and address of the provident fund office where the account was held.
- On form 13, the signature of the previous employer is not required.
- Once he fills the required details and submit it to the current employer, the current employer will forward it to the provident fund office for transferring process.
- The time taken for transferring the fund from one account to other account normally takes about 40 days from date of submission.

Problems Faced in withdrawing / transferring Provident Fund monies and the remedies:

On many occasions, members face problems in withdrawing the provident fund monies. Some of the normal reasons for the problems and the solutions to overcome these are quoted here below:

Mismatch of Signature of the member

If the signature mismatches or they have changed their signature, they need to inform the provident fund office through their employer. If the PF officer is still not convinced with this letter, a fresh application has to be submitted again.

Mismatch of Provident Fund Account number of the member

If the PF Account number has been mentioned wrongly by the member, then the application will be returned back to the employer. The employee has to correct the details and get it counter-signed by the employer.

If the PF Account number has been reported wrongly by the employer in their annual return, then it needs be corrected through a formal letter to the PF department explaining the problem and correcting the same.

Incorrect bank account details furnished by the member

The correct details with regard to account number, name of the bank, branch address, MICR code of the bank (MICR is a 9 digit number printed on the cheque leaf, next to the cheque number) have to be filled in again and re-submission required.

Incorrect address given by member

The correct details have to be filled in again and re-submission required.

Mismatch of date of joining / resignation

If the date of joining / resignation has been mentioned wrongly by the member, then the application will be returned back to the employer. The employee has to correct the details and get it counter-signed by the employer.

If the date of joining / resignation has been mentioned wrongly by the employer in their annual return, then it needs be corrected through a formal letter to the PF department explaining the problem and correcting the same.

Communication from PF department while processing the request would not have reached the employer

The employer / employee needs to check with the PF office and find out the reason for not receiving the communication. If not traceable, then a request has to be made to the PF office for re-sending the communication.

Failure of employer to remit the PF amount recovered from members to PF Account

It is the duty of the employer to remit the PF monies (which are recovered from employees) to the authorised banks for the credit of PF department. It is a statutory violation if the recovered monies are not remitted on time.

If the employee comes to know that the employer has not remitted the PF monies that are recovered from him, then he can lodge a complaint to the PF office against the employer insisting for the recovery.

Member might have changed his / her official name and the same has not been informed to the provident fund office

If the employee has changed his / her name and the same has not been informed to the PF office, then the application will be rejected when the PF office compares the data with the returns being filed by the company. In such a situation, the concerned employee has to request through a formal letter informing about the change in name and also, attach the notification copy of the Gazette publication.

Change in Authorised Signatory of the employer when the application is in process

Sometimes, the authorized signatory would have been changed when the application is in process and it would lead to rejection of the application. In such a situation, the employer has to get the application re-signed by the concerned authorized signatory who is active at the appropriate period of time.

Problem during Transfer of Monies

In the case of transfer and when the previous employer is an exempt establishment (which means, having own PF trust), the procedure is that the current employer should forward the transfer form (Form 13) to the previous employer who will process a cheque (after validation) in favour of PF office of the current employer and it will be sent to the current employer. It becomes the responsibility of the current employer to submit the cheque along with a request letter to the PF office for transferring the monies. Here, the normal problems that might occur are:

- previous employer might have changed their address
- Documents lost in transit / do not reach the concerned department
- Delay in processing the application for reasons like tedious internal processing procedures, processing person is on vacation / busy on some other assignments, signatory not available etc

Note: In all the above situations, the employee is required to be in contact with his employer regularly and chase them constantly which will speed up the process.

Advances from PF Account

The members are eligible to withdraw monies as advances from their PF Account for purposes like marriage, education, medical treatment etc, subject to the prescribed conditions as mentioned here below. Note that the said advance is totally tax-free and interest-free.

Marriage

- only for self, son, daughter, brother & sister
- The member should have completed at least 7 years of service (not necessarily with the same employer, but should have transferred the PF monies from previous employers for consecutive period of 7 years)
- Maximum of 3 times in the entire service
- Maximum amount is 50% of employee's share at the time of tendering application.

- The member should apply in Form 31 through employer
- Marriage Invitation card should be submitted along with form as proof for marriage through employer.

Education

- Only for self, son & daughter
- The member should have completed at least 7 years of service (not necessarily with the same employer, but should have transferred the PF monies from previous employers for consecutive period of 7 years)
- Maximum of 3 times in the entire service
- Maximum amount is 50% of employee share at the time of tendering application
- The member should apply in Form 31 through employer
- Bonafide certificate duly indicating the fees payable from the educational institution.

For Medical Treatment

- Only for self, spouse, son, daughter, dependent father & mother
- Applicable for major surgical operation in a hospital and 1 month or more hospitalization for the operation or suffering from TB, leprosy, paralysis, cancer, mental derangement or heart ailment.
- For this purpose, no minimum service is required.
- The members should obtain certificate from ESI or from employer that E.S.I. facility are not available for the member.
- A doctor (or registered medical practitioner) of the hospital certifies that a surgical operation or hospitalization for 1 month or more is/was necessary.
- Incase of TB or leprosy etc, a specialist doctor should certify
- Maximum amount given is 6 times of wages or full employee share, whichever is less.
- A certified proof for the said decease has to be submitted along with the application in Form 31 through employer.

For Purchase of Site and Construction there on

- Should have completed 5 years of services
- Members contribution with interest should not be less than 1,000
- Site should be free from encumbrances
- site should be in the name of the member or spouse of the member or in the joint names of the member and the spouse
- The maximum amount given is least of Basic+DA for 24 months or total contribution & Interest or total cost of site.

Purchase of Flat/House (from agency/promoter)

- Should have completed 5 years of services
- Members contribution with interest should not be less than 1,000
- House/Flat should be free from encumbrances
- Flat/house should be in the name of the member or spouse of the member or in the joint names of member & spouse.
- The Agreement with the Flat promoter should be registered under the Indian Registration Act.
- The maximum amount given is least of Basic+DA for 36 months or total contribution & Interest or total cost of site.

Alteration / Modification of House

- Should have completed 5 years of services
- Only after 5 years of completion of construction of dwelling house
- The maximum amount given is 12 months Basic+DA or member share of contribution with interest, whichever is less.

Repayment of outstanding principal / Int. of a loan obtained from State Govt, Regd Co-operative Society, State Housing Board, Nationalized Bank and Public Financial Institution.

- Should have completed 10 years of services
- Member contribution with interest should be more than 1,000
- The amount will be paid directly to the agency and not to the member
- The maximum amount paid is 36 Months Basic + Members accumulation with interest or Outstanding Principal plus interest which is sought to be repaid, whichever is less.

The Act provides for:

- Grant of exemption from the operation of the scheme/s framed under the Act to an establishment , to a class of employees and to an individual employee , on certain conditions.
- Penalties to employers/trustees of exempted Provident Fund who contravene the provision of the Act and the Scheme.
- Appointment of inspector to secure compliance under the Act and the Schemes framed there under.
- Mode of recovery of moneys due from employers.

CONTRIBUTION

CONTRIBUTION OF EMPLOYERS

Rates For Contribution

A) The Employees' Provident Fund Scheme

in respect of establishments employing 20 or more persons and engaged in industry notified under Section 6 of Act (other than the Establishments. declared as sick) 12% of the basic pay DA , Cash value of food concession and retaining allowance , if any, subject to a maximum of Rs.15000/- per month. Voluntary higher contributions are also acceptable at the joint request of

the member and the employer . However, the rate of contribution is 10% in respect of the following categories of establishments:

- o Any establishment covered prior to 22.9.97 in which less than 20 persons are employed.
- o Any sick industrial company as defined in Clause(0) of Sub-Section(1) of Section 3 of the sick industrial companies (special provisions) Act 1985 and which has been declared as such by the Board for Industrial and Financial Reconstruction.
- o Any Establishment which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.
- o Any Establishment engaged in manufacturing of (a) Jute , (b) Beedi , (c) Brick , (d) Coir (other than spinning sector), (e) Guar Gum Industries/Factories.

B) The Employees' Pension Scheme

From and out of employer's share of Provident Fund contributions 8.33% of the total wages limited to Rs. 15000/- per month is segregated and credited to the Employees' Pension Fund in A/C No. 10 (w.e.f. 1-09-2014).

The Central Government also would contribute at the rate of 1.1 / 6% of total wages.

Unit V

The Payment of Wages Act, 1936

OBJECT OF THE ACT

The Payment of Wages Act regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated. The Act guarantees payment of wages on time and without any deductions except those authorised under the Act. The Act provides for the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be imposed by him and also sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims. The Act does not apply to persons whose wage is Rs. 10,000 or more per month. The Act also provides to the effect that a worker cannot contract out of any right conferred upon him under the Act.

Section 2 of Payment of Wages Act, 1936 defines **Wage**; What is included and not included.

Wage means all remuneration (whether by way of salary, allowance or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or work done in such employment, and

Includes:-

- any remuneration payable under any award or settlement between the parties or orders of a court
- any remuneration .. in respect of overtime work or holidays or any leave period
- any additional remuneration (whether called a bonus or by any other name)
- any sum to which the person is entitled under any scheme framed under any law for the time being in force

Does not include:-

- any bonus, profit-sharing or otherwise which does not form part of the remuneration payable
- value of any house accommodation or of supply of water, light, medical assistance or other amenity or any service excluded from the computation of wages
- any contribution paid by the employer to any pension or provident fund
- any traveling allowance
- any sum paid to defray special expenses entitled on him by the nature of his employment
- any gratuity payable.

The purpose of the Act :

The Payment of Wages Act, 1936 was enacted with a view “to regulate the payment of wages to certain classes of persons employed in industry”. The regulation contemplated by the Act is two-fold :

- i. to ensure regular and prompt payment of wages
- ii. to prevent exploitation of wage-earners by prohibiting arbitrary fines and deduction from wages.

Application of the Act

The payment of Wages Act, 1936 extends to the whole of India. It came into operation of 28th March, 1937. it applies in the first instance to the payment of wages to :

- i)** persons employed in any factory;
- ii)** persons employed (otherwise than in factory) upon any railway by a railway administration, either directly or, through a subcontractor, by a person fulfilling a contract with railways administration; and
- iii)** persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (iii) of section.

The Act empowers the state government to extend the application of the whole or a part of the Act to any class of persons employed in the establishment or class of establishments specified by the Central/ State Government under Section 2(h)(ii).

However, before doing so the State Government is required to

- i) Issue three months notice of its intention to do so;
- ii) Issue a notification of the extension in the official Gazette. But in relation to establishment owned by the Central Government, no such notification shall be issued with the concurrence of that Government.

Who are covered by the Act :

The Act covers persons drawing less than one thousand six hundred rupees a month. (original Act)

The Parliament of India widened the scope of the Payment of Wages Act, which would cover those drawing wages up to **Rs 6,500/-** a month against **Rs 1600/-** earlier with government assuring that it would soon come forward with a measure aimed at welfare of workers in the unorganised sector.

The Payment of Wages (Amendment) Bill that was earlier passed by the Rajya Sabha was adopted by the Lok Sabha, on 17th August 2005.

With the passage of the bill, the salary and wages of workers would be protected and they would get timely payment and employers would not be able to make illegal deductions.

Responsibility for Payment of Wages :

Section 3 makes every employer responsible for the payment to persons employed by him of all wages required to be paid under the Act. Quite apart from this the following persons shall also be responsible for the payment of wages for persons employed otherwise by a contractor :

- i) In a factory, a person named as manager of a factory under the Factories Act, 1948.
- ii.) In industrial or other establishment a person responsible to the employer for the supervision and control of the industrial or other establishment : and

iii) Upon railways (otherwise than in factories), if the employer is the railway administration and the person nominated in this behalf.

Fixation of Wage Period

Section 4 imposes an obligation on every person responsible for payment of wages under section 3, to fix periods in respect of which such wages shall be payable. Such wage -period shall not exceed one month.

Time of Payment of Wages

Section 5 of the Act lays down that the wages of every person employed upon or in :

(a) Any railway, factory or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

(b) Any other railway, factory or industrial or other establishment, shall be paid before the expiry of the tenth day after the last day of the wage-period in respect of which the wages are payable.

(c) In the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on the completion of a final tonnage amount of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion.

(d) Where the employment of any person is terminated by or on behalf of the employer the wages earned by him shall be paid before expiry of the second working day from the date on which his employment is terminated.

Exemption from compliance with the time limit for Payment of wages :

The Act empowers the state Govt to exempt , the person responsible for the payment of wages to persons employed upon in railways (otherwise than in factory), or to persons employed as daily-rated workers in the control, public works Department or the state from the operation of this section. However, no such order shall be made without consultation of the central Government. In case of daily-rated workers.

Wages to be paid in current coin or currency notes

All wages shall be paid in current coin or currency notes or in both.

Payment by Cheque

An employer may, after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

DEDUCTION FROM WAGES :

a) Concept of deduction

The following shall be deemed to be deduction from wages :

1. Every payment made by the employed person to the employer or his agent.
2. Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed, of any of the following penalties :

-The withholding of increment or promotion (including the shortage of increment at an efficiency bar);

-The reduction to a lower post or time scale or to a lower stage in a time scale; or

-Suspension;

b) Deduction which may be made from wages

Deduction authorized under the Act are enumerated in section 7(2). Any other deduction is unauthorized. Further, the authorized deduction can be made only in accordance with the provisions of the Act.

i) fines

ii) deduction for absence from duty;

iii) deduction for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default;

iv) deduction for house accommodation supplied by the employer or by Govt of any housing board set up under any law for the time being in force (whether the Govt. or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the State Govt. by notification in the Official Gazette.

v) Deduction for such amenities and services supplied by the employer as the state Government or any officer specified by it in this behalf may, by general or special order, authorize;

Fines [Section 7(2)(a) and 8]

1. The fine shall be imposed on any employed person only for acts and omissions which has received approval of the State Government or of the prescribed authority, and has been specified by notice under Sub-section (2).
2. A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.
3. The fine shall not be imposed on any employed person unless he has been given an opportunity of showing cause against the fine.
4. The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three percent of the wages payable to him in respect of that wage-period.
5. No fine shall be imposed on any employed person who is under the age of fifteen years.
6. No fine shall be imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.
7. Every fine shall be deemed to have been imposed on the day of the Act or omission in respect of which it was imposed.
8. All fines and all realization thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under Section 3 in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial the persons employed in the factory or establishment as are approved by the prescribed authority.

The Minimum. Wages Act, 1948

The Minimum Wages Act, 1948 envisages to provide minimum statutory wages for scheduled employments with a view to obviate the chances of exploitation of labor through payment of very low and sweating wages. The Act also provides for the maximum daily working hours, weekly rest day and overtime. Rates fixed under Minimum Wages Act prevail over the rates fixed under award/agreement. The Act applies to all establishments employing one or more persons and engaged in any Scheduled employment. The State Governments have been empowered to fix rates of wages for different classes of employees -skilled, unskilled, clerical, supervisory, etc. employed in any Scheduled employment and to review and revise the same from time to time, the interval between two revisions not to exceed five years, considering the change in price index and dearness allowance. Although the Minimum Wages Act, 1948 recognises the argument for providing minimum protections to the workers, it does not itself set a minimum wage for all works/occupations, leaving it to the states for fixing occupation-specific wages. This has led to anomalies which is evident by the sharp variation in wages among the different states and between the two genders in the country.

Object and scope

The main objective of this Act, is fixing a minimum rate of wages in number of industries where the labours are not organized and sweated labours are most dominant. The Act aims at preventing the exploitation of workers or labours in some industries, for which, the appropriate Government is empowered to take steps to prescribe minimum rates of wages in certain employment.

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

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

DEFINITIONS

IMPORTANT DEFINITIONS

***Appropriate Government* [Section 2(b)]**

“Appropriate Government” means –

(i) in relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act, the Central Government, and

(ii) in relation to any other scheduled employment, the State Government.

***Employee* [Section 2(i)]**

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

***Employer* [Section 2(e)]**

“Employer” means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled

employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except, in sub-section (3) of Section 26 –

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

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the Head of the Department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority;

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

The definitions of “employees” and “employer” are quite wide. Person who engages workers through another like a contractor would also be an employer (1998 LLJ I Bom. 629). It was held in *Nathu Ram Shukla v. State of Madhya Pradesh* A.I.R. 1960 M.P. 174 that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. Similarly, in case of *Loknath Nathu Lal v. State of Madhya Pradesh* A.I.R. 1960 M.P. 181 an out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of this Act.

***Scheduled employment* [Section 2(g)]**

“Scheduled employment” means an employment specified in the Schedule or any process or branch of work forming part of such employment.

Note: The schedule is divided into two parts namely, Part I and Part II. When originally enacted Part I of Schedule had 12 entries. Part II relates to employment in agriculture. It was realised that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result, the State Government and Central Government have made several additions to the Schedule and it differs from State to State.

***Wages* [Section 2(h)]**

“Wages” means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include:

(i) the value of:

(a) any house accommodation, supply of light, water medical;

(b) any other amenity or any service excluded by general or social order of the appropriate Government;

(ii) contribution by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling concession;

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

(v) any gratuity payable on discharge.

FIXATION OF MINIMUM RATES OF WAGES [Section 3(1)(a)]

Section 3 lays down that the ‘appropriate Government’ shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities: [*Basti Ram v. State of A.P.* A.I.R. 1969, (A.P.) 227].

Notwithstanding the provisions of Section 3(1)(a), the “appropriate Government” may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

REVISION OF MINIMUM WAGES

According to Section 3(1)(b), the ‘appropriate Government’ may review at such intervals as it may think fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

MANNER OF FIXATION/REVISION OF MINIMUM WAGES

According to Section 3(2), the ‘appropriate Government’ may fix minimum rate of wages for:

(a) time work, known as a Minimum Time Rate;

(b) piece work, known as a Minimum Piece Rate;

(c) a “Guaranteed Time Rate” for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and

(d) a “Over Time Rate” i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Section 3(3) provides that different minimum rates of wages may be fixed for –

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employments;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other large wage periods as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

However, where wage period has been fixed in accordance with the Payment of Wages Act, 1986 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

MINIMUM RATE OF WAGES (Section 4)

According to Section 4 of the Act, any minimum rate of wages fixed or revised by the appropriate Government under Section 3 may consist of –

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or

(ii) a basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates where so authorized; or

(iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions specified or given by the appropriate Government.

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (Section 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method [Section 5(1)(a)]

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages.

The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Section 5 is only an advisory body and that Government is not bound to accept its recommendations. As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government.

Second Method [Section 5(1)(b)]

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification.

Industrial Disputes Act 1947

The **Industrial Disputes Act 1947** extends to the whole of India and regulates Indian labour law so far as that concerns trade unions. It came into force April 1, 1947. The Industrial Disputes Act extends to whole of India and applies to every industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed therein. Every person employed in an establishment for hire or reward including contract labour, apprentices and part-time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act. This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity and drawing > 10,000 p.m or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison.

Definition

According to Sec. 2 of the Industrial Dispute Act, 1947, “Industrial dispute means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person” Industrial disputes are of symptoms of industrial unrest in the same way that boils are symptoms of a disordered body.

Whenever an industrial dispute occurs, both management and workers try to pressurize each other. The management may resort to lock-out and the workers may resort to strike, gherao, picketing, etc.

Objective

The objective of the Industrial Disputes Act 1947 is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations. This act deals with the retrenchment process of the employees, procedure for layoff, procedure and rules for strikes and lockouts of the company.

Concept of industrial disputes:

In common parlance, dispute means difference or disagreement of strife over some issues between the parties. As regards industrial dispute, since its settlement proceeds as per the legal provisions contained in the 'Industrial Disputes' Act, 1947, hence it seems pertinent to study the concept of industrial disputes from a legalistic angle.

According to Section 2 (k) of the Industrial Disputes Act, 1947, the term 'industrial dispute' means "any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment and conditions of employment of any person".

The above definition is too broad and includes differences even between groups of workmen and employers engaged in an industry. However, in practice, industrial disputes mainly relate to the difference between the workmen and the employers.

Dispute differs from discipline and grievance. While discipline and grievance focus on individuals, dispute focuses on collectivity of individuals. In other words, the test of industrial dispute is that the interest of all or majority of workmen is involved in it.

The following principles judge the nature of an industrial dispute:

1. The dispute must affect a large number of workmen who have a community of interest and the rights of these workmen must be affected as a class.
2. The dispute must be taken up either by the industry union or by a substantial number of workmen.
3. The grievance turns from individual complaint into a general complaint.
4. There must be some nexus between the union and the dispute.
5. According to Section 2A of the Industrial Disputes Act, 1947, a workman has a right to raise an industrial dispute with regard to termination, discharge, dismissal, or retrenchment of his or

her service, even though no other workman or any trade union of workman or any trade union of workmen raises it or is a party to the dispute.

Forms of Industrial Disputes:

The industrial disputes are manifested in the following forms:

Strikes: Strike is the most important form of industrial disputes. A strike is a spontaneous and concerted withdrawal of labour from production. The Industrial Disputes Act, 1947 defines a strike as “suspension or cessation of work by a group 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 accept employment”.

According to Patterson “Strikes constitute militant and organised protest against existing industrial relations. They are symptoms of industrial unrest in the same way that boils symptoms of disordered system”.

Depending on the purpose, Mamoria et. al. have classified strikes into two types: primary strikes and secondary strikes.

(i) Primary Strikes:

These strikes are generally aimed against the employers with whom the dispute exists. They may include the form of a stay-away strike, stay-in, sit-down, pen-down or tools- down, go-slow and work-to-rule, token or protest strike, cat-call strike, picketing or boycott.

(ii) Secondary Strikes:

These strikes are also called the ‘sympathy strikes’. In this form of strike, the pressure is applied not against the employer with whom the workmen have a dispute, but against the third person who has good trade relations with the employer.

However, these relations are severed and the employer incurs losses. This form of strike is popular in the USA but not in India. The reason being, in India, the third person is not believed to have any locus standi so far the dispute between workers and employer is concerned.

General and political strikes and bandhs come under the category of other strikes:

Lock-Outs:

Lock-out is the counter-part of strikes. While a 'strike' is an organised or concerted withdrawal of the supply of labour, 'lock-out' is withholding demand for it. Lock-out is the weapon available to the employer to shut-down the place of work till the workers agree to resume work on the conditions laid down by the employer. The Industrial Disputes Act, 1947 defined lock-out as "the temporary shutting down or closing of a place of business by the employer".

Lock-out is common in educational institutions also like a University. If the University authority finds it impossible to resolve the dispute raised by the students, it decides to close-down (or say, lockout) the University till the students agree to resume to their studies on the conditions laid down by the University authority. Recall, your own University might also have declared closure sometimes for indefinite period on the eve of some unrest / dispute erupted in the campus.

Gherao:

Gherao means to surround. It is a physical blockade of managers by encirclement aimed at preventing the egress and ingress from and to a particular office or place. This can happen outside the organisational premises too. The managers / persons who are gheraoed are not allowed to move for a long time.

Sometimes, the blockade or confinements are cruel and inhuman like confinement in a small place without light or fans and for long periods without food and water. The persons confined are humiliated with abuses and are not allowed even to answer "calls of nature".

Picketing and Boycott:

Picketing is a method designed to request workers to withdraw cooperation to the employer. In picketing, workers through display signs, banners and play-cards draw the attention of the public that there is a dispute between workers and employer.

Workers prevent their colleagues from entering the place of work and persuade them to join the strike. For this, some of the union workers are posted at the factory gate to persuade others not to enter the premises but to join the strike.

Boycott, on the other hand, aims at disrupting the normal functioning of the organisation. The striking workers appeal to others for voluntary withdrawal of co-operation with the employer. Instances of boycotting classes and examinations are seen in the Universities also.

DISPUTE SETTLEMENT AUTHORITIES UNDER THE ACT

(i) Works Committees:

This committee represents of workers and employers. Under the Industrial Disputes Act 1947, works committees exist in industrial establishments in which one hundred or more workmen are employed during the previous year.

It is the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employers and workers. It also deals with certain matters viz. condition of work, amenities, safety and accident prevention, educational and recreational facilities.

(ii) Conciliation Officers:

Conciliation Officers are appointed by the government under the Industrial Disputes Act 1947.

The duties of conciliation officer are given below:

(i) He has to evolve a fair and amicable settlement of the dispute. In case of public utility service, he must hold conciliation proceedings in the prescribed manner.

(ii) He shall send a report to the government if a dispute is settled in the course of conciliation proceedings along with the charter of the settlement signed by the parties.

(iii) Where no settlement is reached, conciliation officer sends a report to the government indicating the steps taken by him for ascertaining the facts, circumstances relating to dispute and the reasons on account of which settlement within 14 days of the commencement of the conciliation proceedings.

Boards of Conciliation:

The government can also appoint a Board of Conciliation for promoting settlement of Industrial Disputes. The chairman of the board is an independent person and other members (may be two or four) are to be equally represented by the parties to the disputes.

The duties of the board include:

(a) To investigate the dispute and all matters affecting the merits and do everything fit for the purpose of inducing the parties to reach a fair and amicable settlement.

(b) A report has to be sent to the government by the board if a dispute has been settled or not within two months of the date on which the dispute was referred to it.

(iii) Court of Enquiry:

The government may appoint a court of enquiry for enquiring into any industrial dispute. A court may consist of one person or more than one person in and in that case one of the persons will be the chairman. The court shall be required to enquire into the matter and submit its report to the government within a period of six months.

(iv) Labour Courts:

As per the Second Schedule of the Industrial Dispute Act 1947.

The Government sets up Labour Courts to deal with matters such as:

- (i) The propriety or legality of an order passed by an employer under the standing orders.
- (ii) The application and interpretation of standing orders passed.
- (iii) Discharge or dismissal of workmen including reinstatement, grant of relief to workers who are wrongfully dismissed.
- (iv) Withdrawal of any customary concession of privilege.
- (v) Illegality or otherwise of a strike or lockout, and all other matters not specified in the Third Schedule.

(v) Industrial Tribunals:

A Tribunal is appointed by the government for the adjudication of Industrial Disputes.

(vi) National Tribunal:

A National Tribunal is constituted by the Central Government for Industrial Disputes involving questions of national importance.

(vii) Arbitration:

The employer and employees may agree to settle the dispute by appointing an independent and impartial person called Arbitrator. Arbitration provides justice at minimum cost.

The Industrial employment (standing orders) Act, 1946

Section 2(g) “Standing orders” means rules relating to matters set out in the Schedule; ‘Standing Orders’ means rules of conduct for workmen employed in industrial establishments. The object of the Act is to require employers in industrial establishments to formally define conditions of employment under them.

Applicability of the Act –

The Act is applicable to all ‘industrial establishments’ employing 100 or more workmen. Provided that the appropriate Government may, after giving not less than two month’s notice of its intention so to do, by notification in the official Gazette, apply the provision of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

‘Industrial establishment’ means (i) an industrial establishment as defined in section 2(i) of Payment of Wages Act (ii) Factory as defined in section 2(m) of Factories Act (iii) Railway (iv) Establishment of contractor who employs workmen for fulfilling contract with owner of an industrial establishment. [section 2(e)].

The term ‘industrial establishment’ includes factory, transport service, construction work, mines, plantation, workshop, building activity, transmission of power etc.

Act not to apply to certain Industrial establishments. Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil “Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply.

MATTERS TO BE PROVIDED IN STANDING ORDERS UNDER

THIS ACT

1. Classification of workmen, *e.g.*, whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, an liability to search.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of he employer and workmen arising there from.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

The Trade Union Act, 1926

Trade Union [Sec. 2(h)]: Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions.

Provided that this Act shall not affect –

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession trade or handicraft.

Objectives:

Trade union is a voluntary organization of workers relating to a specific trade, industry or a company and formed to help and protect their interests and welfare by collective action. Trade union are the most suitable organisations for balancing and improving the relations between the employees and the employer. They are formed not only to cater to the workers' demand, but also for imparting discipline and inculcating in them the sense of responsibility. They aim to:-

- Secure fair wages for workers and improve their opportunities for promotion and training.
- Safeguard security of tenure and improve their conditions of service.
- Improve working and living conditions of workers.
- Provide them educational, cultural and recreational facilities.
- Facilitate technological advancement by broadening the understanding of the workers.
- Help them in improving levels of production, productivity, discipline and high standard of living.
- Promote individual and collective welfare and thus correlate the workers' interests with that of their industry.

- to take participation in management for decision-making in connection to workers and to take disciplinary action against the worker who commits in-disciplinary action.

Well known Central Trade Union Organizations in India:

- All India Trade Union Congress (AITUC)
- Bharatiya Mazdoor Sangh (BMS)
- Centre of Indian Trade Unions (CITU)
- Hind Mazdoor Kisan Panchayat (HMKP)
- Hind Mazdoor Sabha (HMS)
- Indian Federation of Free Trade Unions (IFFTU)
- Indian National Trade Union Congress (INTUC)
- National Front of Indian Trade Unions (NFITU)
- National Labor Organization (NLO)
- Trade Unions Co-ordination Centre (TUCC)
- National Mazdoor Union (NMU)

Definitions

Appropriate Government [Sec. 2]: In relation to Trade Unions whose objects are not confined to one state 'the appropriate Government' is the Central Government. In relation to other Trade Unions, the 'appropriate Government' is the State Government.

Executive [Sec. 2(a)]: Executive means the body of which the management of the affairs of a Trade Union is entrusted.

Trade Dispute [Sec. 2(g)]: A trade dispute means any dispute between the employers and workmen, the workmen and workmen and the employers and employers which is connected with the employment or non-employment, or the terms of employment, or the conditions of labour of any person. 'Workmen' mean all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

Trade Union [Sec. 2(h)]: Trade Union means any combination, whether temporary or

permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions.

Provided that this Act shall not affect -
(i) any agreement between partners as to their own business;
(ii) any agreement between an employer and those employed by him as to such employment; or
(iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession trade or handicraft.

REGISTRATION OF TRADE UNIONS

[Sec 3] Appointment of Registrars.

- The government will appoint a person to be a Registrar.
- The government will appoint required number of person as the Addition and deputy Registrar of the Trade Unions. These office will be under the Registrar of the Trade Union.

[Sec 4] Mode of registration

Minimum Requirement of Registration of Trade Union (2001 amendment)

(1) Any seven or more members of a trade union may, by subscribing their names to the rules of the trade union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the trade union under this Act. Provided that no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected .".

(2) Where an application has been made under sub-section (1) for the registration of a trade union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the trade union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the trade union or have given notice in writing to the Registrar dissociating themselves from the application.

[Sec 5] Application for Registration.

Every application for registration of a trade union shall be made to the Registrar and shall be accompanied by a copy of the rules of the trade union and a statement of the following particulars, namely-

- (a) the names, occupations and addresses of the members making application;
 - (aa) in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;".
- (b) the name of the trade union and the address of its head office; and
- (c) the titles, names, ages, addresses and occupations of the 8[office-bearers] of the trade union.

If Trade Union has already been existing for one year or more, for its registration the members should submit all the details such as general statement of the assets and liabilities of the Trade Union going to be registered by the Registrar of Trade Union.

[sec. 6] Provisions to be contained in the rules of a Trade Union (2001 amendment)

For registration of the Trade Union, provision or rules mentioned below should be followed by the member for registration of the Trade Union according to this act.

- a) The name of the Trade Union.

- b) The object of the Trade Union.

- c) General funds of the Trade Union by its members should be properly used for Lawful purpose.
- d) Maintenances of list of members in the Trade Union and their facilities to be provided.
- e) Half of the members of the trade union must be the member who actually engaged in an industry with which trade union is connected.
- (ee) the payment of a minimum subscription by members of the Trade Union which shall not be less than—
 - (i) one rupee per annum for rural workers;
 - (ii) three rupees per annum for workers in other unorganized sectors; and
 - (iii) twelve rupees per annum for workers in any other case;
- f) Disciplinary action against member of the Trade Union and procedures in imposition of fines on members.
- g) the manner in which the rules shall be amended, varied or rescinded;
- h) the manner in which the members of the executive and the other of the Trade Union shall be elected and removed
- (hh) executive members and other office bearers should be elected for the period of maximum 3 years..
- i) Funds of the Trade Union should be safe guarded, annual audit is necessary, and account books should be maintained for the purpose of inspection if necessary.

j) Procedure how to wind up the Trade Union

Power to call for further particulars and to require alteration of name. [Sec 7]

- If Registrar is not satisfy with information provided by the members of the Trade Union going to be registered, Registrar is having power to call its members for submitting the additional and required information for registering the Trade Union.
- If the Name of the Trade Union is already existed or similar to other Trade Unions names, registrar is having power to order for changing of the name.

[Sec 13] Features of Registered Trade Union.

- Registered Trade Union will have perpetual succession (will no stop after the death of the members of the Trade Union).
- Every registered Trade Union will have common seal.
- Every registered Trade Union can acquire and hold both movable and immovable property.
- Every registered Trade Union can sue others.
- Every registered Trade Union can sued by others also.

Rights and Liabilities of Registered Trade Unions:

1. Objects on Which General Funds May Be Spent:

The general funds of a registered trade union shall not be spent on any other objects than the payment of salaries, allowances and expenses to the office bearers of the trade unions; expenses for the administration of the trade union; the presentation or defiance of any legal proceeding to which the trade union of any member thereof is a party; the conduct of trade disputes and compensation of members for loss arising out of trade disputes; provision of education, social or religious benefits for members; upkeep of a periodical published.

2. Constitution of a Separate Fund for Political Purposes:

A registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civic and political interests of its members, in furtherance of any of the objects such as the payment of any expenses incurred, either directly or indirectly; the holding of any meeting or the distribution of any literature/documents in support of any such candidate; the registration of electors of the selection of a candidate for any legislative body constituted under or for any local authority; the registration of electors or the selection of a candidate for any legislative body constituted under/or for any local authority; holding of political meetings of any kind.

3. Criminal Conspiracy in Trade Disputes:

No office bearer or member of a registered trade union shall be liable to punishment under subsection (2) of Section 120 B of the Indian Penal Code, 1860 in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section its unless the agreement is an agreement to commit an offence.

4. Immunity from Civil Suit in Certain Cases:

(i) No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

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

5. Enforceability of Agreements:

Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered trade union shall not be void or voidable merely by reason of the fact that any to the subjects of the agreement are in restraint of the trade.

6. Right to Inspect Books of Trade Unions:

The account books of a registered trade union and the list of members thereof shall be open to inspection by an office bearer or member of the trade union at such times as may be provided for in the rules of the trade union.

7. Right of Minors to Membership of Trade Unions:

Any person who has attained the age of 18 years may be a member of a registered trade union subject to any rules of the trade union to the contrary, and may subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

8. Effects of Change of Name and of Amalgamation:

The change in the name of a registered trade union shall not affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union. An amalgamation of 2 or more registered trade unions shall not prejudice any right of any of such trade unions or any right of a creditor of any of them.

Latest legislations

Goods and Service Tax

Brief Intro: Introduction of Goods and Services Tax (GST) will indeed be an important perfection and the next logical step towards a widespread indirect tax reforms in India. As per, First Discussion Paper released by the Empowered Committee of the State Finance Ministers on 10.11.2009, it has been made clear that there would be a “Dual GST” in India, i.e. taxation power lies with both by the Centre and the State to levy the taxes on the Goods and Services.

The scheme was supposed to be implemented in India from 1st April 2016, however it may get delayed since the NDA government does not have majority in Rajya sabha (‘The upper house of parliament’ or ‘the house of states’).

Further, Punjab and Haryana were reluctant to give up purchase tax, Maharashtra was unwilling to give up octroi, and all states wanted to keep petroleum and alcohol out of the ambit of GST. Gujarat and Maharashtra want the additional one per cent levy extended beyond the proposed two years, and raised to two per cent. Punjab wants purchase tax outside GST.

Constitutional Amendment: While the Centre is empowered to tax services and goods upto the production stage, the States have the power to tax sale of goods. The States do not have the powers to levy a tax on supply of services while the Centre does not have power to levy tax on the sale of goods. Thus, the Constitution does not vest express power either in the Central or State Government to levy a tax on the ‘supply of goods and services’. Moreover, the Constitution also does not empower the States to impose tax on imports. Therefore, it is essential to have Constitutional Amendments for empowering the Centre to levy tax on sale of goods and States for levy of service tax and tax on imports and other consequential issue.

What is GST?

‘G’ – Goods

‘S’ – Services

‘T’ – Tax

“Goods and Service Tax (GST) is a comprehensive tax **levy on manufacture, sale and consumption of goods and service** at a national level under which no distinction is made between goods and services for levying of tax. It will mostly **substitute all indirect taxes** levied on goods and services by the Central and State governments in India.

GST is a tax on goods and services under which every person is liable to pay tax on his output and is entitled to get input tax credit (ITC) on the tax paid on its inputs (therefore **a tax on value addition only**) and ultimately the final consumer shall bear the tax”.

OBJECTIVES OF GST:

One of the main objective of Goods & Service Tax(GST) would be to eliminate the doubly taxation i.e. cascading effects of taxes on production and distribution cost of goods and services. The exclusion of cascading effects i.e. tax on tax till the level of final consumers will significantly improve the competitiveness of original goods and services in market which leads to beneficial impact to the GDP growth of the country. Introduction of a GST to replace the existing multiple tax structures of Centre and State taxes is not only desirable but imperative. Integration of various taxes into a GST system would make it possible to give full credit for inputs taxes collected. GST, being a destination-based consumption tax based on VAT principle.

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