



**KAMARAJ COLLEGE**  
SELF FINANCING COURSES  
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**STUDY MATERIAL FOR B.COM**

**INDUSTRIAL LAW**

**VI - SEMESTER**



**ACADEMIC YEAR 2022-23**

**PREPARED**

**BY,**

**DEPARTMENT OF COMMERCE (SF)**

**KAMARAJ COLLEGE,**

**THOOTHUKUDI.**



**III B. COM**  
**PART III - MAJOR CORE -19**  
**INDUSTRIAL LAW**

**Objectives**

1. To acquaint knowledge on industrial relations framework in our country
2. To study various rights and benefits available to the workmen under the legislations.

**Unit I**

The Factories Act, 1948- definitions - approval, licensing and registration of factories - duties of occupier - inspecting staff - certifying surgeons - provisions for health -safety - welfare - working hours and holidays- employment of young persons and women - annual leave with wages- penalties and procedure.

**Unit II**

Workmen's compensation Act 1923 - Scope and coverage - definitions - rules - personal injury by accident occupational diseases arising out of and in the course of employment - theory of national extension amount of compensation- distribution of the compensation- notice and claim. -

**Unit III**

Industrial Disputes Act 1947- object definitions- conciliation - machineryadjudication machinery- powers and duties of authorities - procedures - voluntary reference to arbitration - award - strike - and lock outs - lay off- retrenchment - transfer and closing down of their undertaking – penalties.

**Unit IV**

The Trade Unions Act, 1926 - Consumer Act 1986

**Unit V**

The Employees' State Insurance Act 1948 - The payment of Gratuity Act 1972.

**Text Books**

1. N.D. Kapoor, Elements of Mercantile Law, Sultan Chand & Sons.



2. S.M.Sundaram, Business Law / Commercial and Industrial Law,  
SreeMeenakshi Publication, Karaikudi.

**Reference Books:**

1. Sahanay, H.K, Commercial and Industrial Law, New Central Book Agency.
2. Goswami, V.G, Labour and Industrial Laws, Central Law Agency.
3. Sengupte, Commercial and Industrial Law, New Central Book Agency.
4. S.N. Mithra, Industrial Law.



## UNIT –I

### THE FACTORIES ACT, 1948

#### Definitions

The Factories Act, 1948 (Act No. 63 of 1948), as amended by the Factories (Amendment) Act, 1987 (Act 20 of 1987), serves to assist in formulating national policies in India with respect to occupational safety and health in factories and docks in India. It deals with various problems concerning safety, health, efficiency and well-being of the persons at work places.

#### Objectives of factories act 1948

##### 1. Working Hours:

According to the provision of working hours of adults, no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week. There should be a weekly holiday.

##### 2. Health:

For protecting the health of workers, the Act lays down that every factory shall be kept clean and all necessary precautions shall be taken in this regard. The factories should have proper drainage system, adequate lighting, ventilation, temperature etc.

Adequate arrangements for drinking water should be made. Sufficient latrine and urinals should be provided at convenient places. They should be easily accessible to workers and must be kept cleaned.

##### 3. Safety:

In order to provide safety to the workers, the Act provides that the machinery should be fenced, no young person shall work at any dangerous machine, in confined spaces, there should be provision for manholes of adequate size so that in case of emergency the workers can escape.

##### 4. Welfare:

For the welfare of the workers, the Act provides that in every factory adequate and suitable facilities for washing should be provided and maintained for the use of workers. Facilities for toring and drying clothing, facilities for



sitting, first-aid appliances, shelters, rest rooms' and lunch rooms, crèches, should be there.

### **5. Penalties:**

The provisions of The Factories Act, 1948, or any rules made under the Act, or any order given in writing under the Act is violated, it is treated as an offence. The following penalties can be imposed:

- a) Imprisonment for a term which may extend to one year;
- b) Fine which may extend up to one lakh rupees
- c) Both fine and imprisonment.

If a worker misuses an appliance related to welfare, safety and health of workers, or in

relation to discharge of his duties, he can be imposed a penalty of Rs. 500/-.

## **IMPORTANT DEFINITIONS**

### **Adult**

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

### **Adolescent**

“Adolescent” means a person who has completed his fifteen years of age but not his eighteen.

### **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 fifteen year of age. [Section 2(c)]

### **Competent Person**

“Competent Person” in relation to any provision of this Act, means a person or an institution recognized 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 recognized 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
- 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)]

## **Machinery**

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

## **HEALTH OF WORKERS**

### **Cleanliness:**

Every factory shall be kept clean and free from dirt, and the outflow of drains etc. The floors must be cleaned. Drainage shall be provided. Inside walls, partitions and ceilings ( must be repainted at least once in five years. When washable water paint is used, they must be painted once every three years and washed at least every period of six months-Sec. 11, as amended in 1976.

### **Disposal of wastes and effluents:**

The waste materials produced from the manufacturing process must be effectively disposed of Sec. 12.

### **Ventilation and Temperature:**

There must be provision for adequate ventilation by the circulation of fresh air: The temperature must be kept at a comfortable level. Hot parts of machines must be separated and insulated of Sec. 13.

### **Dust and Fume:**

If the manufacturing process used gives off injurious or offensive dust and fume steps must be taken so that they are not inhaled or accumulated. The exhaust fumes of internal combustion engines must be evacuated outside the factory of Sec. 14.



### **Artificial humidification:**

The water used for this purpose must be pure. It must be taken from source of drinking water supply. The State Government can frame rules regarding the process of humidification etc. of Sec15.

### **Over Crowding:**

There must be no overcrowding in a factory. In factories existing before the commencement of the Act there must be at least 350 cubic ft. of space per worker. For factories built afterwards, there must be at least 500 cubic ft. of space. In calculating the space, an account is to be taken for space above 14 ft. from the floor of Sec. 16

### **Lighting:**

Factories must be well lighted. Effective measures must be adopted to prevent glare or formation of shadows which might cause eyestrain of Sec. 17.

### **Drinking water:**

Arrangements must be made to provide a sufficient supply of wholesome drinking water. All supply' points of such water must be marked "drinking water". No such points shall be within 20 ft. of any latrine, washing place etc. Factories employing more than 250 workers must cool the water during the hot weather of Sec. 18.

### **Latrines and Urinals:**

Every factory must provide' sufficient number of latrines and urinals. There must be separate provision for male and female workers. Latrine and urinals must be kept in a clean and sanitary condition. In factories employing more than 250 workers, they shall be of prescribed sanitary types of Sec 19.

## **SAFETY OF WORKERS**

### **Fencing of machinery :**

All dangerous machinery must be securely fenced e.g., moving parts of prime movers and flywheels connected to every prime mover, electric generators, etc. of Sec 21. Work on or near machinery in motion: Work on or near machinery in motion must be carried out only by specially trained adult male workers wearing tightly fitting clothes of Sec. 22.





### **Employment of young person's on dangerous machines:**

No young person shall work at any dangerous machine unless he has been specially instructed as to the dangers and the precautions to be observed and has received sufficient training about the work and to be kept under the supervision of some person having a good knowledge and experience about the machine of Sec 23.

### **Striking gear and devices for cutting off power:**

In every factory suitable device for cutting off Power in emergencies from running machinery shall be provided and maintained in every work room of 24.

### **Self-acting machines:**

Moving parts of a self-acting machine must not be allowed to come within 45cms of any fixed structure which is not part of the machine of Sec 25.

### **Casing of new machinery:**

In all machinery installed after the commencement of the act certain parts must be sunk, encased or otherwise effectively guarded like set screw bolt, toothed gearing etc. of Sec 26.

### **Women and children near cotton Openers:**

Women and children must not be allowed to work near cot/On openers, except in certain cases of Sec 27.

### **Hoists, lifts, chains etc.:**

Every hoist and lift must be so constructed as to be safe. There are detailed rules as to how such safety is to be secured. There are similar provisions regarding lifting machines, chains, and ropes and lifting tackle of Sec 28 & 29.

### **Revolving machinery:**

Where grinding is carried on the maximum safe working speed of every revolving machinery, connected therewith must be notified. Steps must be taken to ensure that the safe speed is not exceeded of Sec 30.



### **Pressure plant:**

Where any operation is carried on at a pressure higher than the atmospheric pressure, steps must be taken to ensure that the safe working pressure is not exceed of Sec.

### **Floors, stairs and means of access:**

All floors, steps, stairs, passage and gangways shall be of sound construction and properly maintained. Handrails shall be provided where necessary. Safe means of access shall be provided to the place where the worker will carry on any work of Sec 32.

### **Pits, sumps openings in floors etc.:**

Pits, sumps openings in floors etc. must be securely covered or fenced of Sec 33.

### **Excessive weights:**

No worker shall be made to carry a load so heavy as to cause him injury of Sec 34.

### **Protection of eyes:**

Effective screen or suitable goggles shall be provided to protect the eyes of the worker from fragments thrown off in course of any manufacturing process and from excessive light if any. -Sec. 35.

### **Precautions against dangerous fumes:**

No person shall be allowed to enter any chamber. Tank etc. where dangerous fumes are likely to be present. Unless it is equipped with a manhole or other means of going out. In such space no portable electric light of more than 24, volts shall be used. Only a lamp or light of flame proof construction can be used in such space. For people entering such space suitable breathing apparatus, reviving apparatus etc. shall be provided. Such places shall be cooled by ventilation before any person is allowed to enter. -8ecs. 36 and 36A.

### **Precaution in case of fire:**

Fire escapes shall be provided. Windows and doors shall be constructed to open outwards. The means of exit in case of the fire shall be clearly marked



in red letters. Arrangements must be made to give warning in case of fire -sec. 38

### **Specifications of defectives etc. and safety of buildings and machinery:**

If any building or machine is in a defective or dangerous condition, the inspector of factories can ask for holding tests to determine how they can be made safe. He can also direct the adoption of the measure necessary to make them safe. In case of immediate danger, the use of the building or machine can be prohibited. -Sec. 39, 40.

### **Maintenance of Buildings:**

If the Inspector of Factories thinks that any building in a factory, or any part of it is in such a state of disrepair that it is likely to affect the health and welfare of the workers he may serve on the occupier or manager or both in writing specifying the measures to be done before the specified date. Sec. 40A.

### **Safety Officers:**

The State Government may notify to the occupier to employ a number of Safety Officers in a factory (i) wherein one thousand or more workers are ordinarily employed or (ii) wherein any manufacturing process or operation which involves the risk of bodily injury, poisoning, disease or any other hazard to health of the persons employed in the factory -Sec. 40B.

### **WELFARE OF WORKERS:**

#### **Washing:**

In every factory adequate and suitable facilities for washing shall be provided and maintained. They shall be conveniently accessible and shall be kept clean. There must be separate provisions for male and female workers - Sec. 42.

#### **Storing and drying:**

The State Government may make rules requiring the provision of suitable facilities for storing and drying clothing - Sec. 43.

#### **Sitting:**

Sitting facilities must be provided for workers who have to work in a standing position so that they may take rest when possible. If work can be done



in a sitting position efficiently the Chief Inspector may direct the provision of sitting arrangements- Sec. 44.

### **First Aid:**

Every factory must provide first aid boxes or cupboard. They must contain the prescribed materials and they must be in charge of persons trained in first aid treatment. Factories employing more than 500 persons must maintain an ambulance room containing the prescribed equipment and in charge of the prescribed medical and nursing staff - Sec. 45.

### **Canteens:**

Where more than 250 workers are employed the state Government may require the opening of canteen or canteens for workers. Rules may be framed regarding the food served its management etc. - Sec. 46.

### **Shelters:**

In every factory where more than 150 workers are employed there must be provided adequate and suitable shelters or rest rooms and a lunch room (with drinking water supply) where workers may eat meals brought by them. Such rooms must be sufficiently lighted and ventilated and must be maintained in a cool and clean condition. The standards may be fixed by the State Government - Sec. 47

### **Creches:**

In every factory where more than 30 women are employed, a room shall be provided for the use of the children (below 6 years) of such women. The room shall be adequate size, well lighted and ventilated, maintained in a clean and sanitary condition and shall be in charge of a woman trained in the care of children and infants. The standards shall be laid down by the State Government -Sec. 48.

### **Welfare officers:**

Welfare officers must be appointed in every factory where 500 or more workers are employed. The State Government may prescribe the duties, qualifications etc. of such officers- Sec. 49.

### **Employment of young persons:**



### **1) Prohibition of employment of young children (Sec. 67)**

No child who has not completed his fourteenth year shall be required or allowed to work in any factory. It is the duty of the employer to ascertain the age of the children whom he allows to work in any factory. Where a child labourer was found guilty and convicted in contravention of Section 67 of the Factories Act, he shall be liable to minimum penalty as prescribed under Section 14(1) of the Child Labour (Prohibition and Regulation) Act, 1986.

### **2) Non-adult workers to carry tokens (Sec. 68)**

A certificate of fitness granted with reference under Section 69 is in the custody of the manager of the factory, and such child or adolescent carries while at work a token giving a reference to such certificate. A child who has completed his fourteenth year or an adolescent can be required or allowed to work in any factory if a certificate of fitness granted with reference to him under Section 69 is in custody of the manager of the factory, and such child or adolescent carries while he is at work a token giving a reference to such certificate.

### **3) Certificates of fitness (Sec. 69)**

- A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.
- The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew.
- A certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work.
- A certificate of fitness of work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year and fit for a full day's work in a factory; Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he



shall not grant or renew a certificate under this sub-section until he has examined such place.

- A certificate of fitness granted or renewed under sub-section (2):
  - a) shall be valid only for a period of twelve months from the date thereof;
  - b) May be subjected to conditions in regard to the nature of the work in which the young person may be employed or requiring re-examination before the expiry of the period of twelve months.
- A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.
- Where a certifying surgeon refuses to grant/renew or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, may state his reasons for inapplicability.
- Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in Clause (b) of sub-section (3) the young person shall not be required or allowed to work in any factory except in accordance with those conditions.
- Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

#### **4) Effect of certificate of fitness granted to adolescent (Sec. 70) (1)**

An adolescent who has been granted a certificate of fitness to work in a factory as an adult under Clause (b) of sub-section (2) of Section 69, 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. & 7 P.M.: Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group of factories,

- May vary the limits laid down in this sub-section so, that no such section shall authorize the employment of any female adolescent between 10 p.m.

and 5 a.m.;grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved".





- (2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid Clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

#### **5) Working hours for children (Section 71) (1)**

##### **No child shall be employed or permitted to work, in any factory:**

For more than four and a half hours in any day; during the night.

##### **Explanation:**

For the purpose of this sub-section 'night' shall mean a period of at least twelve consecutive hours which shall include the interval between 10 p.m. and 6 a.m. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission of the Chief Inspector be changed more frequently once in a period of thirty days. The provisions of Section 52 shall apply also to child workers, and no exemption from the provisions of that section may be granted in respect of any child. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory. No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

#### **6) Notice of periods of work for children (Sec. 72) (1)**

They shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (2) of Section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

#### **7) Register of child workers (Sec. 73)**

The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during which working hours or when any work is being carried on in a factory; showing:



- i. The name of each child worker in the factory
- ii. The nature of his work
- iii. The group, if any, in which he is included
- iv. where his group works on shifts, the relay to which he is allotted; and
- v. The number of his certificate of fitness granted under Section 69. (1-A)  
No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.
- vi. The State Government may prescribe the register of child workers, the manner in which it should be maintained and the period for which it should be preserved.

**8) Hours of work to correspond with notice under Section 72 and register under Section 73 (Sec. 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.

**9) Power to require medical examination (Sec. 75)**

- i. That any person working in a factory without a certificate of fitness is a young person, or
- ii. That a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate to fitness or a fresh certificate of fitness, as the case may be under Section 69, has been certified by the certifying surgeon examining him not to be a young person.

**10) Power to make rules (Sec. 76) (1)**

- Prescribing the forms of certificates of fitness to be granted under Section 69, providing for the grant of duplicates in the event of loss of the original certificates, and fixing fees which may be charged for such certificates, and renewals thereof for such duplicates;
- Prescribing the physical standards to be attained by children and adolescents working in factories;





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- Regulating the procedure of certifying surgeons under this Chapter;
- Specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.



## UNIT - II

### THE WORKMENS COMPENSATION ACT

#### MEANING

Workers' compensation is a publicly sponsored system that pays monetary benefits to workers who become injured or disabled in the course of their employment. Workers' compensation is a type of insurance that offers employees compensation for injuries or disabilities sustained as a result of their employment.

#### SCOPE OF THIS ACT

- i. Factories
- ii. Mines
- iii. Plantations
- iv. Transport establishments
- v. Constructions
- vi. Railways
- vii. Other hazardous occupation and employments specified schedule II to the act
- viii. Members of armed forces pf the union
- ix. Employees covered by the employee's state insurance act.1948
- x. Casual employee not employed to do the work of the principal employer.

#### Objectives of the act

1. To provide adequate compensations to the injured workmen in case of accident.
2. To prevent accident.
3. To protect workmen and their dependents from being deprived of economic security on account of accidents occurred to them arising out of employments and in the course of employment.
4. To provide compensation for certain occupational diseases.

#### DEFINITION

##### Dependent

Dependent means any of the following relatives of a deceased workman, namely: -



- I. A widow a minor legitimate son, and unmarried legitimate 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 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;]

### **Meaning**

### **Disablement**

The expression "disablement" means loss of capacity to work or to move. Disablement which reduces the earning capacity of an employee. Injury caused to an employee by an accident resulting in the loss of earning capacity is technically called disablement. In other words, a person is incapacitated to work or to move as a consequence of an accident.

### **(A) Temporary disablement**

Temporary disablement means disablement in doing normal work lasts (continuous) for a temporary period. Temporary disablement is subdivided into following two heads

#### **i. Temporary total disablement**

Temporary total disablement incapacitates a workman to do every work, which he could do. It lasts for the temporary period.



ii. Temporary partial disablement

Temporary partial disablement reduces the earning capacity of the workmen in doing every work which he could do before the accident. It lasts for a temporary period.

**(B) Permanent disablement:**

Permanent disablement means disablement arising out of the accident. It lasts forever, for

example, permanent in nature. It is sub-divided under the following two heads –

i. Permanent total disablement -

If employee as a result of an accident suffers from injury specified in part I of Schedule I (The Workmen's Compensation Act, 1923) or suffer from such a combination of injuries specified in part 2 Schedule I as would bring the loss of earning capacity when totaled to 100% or more such an injury is said to be permanent total disablement.

To determine whether the injury is permanent or temporary the total effect of injury on the employment opportunities of the employee concerned is the deciding Criterion. In simple words, the accident in capacities loss of 100% earning capacity forever

ii. Permanent partial disablement –

Permanent partial disablement reduces earning capacity in every work, which he could do well. It is permanent in nature every injury specified in part II Schedule I is Deemed to be permanent partial disablement. (Part-I, Schedule-I contains 48 Injuries, for example, loss of thumb 30% loss of 4 fingers of one hand 50% etc.

**Accident Arising Out of and in The Course of Employment**

- i. An accident arising out of employment implies a causal connection between the injury and the accident and the work done in the course of employment. Employment should be the distinctive and the proximate cause of the injury. The three tests for determining whether an accident arose out of employment are:
- ii. At the time of injury workman must have been engaged in the business of the employer and must not be doing something for his personal benefit;



- iii. That accident occurred at the place where he is performing his duties; and
- iv. Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature condition of employment.
- v. The general principles that are evolved are:
- vi. There must be a causal connection between the injury and the accident and the work done in the course of employment;
- vii. The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.
- viii. It is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and
- ix. Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury it would be enough for the workman to succeed.
- x. But when the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of employment or where the accident was the result of an added peril to which the workman by his own conduct exposed himself, which peril was not involved in the normal performance of the duties of his employment, then the employer will not be liable.

### **Compensation in The Case of Occupational Diseases**

- Workers employed in certain types of occupations are exposed to the risk of contracting certain diseases, which are peculiar and inherent to those occupations. A worker contracting an occupational disease is deemed to have suffered an accident out of and in the course of employment and the employer is liable to pay compensation for the same.
- Occupational diseases have been categorized in Parts A, B and C of Schedule III. The employer is liable to pay compensation:
- When a workman contracts any disease specified in Part B, while in service for a continuous period of 6 months under one employer.
- When a workman contracts any disease specified in Part C, while he has been in continuous service for a specified period, whether under one or more employers.
- If an employee has after the cessation of that service contracted any disease specified in the said Part B or Part C, as an occupational disease



peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of the Act.

### **Calculation of Compensation.**

- The amount of compensation payable by the employer shall be calculated as follows:
- In case of death. - 50% of the monthly wages X Relevant Factor or Rs. 50,000, whichever is more. And Rs. 1000 for funeral expenses.
- In case of total permanent disablement Specified under Schedule I - 60% of the monthly wages X Relevant Factor or Rs. 60,000, whichever is more?
- In case of partial permanent disablement specified under Schedule I - Such percentage of the compensation payable in case (2) above as is the percentage of the loss in earning capacity (specified in Schedule I)
- In case of partial permanent disablement not specified under Schedule I .-Such percentage of the compensation payable in case (2) above, as is proportionate to the loss of earning Capacity (as assessed by a qualified medical practitioner).
- In case of temporary disablement (whether total or partial). - A half-monthly installment equal to 25% of the monthly wages, for the period of disablement or 5years, whichever is shorter.

### **When Compensation is to be deposited with Commissioner**

The amount of compensation is not payable to the workman directly. It is generally deposited along with the prescribed statement, with the Commissioner who will then pay it to the workman. Any payment made to the workman or his dependents, directly, in the following cases will not be deemed to be a payment of compensation:

#### **In case of death of the employee;**

- In case of lump sum compensation payable to a woman or a minor or a person of unsound mind or whose entitlement to the compensation is in dispute or a person under a legal disability.
- Besides, compensation of Rs. 10 or more may be deposited with the Commissioner on behalf of the person entitled thereto.



- The receipt of deposit with the Commissioner shall be a sufficient proof of discharge of the employer's liability.

### **AMOUNTS PERMISSIBLE TO BE PAID TO THE WORKMAN/DEPENDENTS DIRECTLY**

Following amounts may be paid directly to the workman or his dependents:

- In case of death of the workman, any advance on account of compensation up to [an amount equal to three months' wages of such workman] may be paid to any dependent.
- In case of lump sum compensation payable to an adult male worker not suffering from any legal disability
- In case of half-monthly payments payable to any workman

### **Registration of Agreements of Compensation**

Where the amount payable as compensation has been settled by agreement a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied about its genuineness, record the memorandum in a registered manner.

However if it appears to the Commissioner that the agreement ought not to be registered by reason of the inadequacy of the sum or amount, or by reason that the agreement has been obtained by fraud or undue influence or other improper means he may refuse to record the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.

An agreement for payment of compensation which has been registered shall be enforceable under this act notwithstanding anything contained in the Indian Contract Act, or any other law for the time being in force.

### **EFFECT OF FAILURE TO REGISTER AGREEMENT**

When a memorandum of any agreement is not sent to the Commissioner for registration, the employer shall be liable to pay the full amount of compensation, which he is liable to pay under the provisions of this Act.

### **Filing of Claims**

- A claim for the compensation shall be made before the Commissioner.





- No claim for compensation shall be entertained by the Commissioner unless the notice of accident has been given by the workman in the prescribed manner, except in the following circumstances:
- In case of death of workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working died on such premises or such place or in the vicinity of such premises or place;
- In case the employer has knowledge of the accident from any other source, at or about the time of its occurrence;
- In case the failure to give notice or prefer the claim, was due to sufficient cause.

### **LIMITATION**

Workman, to the Commissioner, may file the claim for accident compensation in the prescribed form, within 2 years from the occurrence of the accident or from the date of death. The claim must be preceded by a notice of accident, and the claimant-employee must present himself for medical examination if so, required by the employer.

### **Attachment and Assignment of Compensation:**

No compensation payable under this Act, whether in lumpsum or half-monthly payments, can be attached, charged or passed on to any person other than workman by operation of law, nor can it be set off against any other claim.

### **Duties of Employer/Employees**

- To pay compensation for an accident suffered by an employee, in accordance with the Act.
- To submit a statement to the Commissioner (within 30 days of receiving the notice) in the prescribed form, giving the circumstances attending the death of a workman as result of an accident and indicating whether he is liable to deposit any compensation for the same.
- To submit accident report to the Commissioner in the prescribed form within 7 days of the accident, which results in death of a workman or a serious bodily injury to a workman.
- To maintain a notice book in the prescribed form at a place where it is readily accessible to the workman.





- v. To submit an annual return of accidents specifying the number of injuries for which compensation has been paid during the year, the amount of such compensation and other prescribed particulars.

### **DUTIES OF EMPLOYEES**

- i. To send a notice of the accident in the prescribed form, to the Commissioner and the employer, within such time as soon as it is practicable for him. The notice is a precondition for the admission of the claim for compensation.
- ii. To present himself for medical examination, if required by the employer.

### **EMPLOYER'S LIABILITY FOR COMPENSATION**

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

### **OCCUPATIONAL DISEASES:**

- a. Part A of schedule III
- b. Part B of schedule III
- c. Part C of schedule III

### **PERSONAL INJURY:**

- a. Personal injury
- b. Accident
- c. Arising out of employment & in course of employment

### **EMPLOYER IS NOT LIABLE WHEN:**

- a. Disablement not exceeding 3 days
- b. Accident due to influence of drink, drugs or disobeyed orders, disregards of safe guards

### **Occupational Diseases**

Workers employed in certain occupations are exposed to certain diseases which are inherent [its character] in those occupations.

- a. Infections due to contamination.
- b. Infra-red radiations.
- c. Skin diseases [Chemical, Leather Processing Units].



- d. Hearing impairment caused by noise.
- e. Lung Cancer caused by asbestos dust.
- f. Diseases due to effect of heat/cold in extreme hot/cold climate, etc.

Section 4(1) in the Workmen' S Compensation Act, 1923

Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

- a. Where death results an amount equal to forty per from the injury cent. of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of twenty thousand rupees, whichever is more;
- b. Where permanent total an amount equal to fifty per disablement results from cent. of the monthly wages the injury of the injured workman multiplied by the relevant factor; or an amount of twenty- four thousand rupees, whichever is more;

### **Explanation I**

For the purposes of clause (a) and clause (b)," relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

### **Explanation II**

Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be one thousand rupees only,

- a. Where permanent or partial (i) in the case of an injury disablement results from specified in Part II of Schedule the injury I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
- b. In the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is
- c. proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;



### **Explanation I**

Where more injuries than one is caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

### **Explanation II**

In assessing the loss of earning capacity for the purposes of sub- clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I; Where temporary disable- a half- monthly payment of the employment, whether total or sum equivalent to twenty- five partial result from the per cent. of monthly wages of injury, the workman, to be paid in accord- dance with the provisions of sub- section 2. (2) The half-monthly payment referred to in clause (d) of sub- section (1) shall be payable on the sixteenth day- from the date of disablement where such disablement lasts for a period of twenty- eight days or more, or- after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half- monthly during the disablement or during a period of five years, whichever period is shorter: Provided that--- there shall be deducted from any lump sum or half- monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half- monthly payment, as the case may be; and- no half- monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

### **Explanation**

Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

### **Method of calculating wages**



In this Act and for the purposes thereof the expression “monthly wages” means the amount of wages deemed to be payable for a month’s service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated] as follows, namely: —

1. Where the workman, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

2. Where the whole of the continuous period of service immediately preceding the accident during which the workman was in service with the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality;

3. In other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

### **Explanation**

A period of service shall, for the purposes of 8 [this section] be deemed to be continuous

which has not been interrupted by a period of absence from work exceeding fourteen days.



## UNIT - III

### INDUSTRIAL DISPUTES ACT 1947

#### MEANING

Industrial disputes are collective dissent and protest against the terms and conditions of employment and work. In the Industrial Disputes Act, 1947, an Industrial dispute means “Difference between employer and employer or between employer and workmen or between workmen and workmen, or any dispute among these which are related to the employment or non-employment or terms and conditions of employment of any person”.

#### Objectives:

The objectives of Industrial laws are:

- a. To safeguard the workers against exploitation.
- b. To maintain good relationship between employees and employers.
- c. To provide and improve the welfare, amenities of workers.
- d. To settle industrial disputes.
- e. The Act provides machinery for the settlement of disputes by arbitration or adjudication.
- f. It attempts to ensure social justice and economic progress by fostering industrial harmony.
- g. It enables workers to achieve their demands by means of legitimate weapon of strike and thus facilitates collective bargaining.
- h. It prohibits illegal strikes and lockouts.
- i. It provides relief to the workman in the event of layoff or retrenchment.

#### METHODS FOR SETTLEMENT

The three methods for settlement of industrial disputes are as follows:

1. Conciliation
2. Arbitration
3. Adjudication

Failure of the employees and the employers to sort out their differences bilaterally leads to the emergence of industrial disputes. The Industrial Disputes Act, 1947 provides legalistic machinery for settlement of such disputes



by involving the interference of a third party. The settlement machinery as provided by the Act consists of the three methods:

1. Conciliation
2. Arbitration
3. Adjudication

### **1. Conciliation:**

In simple sense, conciliation means reconciliation of differences between persons. Conciliation refers to the process by which representatives of workers and employers are brought together before a third party with a view to persuading them to arrive at an agreement by mutual discussion between them. The alternative name which is used for conciliation is mediation.

In view of its objective to settle disputes as quickly as possible, conciliation is characterized by the following features:

- a. The conciliator or mediator tries to remove the difference between the parties.
- b. He/she persuades the parties to think over the matter with a problem-solving approach, i.e., with a give and take approach.
- c. He/she only persuades the disputants to reach a solution and never imposes his/her own viewpoint.
- d. The conciliator may change his approach from case to case as he/she finds fit depending on other factors.

According to the Industrial Disputes Act 1947, the conciliation machinery in India consists of the following:

- a. Conciliation Officer
- b. Board of Conciliation
- c. Court of Enquiry

### **Conciliation Officer:**

- a. The Industrial Disputes Act, 1947, under its Section 4, provides government to appoint such number of persons as it thinks fit to be conciliation officers. Here, the appropriate government means one in whose jurisdiction the disputes fall.





- b. While the Commissioner /additional commissioner/deputy commissioner is appointed as conciliation officer for undertakings employing 20 or more persons, at the State level, officers from central Labour Commission office are appointed as conciliation officers, in the case of Central government. The conciliation officer enjoys the powers of a civil court. He is expected to give judgment within 14 days of the commencement of the conciliation proceedings. The judgement given by him is binding on the parties to the dispute.

### **Board of Conciliation:**

- i. In case the conciliation officer fails to resolve the dispute between the disputants, under Section 5 of the Industrial Disputes Act, 1947, the appropriate government can appoint a Board of Conciliation. Thus, the Board of Conciliation is not a permanent institution like conciliation officer. It is an adhoc body consisting of a chairman and two or four other members nominated in equal numbers by the parties to the dispute.
- ii. The Board enjoys the powers of civil court. The Board admits disputes only referred to it by the government. It follows the same conciliation proceedings as is followed by the conciliation officer. The Board is expected to give its judgment within two months of the date on which the dispute was referred to it.
- iii. In India, appointment of the Board of Conciliation is rare for the settlement of disputes. In practice, settling disputes through a conciliation officer is more common and flexible.

### **2.Arbitration:**

- i. Arbitration is a process in which the conflicting parties agree to refer their dispute to a neutral third party known as 'Arbitrator'. Arbitration differs from conciliation in the sense that in arbitration the arbitrator gives his judgment on a dispute while in conciliation, the conciliator disputing parties to reach at a decision.
- ii. The arbitrator does not enjoy any judicial powers. The arbitrator listens to the view points of the conflicting parties and then gives his decision which is binding on all the parties. The judgment on the dispute is sent to the government. The government publishes the judgment within 30 days of its submission and the same becomes enforceable after 30 days of its



- iii. publication. In India, there are two types of arbitration: Voluntary and Compulsory.

### **Voluntary Arbitration:**

In voluntary arbitration both the conflicting parties appoint a neutral third party as arbitrator. The arbitrator acts only when the dispute is referred to him/her. With a view to promote voluntary arbitration, the Government of India has constituted a tripartite National Arbitration Promotion Board in July 1987, consisting of representatives of employees (trade employers and the Government. However, the voluntary arbitration could not be successful because the judgments given by it are not binding on the disputants. Yes, moral binding is exception to it.

### **Compulsory Arbitration:**

In compulsory arbitration, the government can force the disputing parties to go for compulsory arbitration. In other form, both the disputing parties can request the government to refer their dispute for arbitration. The judgment given by the arbitrator is binding on the parties of dispute.

### **3.Adjudication:**

The ultimate legal remedy for the settlement of an unresolved dispute is its reference to adjudication by the government. The government can refer the dispute to adjudication with or without the consent of the disputing parties. When the dispute is referred to adjudication with the consent of the disputing parties, it is called 'voluntary adjudication.' When the government itself refers the dispute to adjudication without consulting the concerned parties, it is known as 'compulsory adjudication.

The Industrial Disputes Act, 1947 provides three-tier machinery for the adjudication of industrial disputes:

- a. Labour Court
- b. Industrial Tribunal
- c. National Tribunal

### **Labour Court:**

Under Section 7 of the Industrial Disputes Act, 1947, the appropriate Government by notifying in the official Gazette, may constitute Labour Court for adjudication of the industrial disputes The labour court consists of one





independent person who is the presiding officer or has been a judge of a High Court, or has been a district judge or additional district judge for not less than 3 years, or has been a presiding officer of a labour court for not less than 5 years. The labour court deals with the matters specified in the second schedule of the Industrial Disputes Act, 1947. These relate to:

- a. The property or legality of an employer to pass an order under the standing orders.
- b. The application and interpretation of standing orders.
- c. Discharge or dismissal of workers including reinstatement or grant of relief to workmen wrongfully dismissed.
- d. Withdrawal of any statutory concession or privilege.
- e. Illegality or otherwise of a strike or lockout.
- f. All matters other than those reserved for industrial tribunals.

### **Industrial Tribunal:**

Under Section 7A of the Act, the appropriate Government may constitute one or more Industrial tribunals for the adjudication of industrial disputes. Compared to labour court, industrial tribunals have a wider jurisdiction. The matters that come within the jurisdiction of an industrial tribunal include the following:

- Wages, including the period and mode of payment.
- Compensatory and other allowances.
- Hours of work and rest periods.
- Leave with wages and holidays.
- Bonus, profit sharing, provident fund, and gratuity.
- Classification by grades.
- Rules of discipline.
- Rationalization
- Retrenchment of employees and closure of an establishment or undertaking.
- Any other matter that can be prescribed.

### **National Tribunal:**

This is the third one-man adjudicatory body appointed by the Central Government by notification in the Official Gazette for the adjudication of industrial disputes of national importance.



## **STRIKS AND LOCKOUT**

Strikes means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

### **Features of strikes**

1. There must be cessation of work or refusal to do work with common intention.
2. There must be employer and employee relationship.
3. It must be done a body of individuals employed in an industry.
4. It must centre action.

### **Kinds of strike**

1. General strike
2. Sit down strike
3. pen down strike
4. Tool down strike
5. Hunger strike
6. Work to rule, etc.,

## **LOCKOUT**

Lock out is closing of place of employment or the suspension of work or the refusal by any number to continue to employ any number of persons employed by him. Its temporary closing of place of employment.

### **Essentials of a lockout:**

- a) There is temporary closing of the place of employment, or suspension or withholding of the work by the employer in some form.
- b) There is an element of demands for which the place of employment is locked -out or closed. That, is it is done by the employer to press his demand among the workman.
- c) There is an intension to re-employ the workers if they accept the demands.

### **Lay off:**



Lay off means the failure, refusal or inability of an employer to give employment to a workman

- a) Whose name is borne on the muster rolls of his industrial establishment?
- b) Who has not been entrenched.

Lay off means the failure, refusal or inability to provide employment on account of

1. Shortage of coal, power, or raw material.
2. Accumulation of stock
3. Breakdown of machinery.
4. Natural calamity would amount to lay off.

Compensation of lay off:

A workman is entitled to receive compensation during lay off period.

Retrenchment of workmen:

Retrenchment means reduction of surplus employees on account of modernization and rationalization. It involves removing excess of labour out of employment.

Retrenchment does not include:

1. Voluntary retirement.
2. Retirement of workman on reaching the age of super annexation.
3. Termination of service of a workman on the ground of continued ill health.
4. Termination of service of the workman as a result of the non-renewal of the contract of employment.



## UNIT - IV

### TRADE UNION

The first labour union formed in the year of 1918 in India by B.P.Vadia in the name of Madras Textile Labour Union. All India Trade union congress (A.I.T.U.C.) – formed by Indian national congress party, then it went to the control of Communist.

#### **1. This Act shall not affect: -**

1. any agreement between partners as to their own business;
2. any agreement between an employer and employee regarding the employment
3. any agreement in consideration of the sale of the goodwill of a business or trade or handicraft.

#### **2. Trade Union [Sec 2 (h)] defines that:**

Any combination, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, on the conduct of any trade.

#### **Scope of trade union:**

1. Procedure for registrations of trade union.
2. Duties and obligation of the trade union.
3. Privileges including liabilities of the trade union.

#### **Advantage of trade union:**

- I. Keeps wages at uniform level according to the actual economic value.
- II. Encourage self- reliance and self- respects among workers.
- III. Raise the standard of living of workers.
- IV. Increase efficiency of workmen.
- V. Develop better understanding both employer and employee.
- VI. Workmen to negotiate with employers with equal status and dignity for collective bargaining.



VII. Provides guarantee for industrial peace

VIII. Ensures stability of the industry.

### **3. Trade dispute [Sec 2 (g)] define that: -**

Dispute between employers and workmen or between workmen and workmen, or between employers and employers, which is connected with the employment. “WORKMEN” means all persons employed in trade or industry.

### **Registration of Trade Unions: -**

#### **1. Mode of registration [Sec.4]**

No Trade Union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, employed in the establishment or industry on the date of making of application for registration.

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.

#### **2. Application for registration[Sec.5]**

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

- a. The names, occupations and addresses of the members making the application
- b. The name of the Trade Union and the address of its head office;
- c. The titles, names, ages, addresses and occupations of the [office bearers] of the Trade Union.

Where a Trade Union existence for more than one year before the making of an application for its registration, shall be together with the application, a general statement of the assets and liabilities of the Trade Union.

#### **3. Rules of a Trade Union [Sec.6]**

A Trade Union shall be constituted the rules thereof provide for the following matters

- the name of the Trade Union;
- (b) objects for the Trade Union



- (c) the purposes for which the general funds of the Trade Union shall be applicable,
- The maintenance of a list of the members
- The admission of ordinary members and also the admission of the number of honorary or temporary members
- The payment of a subscription shall be not less than Rs.1 for Rural workers, Rs. 3 for unorganized sector, Rs. 12 for other workers,
- The conditions for member to get benefits
- The manner for amending, varying, rescinding the rules
- The manner for appointing a removing from executive
- The safe custody of the funds, audit, and adequate facilities for the inspection of the account books
- The manner for dissolving the Trade Union

#### **4. Membership of a Trade Union [Sec. 9(A)]**

Membership of a Trade Union shall at all times continue to have not less than ten per cent, or one hundred of the workmen, whichever is less, subject to a minimum of seven,

#### **5. Certain Acts not to apply to registered Trade Unions [Sec.14]**

- The Societies Registration Act,1860
- The Co-operative Societies Act,1912,
- The Companies Act,1956

Shall not apply to any registered Trade Union, and the registration of any Trade Union under any such Act shall be void.

#### **6. Rights of Minors to Membership [Sec.21]**

Any person who has attained the age of fifteen years may be a member of a registered Trade Union

#### **7. Disqualification of Office – bearers [Sec. 21(A)]**

Disqualification for being a member of executive or office – bearer

- i. Who has not attained the age of 18years.
- ii. Who has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.



## **8. Cancellation and Dissolution of Trade Unions [Sec. 10, and 27]**

### **Cancellation[Sec. 10]:-**

Registration of a Trade Union may be withdrawn or cancelled by the Registrar

- a) On the application of the Trade Union to be verified in such manner as may be prescribed
- b) If the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or has ceased to exist or contravened any provision of this Act or any rule inconsistent with any such provision, or rescinded any rule of Section 6:

Not less than two months' previous notice in writing withdraw or cancel the certificate shall be given to the Trade Union otherwise than on the application of the Trade Union.

### **Dissolution [Sec. 27]:-**

1. Notice for the dissolution should be signed by seven members and by the Secretary
2. Within fourteen days of the dissolution, notice to be sent to the Registrar
3. If he is satisfied the dissolution, It should be verified that the dissolution is effected in accordance with the rules of the Trade Union.
4. A registered Trade Union's rules do not provide for the distribution of funds, the Registrar shall divide the funds amongst the members, in such manner as may be prescribed.

## **RIGHTS / DUTIES / LIABILITIES OF REGISTERED TRADE UNION**

### **Legal person [Sec.13]**

Every registered Trade Union shall be a body corporate by the name, have perpetual succession and a common seal with power to acquire and hold movable and immovable property and to contract, sue and be sued.

### **Right / Duty to Spent General Funds [Sec.15]**

**Shall not be spent on any other objects than the following:**

- a) The payment of salaries, allowances and expenses to office-bearers
- b) The payment of expenses for the administration including audit of the accounts





- c) The prosecution or defense of any legal proceeding
- d) The conduct of trade disputes
- e) The compensation of members for loss arising out of trade disputes
- f) Allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment
- g) Undertaking of liability for policies
- h) Educational, social or religious benefits
- i) The upkeep of a periodical published mainly for discussing questions affecting employers
- j) Any of the objects, in respect of contributions,
- k) Any other object notified by the appropriate Government in the Official Gazette.

### **Right to constitute a separate fund and liabilities to spent it [Sec.16]**

1. May constitute a separate fund, from contributions for the promotion of the civic and political interests.
2. Objects
  - i. The payment of any candidate of any legislative body(or)
  - ii. The holding of any meeting for candidate(or)
  - iii. The maintenance of any member of any legislative body or of any local authority(or)
  - iv. The registration of electors of a candidate for any legislative body or for any local authority;(or)
  - v. The holding of political meetings
3. No member shall be compelled to contribute to the fund constituted under sub-section(1)

### **Right to Change Its Name [Sec.23]**

Any registered Trade Union may, with the consent of not less than two-thirds of the total number of its members may change its name.

### **Right to Amalgamation [Sec.24]**

Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds at least sixty per cent of the votes are needed for amalgamation.

### **Notice to change the name or amalgamation and duties [Sec.25]**



1. For changing the name, a written notice to registrar should be sent with the signature of seven members and by the signature of the secretary for amalgamation, every Trade Union should be sent such notice.
2. If the proposed name is identical with existing registered or nearly resembles to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name.
3. the Registrar shall, if he satisfied register the change of name Duty to make rules Every registered trade union has the Duties to make rules for its objects, spent General funds, Subscription, elect office bearers, Dissolution, name change, Amalgamation and such others.

### **Duty / liability to file returns**

It is bounded duty to send account statements, Audit reports, statements regarding property and liabilities to the registrar.

### **THE PAYMENT OF BONUS ACT, 1965**

#### **Objects:**

In 1967 the supreme Court of India in the case of *Jalan Trading Co., Vs MillMazdoorSabha* explain the object of this Act as below: -

- a) To impose statutory liability upon an employer to pay bonus,
- b) To define the principal of payment of bonus,
- c) To provide for payment of minimum and maximum bonus,
- d) To provide machinery for enforcement of liability for payment of bonus, Act not to apply to certain classes of employees: - [Sec32]

Nothing in this Act shall apply to employees employed by -

- a. The life Insurance Corporation of India.
- b. Seamen
- c. The Dock Workers Act,
- d. In any industry carried on by or under the authority of the Central Government or a State

#### **Government or a Local authority.**

- a) Indian Red Cross Society
- b) Universities and other Educational Institutions



- c) Institutions established not for the purposes of profit
- d) Contractor on building operations
- e) The Reserve Bank of India
- f) The Industrial Finance Corporation of India
- g) Any Financial Corporation established under State Financial Corporations Act
- h) The Deposit Insurance Corporation
- i) The National Bank for Agriculture and Rural Development
- j) The Unit Trust of India
- k) The Industrial Development Bank of India
- l) Inland Water transport

#### **Accounting year [ Sec 2(1)]**

- i. In relation to a corporation – the day on which the accounts of the corporation are to be closed.
- ii. In relation to a company – the account of the company laid before in annual general meeting
- iii. In any other case – 1st day of April or the year ending on the day on which its accounts are so closed. Once it exercised, shall not be again exercised except with the previous permission in writing.

#### **Allocable surplus [Sec 2(4)]**

- a) In relation to a company 67% out of the available surplus in an accounting year, after paying dividends.
- b) In any other case, sixty percent. The remaining 33% or 40% amount is the profit for the company.

#### **Available Surplus [Sec.5]**

The gross profits of an accounting year after deducting the sums referred to in section 6.

#### **Section 6 – Deductible prior charges: -**

- Depreciation in accordance with the provisions of the Income – Tax Act, or the agricultural income-tax law,
- Development rebate or investment allowance or development allowed,
- Any direct tax in respect of income, profits.
- Further sums specified in the Third Schedule.



### **Employee means [Sec. 2(13)]**

Any person employed on a salary or wage not exceeding Rs.21,000/- per mme

### **Eligibility for bonus: - [Sec.8]**

Every employee shall be worked in the establishment for not less than thirty working days in an accounting year.

### **Payment of minimum bonus: [Sec.10]**

- Every employer shall be bound to pay to every employee 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher,
- Provided that where an employee has not completed fifteen years of age the words “one hundred rupees” substituted as 60 rupees.

### **Payment of Maximum bonus: - [Sec.11]**

An amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty percent, Set on and set off [Sec.15]

- 1) The allocable surplus exceeds the amount of maximum bonus shall be carried forward to being set on.
- 2) There is no available surplus or the allocable surplus, as the case may be, shall be carried forward for being set off in the succeeding accounting year.
- 3) Any amount set on or set off under this section, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

### **Time-limit for payment of bonus [Sec.19]**

- a) Bonus shall be paid in cash within a month from the date on which the award becomes enforceable or the settlement comes into operation.
- b) In any other case, within a period of eight months from the close of the accounting year. The appropriate Government may extend the said period of 8 months; however, the tale period shall not exceed two years.



## UNIT - V

### THE PAYMENT OF GRATUITY ACT, 1972

#### Object and Application

To provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

#### Application: - (Sec 1)

- a) Every factory, mine, oilfield, plantation, port and Railway Company. So far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.
- b) Every shop or establishment in which ten or more persons are employed,
- c) Such other establishments as the Central Government may, by notification, specify in this behalf. (Now it is extended to Transport Corporation, Clubs, Chamber of commerce and industries, Education, local bodies, societies, Trust, circus companies etc.,)

This act shall continue, notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

#### Continuous Service [Sec. 2A define]

An employee shall be said to be in continuous service for a period uninterruptedly, including sickness, accident, leave, absence from duty without leave, not exceeding 12 weeks maternity leave, break in service in accordance with standing orders, rules or regulations, lay-off, strike or a lock-out or cessation of work not due to any fault of the employee.

An employee shall be deemed to be in continuous service, who works below the ground in a mine or an establishment which works for less than 6 days in a week, for 190 days in a year. But he should be employed 95 days continuously in the past 6 calendar months. For other employees, should be employed 240 days in 12 calendar months. But he should be employed 120 days continuously in the past 6 calendar months. In a seasonal establishment – an employee shall be employed for not less than 75% of the number of days in a seasonal period.

#### Payment of Gratuity [Sec. 4 define]



### **Eligibility for Gratuity [Sec. 4(1)]**

Gratuity shall be payable to an employee after he has rendered continuous service for not

less than five years.

a. on his superannuation, or

b. on his retirement or resignation,

c. on his death or disablement due to accident or disease, Continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement,

In case of death of the employee, gratuity payable to his nominee or, if no nomination has been made, to his heirs,

### **Rate (or) Calculation of Gratuity [Sec. 4 (2, 3, 5)]**

For every completed year of service (or) part thereof in excess of six months, gratuity to an employee at the rate of fifteen days

In the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of last three months,

In the case of an employee who is employed in a seasonal establishment, the gratuity at the rate of seven day. The fifteen days' wages shall be calculated by dividing the monthly rate of wages by twenty-six and multiplying by fifteen. The amount of gratuity payable to an employee shall not exceed ten lakhs rupees.

The above calculation shall not affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

### **Forfeiture of Gratuity [Sec. 4(6)]**

The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

### **Compulsory Insurance [Sec.4A]**





Every employer, other than an employer or an establishment belonging to, the Central Government or a State Government, shall, obtain insurance for payment towards the gratuity under this Act, from the Life Insurance Corporation of India or any other prescribed insurer.

When an employer fails to make any payment by way of premium to the insurance shall be liable to pay the amount (including interest, if any for delayed payment) to the controlling authority. Whoever contravenes the above provisions shall be punishable with fine which may extend to ten thousand rupees, for a continuing offence with a further fine which may extend to one thousand rupees for each day.

### **Procedure to get Gratuity (or) Determination of the amount of Gratuity [Sec.7]**

A person who is eligible for payment of gratuity under this Act shall send a written application to the employer, within 30 days. The employer shall, determine the amount of gratuity and give notice in writing to the person and also to the controlling authority.

The employer shall arrange to pay the amount of gratuity within thirty days. If the gratuity is not paid by the employer within the specified period, the employer shall pay, simple interest at such rate, not exceeding the rate notified by the Central Government. No such interest shall be payable if the employer obtained permission from the Controlling Authority. If there is any dispute regarding the gratuity amount, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

If any dispute arises regarding the gratuity amount by the employer or employee or any other person may make an application to the Controlling Authority. The Controlling Authority shall, after due inquiry direct the employer to pay such amount. Any person aggrieved by an order of controlling authority may, within sixty days from the date of the receipt of the order, prefer an appeal. The said period of sixty days, may extend a further period of sixty days. No appeal by an employer shall be admitted unless deposited with the appellate authority such amount.

### **The Payment of gratuity Act 1972**

In Army and Navy store Bombay – V their workmen case, Labour Appellate Tribunal formed a scheme for paying gratuity for an employee. i.e.





- a) If died or face Permanent disablement in the course of employment,
- b) Retire or resign after 15 years of work.
- c) Dismissed by employer  $\frac{1}{2}$  month salary shall be calculated for every year.

In Indian Oxygen and Acetylene co Employees Union –Vs- IOA Company, Supreme Court held that all wealthy establishments should pay gratuity.

1. State of Kerala enacted gratuity Act in 1970.
2. State of W.B enacted Employees payment compulsory gratuity Act in 1971.
3. Based on W.B Act, The P a r l i a m e n t has enacted the payment of gratuity Act 1972.

### **Objects:**

- i. To ensure that the payment of Gratuity throughout the country to be uniform pattern.
- ii. To avoid different treatment.

### **Applicability:**

1. Every factory, mine, oilfield, plantation, port and Railway.
2. Shop establishments where 10 or more person are employing or employed on any day of the preceding 12 months.
3. Once this Act applies, it continues to apply even if employment strength falls below 10.
4. Not applies to apprentices.
5. Not apply to the state of J & K plantations.

### **Eligibility**

Gratuity payable to an employee who has rendered continuous service for not less than 5 years.

Continuous Service includes:

1. Sickness
2. Accident
3. Leave
4. Lay off
5. Strike
6. Lock out



7. Cessation of work not due to any fault of the employees.
8. Absence from duty without leave.
9. Maternity leave (26weeks)

1-year Service means – 190 days of employment under the ground in mines or establishment in which works less than 6 days in a week. 240 days of employment in any other establishment  
6 months service means: 95 days of employment under the ground in mines or establishment in which works less than 6 days in a week  
120 days of employment in any other establishment.  
Regarding seasonal establishment 75% of days in a season  
5 years of continuous service is not necessary; in case of death occur due to employment

### **Forfeiture**

Where an employee's services are terminated in the following conditions the employer can forfeit the Gratuity amount.

1. Any act or willful omission or negligence causing damages or loss or destruction of property.
2. Employee's riotous or disorderly conduct or any other violent act.
3. Committing an offence involving moral turpitude.

But before forfeiture show because notice should be issued by the employer as per the following citation, i.e. – Bharath Gold mines Ltd – Vs- Regional Labour commissioner – 1987, Karn.

Termination of employment may result from:

1. Superannuation
2. retirement
3. resignation
4. death or disablement due to accident or disease in the course of employment

### **Calculation**

Employment for a year or excess 6-month, gratuity rate is last 15 days salary.

For piece-rated employee 1-day Salary in the last 3 months. For seasonal establishment last 7 days salary in the season.



The maximum amount of gratuity payable to an employee shall not exceed Rs.20,00,000/-or 20 months' salary.

One month should be calculate as 26 days as per Hon'ble Supreme Court citation in the case, Sridigvijay woolen mills Ltd –Vs- MahendraPratapRaiBuch – 1980 Supreme Court.

### **Compulsory Insurance**

Every employer, other than central or a state Government should obtain an insurance for payment towards the gratuity.If fail shall be punishable with fine, it may extend to Rs.10,000/, for continuing offence further fine Rs.1000/- per breaching day.

### **Procedure to get gratuity:**

- a) Eligible Person should write application to the employer within 30 days.
- b) The employer has to intimate the amount to the employee and controlling authority within 30 day, if fails to pay the amount, it has to pay with simple interest.
- c) If there any disputes, the employer has to deposit the disputed amount before controlling authority.
- d) Controlling authority has to enquire and dispose the dispute, the aggrieved party may file appeal within 60 day, and it may extend to further 60 days only.
- e) Depositing awarded amount is condition precedent for filing appeal by the employer.

### **Family means:**

Regarding male - Wife, Children, Parents of both, Predeceased son's wife and Children, and adopted children.

Regarding Female - Husband, Children, Parents of both Parties, Predeceased son's wife and children, and adopted children.

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