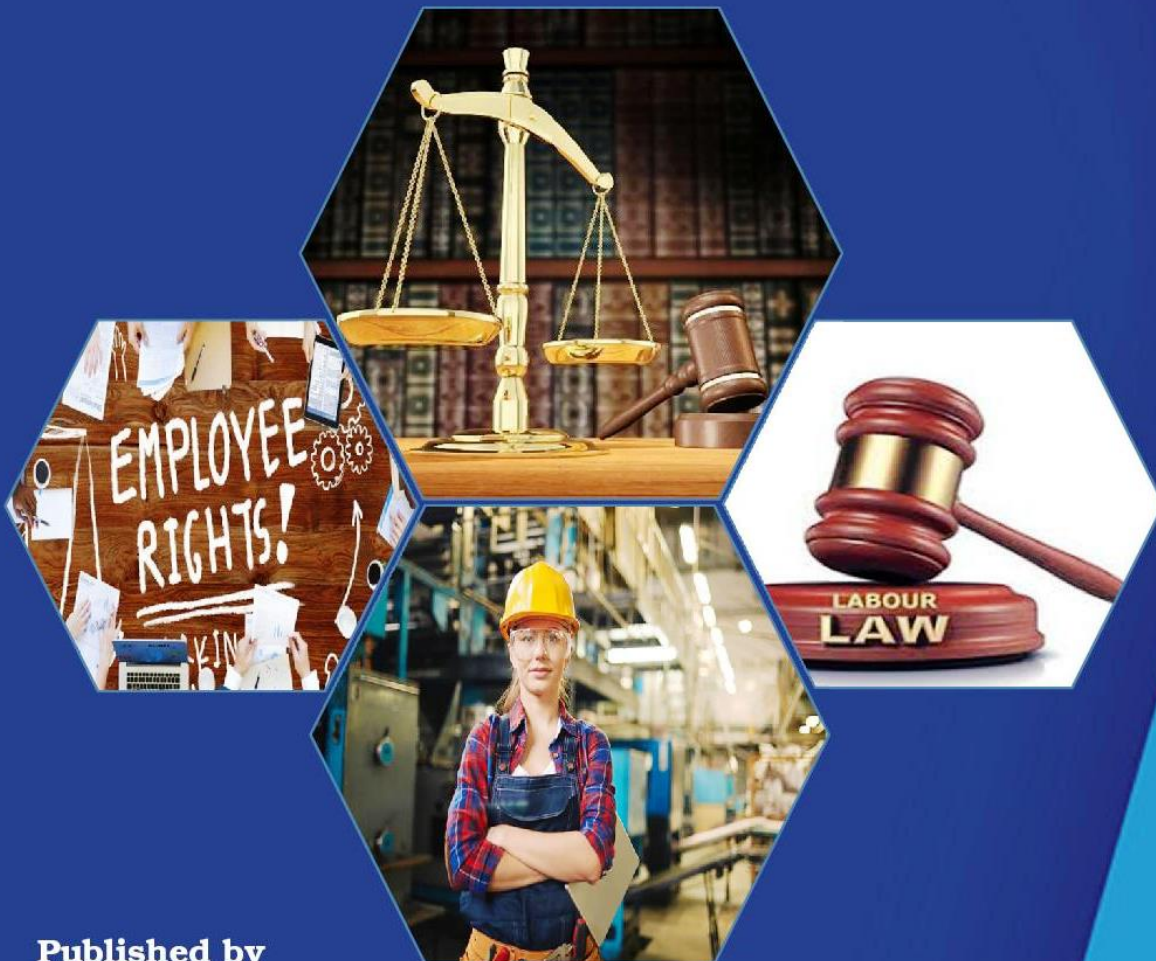


# INDUSTRIAL LAW

**Dr. SUBATHRA CHELLADURAI**  
**Dr. S. PARVATHI**



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# **INDUSTRIAL LAW**

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# **INDUSTRIAL LAW**

Syllabus as per  
**MANONMANIAM SUNDARANAR UNIVERSITY**  
Abishegapatti, Tirunelveli, Tamilnadu, India  
for B.Com III Year

**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-Machinery-Adjudication Machinery-Power and Duties of Authorities-Procedures-Voluntary reference to arbitration- Award-Strike-and Lockouts-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

## 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.

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### DEFINITIONS

The main objectives of the Indian Factories Act, 1948 are to regulate the working conditions in factories, to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories.

### APPLICABILITY OF FACTORIES ACT, 1948

The Factories Act 1948 is applicable throughout the country, including Jammu and Kashmir, and covers all manufacturing processes and establishments falling within the definition of “factory” as defined u/s 2(m) of the Act. The Act is also applicable to factories belonging to the Centre/State Government (section 116).

### DEFINITION OF FACTORY AS PER FACTORIES ACT, 1948

Under the Factories Act, “factory” means any premises:

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

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

### OBJECT AND SCOPE OF THE ACT

The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of

women and young persons (including children and adolescents), annual leave with wages etc.

The Act extends to whole of India including Jammu & Kashmir and covers all manufacturing processes and establishments falling within the definition of 'factory' as defined under Section 2(m) of the Act. Unless otherwise provided it is also applicable to factories belonging to Central/State Governments. (Section 116)

## **SOME OF THE OTHER FACTORS ARE**

### **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.

### **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. These should be easily accessible to workers and must be kept cleaned.

### **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 man-holes of adequate size so that in case of emergency the workers can escape.

### **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 storing and drying clothing, facilities for sitting, first-aid appliances, shelters, rest rooms and lunch rooms, canteens, should be there.

**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 to one lakh rupees; or
- (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/-.

**APPLICABILITY OF FACTORIES ACT, 1948**

The Act is applicable to any factory whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on; but this does not include a mine, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

**IMPORTANCE OF FACTORIES ACT, 1948**

The Factories Act, 1948 is a beneficial legislation. The aim and object of the Act is essentially to safeguard the interests of workers, stop their exploitation and take care of their safety, hygiene and welfare at their places of work. It casts various obligations, duties and responsibilities on the occupier of a factory and also on the factory manager. Amendments to the Act and court decisions have further extended the nature and scope of the concept of occupier, especially vis-a-vis hazardous processes in factories.

## **APPROVAL LICENSING & REGISTRATION OF FACTORIES ACT**

Approval, Licensing and Registration of Factories under the Factories Act 1948 is given under the section 6 of the act. As sec 6 gives the government the empowerment to make rules with regard to the licensing, registration and approval of factories under the act considering the following:

- There must be the submission of the plans irrespective of the class and description of the factories. To the chief inspector or the state government.
- Also, the previous permission of the state government or the chief inspector shall be obtained for the site or place where the factory would be constructed or situated.
- Considering the permit application for the submission of plans and the specification.
- The authority certifies the nature of plans and specification.
- Licensing and registration of the factories.
- Fee for the registration of the license and also for the renewal.
- Considering the section 7 licenses cannot be granted or renewed if no notice is being served

## **THE AUTOMATIC APPROVAL**

If all the documents are submitted on or before time to the chief inspector or the state government. Thus, the license gets automatic approval if there is no response within the three months from the authorities.

## **APPROVAL, LICENSING, AND REGISTRATION OF FACTORIES**

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### **APPEAL AGAINST THE REFUSAL- TO GRANT THE PERMISSION**

If there is a refusal from the state government or the chief inspector, then the applicant within 30 days of the refusal may appeal to them: the Central Government against State Government's order; or the State Government against any other authority's orders.

### **Notice by the occupier**

Section 7 obligates the occupier of a factory to serve a written notice with the prescribed particulars to the higher authority. Before 15 days to occupy the premises as a factory.

### **SECTION 7A. GENERAL DUTIES OF THE OCCUPIER.-**

(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 provision of such information, instruction, training and supervisions 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 the provision and maintenance of such means of access to, and egress from, such place 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 the 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.

#### **SECTION 7B. GENERAL DUTIES OF MANUFACTURERS, ETC., AS REGARDS ARTICLES AND SUB-STANCES FOR USE IN FACTORIES.-**

(1) Every person who designs, manufactures, imports or supplies any article for use in any factory shall-

- (a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;
- (b) carry out or arrange for the carrying out of such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);
- (c) take such steps as may be necessary to ensure that adequate information will be available-
  - (i) in connection with the use of the article in any factory;
  - (ii) about the use for which it is designed and tested; and
  - (iii) about any conditions necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers:

Provided that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see-

- (a) that the article conforms to the same standards if such article is manufactured in India, or
- (b) if the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India, that the article conforms to such standards

(2) Every person, who undertakes to design or manufacture any article for use in any factory, may carry out or arrange for the carrying out of necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to the health or safety of the workers to which the design or article may give rise.

(3) Nothing contained in sub-sections (1) and (2) shall be construed to require a person to repeat the testing examination or research which has been carried out otherwise than by him or at his instance on so far as it is reasonable for him to rely on the results thereof for the purposes of the said sub-sections.

(4) And duty imposed on any person by sub-sections (1) and (2) shall extend only to things done in the course of business carried on by him and to matters within his control.

(5) Where a person designs, manufactures, imports or supplies an article on the basis of a written undertaking by the user of such article to take the steps specified in such undertaking to ensure, so far as is reasonably practicable, that the article will be safe and without risks to the health of the workers when properly used, the undertaking shall have the effect of relieving the person designing, manufacturing, importing or supplying the article from the duty imposed by clause (a) of sub-section (1) to such extent as is reasonably having regard to the terms of the undertaking.

(6) For the purposes of this section, an article is not to be regarded as properly used if it is used without regard to any information or advice relating to its use which has been made available by the person who has designed, manufactured, imported or supplied the article.

## **INSPECTING STAFF**

1) The State Government may, by notification in the Official Gazette, appoint such persons as possessing the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to powers conferred on Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(2A) The State Government may, by notification in the Official Gazette, appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.

(2B) Every additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointment under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the power of an Inspector throughout the State.

(3) No person shall be appointed under sub-section (1), sub-section (2), sub-section (2A) or sub-section (5), or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section, shall be deemed to be a

public servant within the meaning of the Indian Penal Code (XLV of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

## **SECTION 9 POWERS OF INSPECTORS**

Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,-

- (a) enter with such assistants, being persons in the service of the Government, or any local or other public authority or with an expert, as he thinks fit, any place which is used, or which he has reason to believe, is used as a factory;
- (b) make examination of the premises, plant, machinery, article or substance;
- (c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;
- (d) require the production of any prescribed register or any other document relating to the factory;
- (e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;
- (f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);
- (g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;
- (h) in case of any article of substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

- (i) Exercise such other powers as may be prescribed.

## **SECTION 10. CERTIFYING SURGEONS**

(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

(2) A certifying surgeon may, with the approval of the State Government, authorise any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

(3) No person shall be appointed to be, or authorised to exercise the powers of, a certifying surgeon, or having been so appointed or authorised, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory:

Provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.

(4) The certifying surgeon shall carry out such duties as may be prescribed in connection with-

- (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 supervisions as may be prescribed for any factory or class or description of factories where-

- (i) cases of illness have occurred, which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
- (ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process, or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
- (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

**Explanation. – In this section “qualified medical practitioner” means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or in the Schedule to the Indian Medical Council Act, 1933 (XXVII of 1933).**

TERM	DEFINITION	SECTION
Adult	An ‘Adult’ means a person who has completed his eighteenth year of age.	Sec.2(a)
Adolescent	An “Adolescent” means a person, who completes his fifteenth year of age but not his eighteenth year. Hence, he is someone who crosses the age of a child but is not an adult yet.	Sec. 2(b)
Child	A ‘child’ means a person who has not completed his 15th year of age.	Sec. 2 (c)

Competent Person	A “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	Sec. 2(ca)
Calendar year	‘Calendar Year’ means the period of 12 months beginning with the first day of January in any year. Hence, it is different from the Financial Year (starts from 1st April).	Sec.2(bb)
Day	It means a period of 24 hours beginning at midnight.	Sec. 2(e)
Week	It means a period of seven days beginning at midnight on Saturday night or such other night (which CIF certifies).	Sec. 2(f)
Transmission machinery	It means any shaft, wheel, drum, pulley, a system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover reaches any machinery or appliance.	Sec. 2 (i)
Worker	“Worker” means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any the manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the union.	Sec. 2(l)
Shift and relay	Where work of the same kind is carried out by 2 or more sets of workers working during different periods of the day, each of such sets is called a ‘relay’ and each of such periods is called a ‘shift’.	Sec. 2(r)



Manufacturing Process	<p>“Manufacturing process” means any process for—</p> <p>(i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or</p> <p>(ii) Pumping oil, water, sewage or any other substance; or;</p> <p>iii) Generating, transforming or transmitting power; or</p> <p>(iv) Composing types for printing, printing by letterpress, lithography, photogravure, other similar process or bookbinding;</p> <p>(v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; (Inserted by the Factories (Amendment) Act, 1976, w.e.f. 26-10-1976.)</p> <p>(vi) Preserving or storing any article in cold storage</p>	Sec. 2(k)
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## HEALTH OF THE WORKERS



### SECTION 11. CLEANLINESS

(1) Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- (a) accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages and disposed of in a suitable manner;

- (b) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant where necessary, or by some other effective method;
- (c) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided as maintained;
  - (d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall- (i) where they are 'painted otherwise than with washable water paint or varnished, be repainted or revarnished at least once in every period of five years;
  - (i-a) where they are painted with washable water paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months;
  - (ii) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such methods as may be prescribed;
  - (iii) in any other case, be kept whitewashed, or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;
- (dd) all doors and window-frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;
- (e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

(2) If, in view of the nature of the operations carried on in a factory or class or description of factories or any part of a factory or class or description of factories, it is not possible for the occupier to comply with all or any of the provisions of sub-section (1), the State Government may by order exempt such factory or class or description of factories or part from any of the provisions of that sub-section and specify alternative methods for keeping the factory in a clean state.

**SECTION 12. DISPOSAL OF WASTES AND EFFLUENTS**

(1) Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.

(2) The State Government may make rules prescribing the arrangements to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed.

**SECTION 13. VENTILATION AND TEMPERATURE**

(1) Effect and suitable provisions shall be made in every factory for securing and maintaining in every workroom-

- (a) adequate ventilation by the circulation of fresh air, and
- (b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health; and in particular,
  - (i) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;
  - (ii) where the nature of the work carried on in the factories involves, or is likely to involve, the production of excessively high temperature, such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process, which produces such temperature from the workroom, by insulating the hot parts or by other effective means.

(2) The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that proper measuring instruments, at such places and in such position as may be specified, shall be provided and such records, as may be prescribed, shall be maintained.

(3) If it appears to the Chief Inspector that excessively high temperature in any factory can be reduced by the adoption of suitable measures, he may, without prejudice to the rules made under

sub-section (2), serve on the occupier, an order in writing specifying the measures which, in his opinion should be adopted, and requiring them to be carried out before a specified date.

#### **SECTION 14. DUST AND FUME**

(1) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes there from as are likely to be injurious to workers employed in the room.

#### **SECTION 15. ARTIFICIAL HUMIDIFICATION**

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

- (a) prescribing standards of humidification;
- (b) regulating the methods used for artificially increasing the humidity of the air;
- (c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
- (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(3) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

## **SECTION 16. OVERCROWDING**

No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of sub-section (1), there shall be in every workroom of a factory in existence on the date of commencement of this Act at least 9.9 cubic meters and of a factory built after the commencement of this Act at least 14.2 cubic meters of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than 4.2 meters above the level of the floor of the room.

(3) If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the Provisions of this section, be employed in the room.

(4) The Chief Inspector may, by order in writing exempt, subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

## **SECTION 17. LIGHTING**

(1) In every part of a factory where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every factory all glazed windows and skylights used for the lighting of the workroom shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (3) of section 13 will allow, free from obstruction.

(3) In every factory effective provision shall, so far as is practicable, be made for the prevention of-

- (a) glare, either directly from a source of light or by reflection from a smooth or polished surface;
- (b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.

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

## **SECTION 18. DRINKING WATER**

(1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory and no such points shall be situated within 1[six meters of any washing place, urinal, latrine, spittoon, open drain carrying silage or effluent or any other source of contamination unless a shorter distance is approved in writing by the Chief Inspector.

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

(4) In respect of all factories or any class or description of factories the State Government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

**SECTION 19. LATRINES AND URINALS**

(1) In every factory-

- (a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory;
- (b) separate enclosed accommodation shall be provided for male and female workers;
- (c) such accommodation shall be adequately lighted and ventilated and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage;
- (d) all such accommodation shall be maintained in a clean and sanitary condition at all times;
- (e) sweepers shall be employed whose primary duty it would be to keep clean all latrines, urinals and washing places.

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

- (a) all latrine and urinal accommodation shall be of prescribed sanitary types;
- (b) the floors and internal walls, up to a height of ninety centimeters of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface;
- (c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the number of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

**SECTION 20. SPITTOONS**

- (1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.
- (2) The State Government may make rules prescribing the type and numbers of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.
- (3) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.
- (4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

**SAFETY OF THE WORKERS****SECTION 21. FENCING OF MACHINERY**

- (1) In every factory the following, namely-
- (i) every moving part of a prime-mover and every flywheel connected to a prime-mover, whether the prime-mover or flywheel is in the engine-house or not;
  - (ii) the headrace and tailrace of every water-wheel and water-turbine;
  - (iii) any part of a stock bar which projects beyond the head stock of a lathe; and



- (iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely:-
  - (a) every part of an electric generator, a motor or rotary convertor;
  - (b) every part of transmission machinery; and
  - (c) every dangerous part of any other machinery; shall be securely fenced by safeguards of a substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing, are in motion or in use:

Provided that for the purpose of determining whether any part of machinery in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when-

- (i) it is necessary to make an examination of any part of the machinery aforesaid while it is in motion or, as a result of such examination to carry out lubrication or other adjusting operation while the machinery is in motion, being an examination of operation which it is necessary to be carried out while that part of the machinery is in motion. or
- (ii) in the case of any part of a transmission machinery used in such process as may be prescribed (being a process of a continuous nature, the carrying on of which shall be or is likely to be substantially interfered with by the stoppage of that part of the machinery), it is necessary to make an examination of such part of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts or lubrication, or other adjusting operation while the machinery is in motion, and such examination or operation is made or carried out in accordance with the provisions of sub-section (1) of section 22.

(2) The State Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the Provisions of this section.

**SECTION 22. WORK ON OR NEAR MACHINERY IN MOTION**

(1) Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or, as a result of such examination, to carry out-

- (a) in a case referred to in clause (i) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation; or
- (b) in a case referred to in clause (ii) of the proviso aforesaid, any mounting or shipping of belts or lubrication or other adjusting operation,

while the machinery is in motion, such - examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged,-

- (a) such worker shall not handle a belt at a moving pulley unless-
  - (i) the belt is not more than fifteen centimeters in width;
  - (ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case belt is not permissible);
  - (iii) the belt joint is either laced or flush with the belt;
  - (iv) the belt, including the joint and the pulley rim, are in good repair;
  - (v) there is reasonable clearance between the pulley and any fixed plant or structure;
  - (vi) secure foothold and, where necessary, secure handhold, are provided for the operator; and
  - (vii) any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person ;
- (b) without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinions and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

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

(3) The State Government may, by notification in the Official Gazette prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when those parts are in motion.

### **SECTION 23. EMPLOYMENT OF YOUNG PERSON'S ON DANGEROUS MACHINES**

(1) No young person shall be required or allowed to work at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and-

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

(2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young person's ought not to work at them unless the foregoing requirements are complied with.

### **SECTION 24. STRIKING GEAR AND DEVICES FOR CUTTING OFF POWER**

(1) In every factory-

- (a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained so as to prevent the belt from creeping back on to the first pulley;
- (b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

(2) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom:

Provided that in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to workrooms in which electricity is used as power.

(3) When a device, which can inadvertently shift from "off" to "on" position, is provided in a factory- to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted.

## **SECTION 25. SELF-ACTING MACHINES**

No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outwards or inward traverse within a distance forty-five centimeters from any fixed structure which is not part of the machine:

Provided that the 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.

## **SECTION 26. CASING OF NEW MACHINERY**

(1) In all machinery driven by power and installed in any factory after the commencement of this Act,-

- (a) every set 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;
- (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

(2) Whoever sells or lets on hire or, agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (1) or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(3) The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.

## **SECTION 27. PROHIBITION OF EMPLOYMENT OF WOMEN AND CHILDREN NEAR COTTON-OPENERS**

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work:

Provided that 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 the partition where the feed-end is situated.

## **SECTION 28. HOIST AND LIFTS**

(1) In every factory-

- (a) every hoist and lift shall be-
  - (i) of good mechanical construction, sound material and adequate strength;
  - (ii) properly maintained, and shall be 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;
- (b) 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 and any fixed structure or moving part;

- (c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon;
- (d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;
- (e) every gate referred to in clause (b) or clause (d) shall be fitted with inter-locking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(2) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:-

- (a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;
- (b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;
- (c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(3) The Chief Inspector may permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safety as he may think fit to impose.

(4) The State Government may, if in respect of any class or description of hoist or lift, is of opinion that it would be unreasonable to enforce any requirements of sub-sections (1) and (2), by order direct that such requirement shall not apply to such class or description of hoist or lift.

Explanation.- For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

**SECTION 29. LIFTING MACHINES, CHAINS, ROPES AND LIFTING TACKLES**

(1) In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:-

- (a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be-
  - (i) of good construction, sound material and adequate strength and free from defects;
  - (ii) properly maintained; and
  - (iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing, and a register shall be kept containing the prescribed particulars of every such examination;
- (b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked there on together with an identification mark and duly entered in the prescribed register; and where this is not practicable, a table showing the safe working load of every kind and size of lifting machine or chain, rope of lifting tackle in use, shall be displayed in prominent position on the premises;
- (c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within six meters of that place.

(2) The State Government may make rules in respect of any lifting machine or any chain, rope or lifting tackle used in factories-

- (a) prescribing further requirements to be complied with in addition to those set out in this section ;
- (b) providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.

(3) For the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

Explanation.- In this section,-

- (a) "lifting machine" means a crane, crab, winch, teagle, pulley block, gin wheel, transporter or runway;
- (b) "lifting tackle" means any chain sling, rope sling, hook, shackle, swivel, coupling, socket, clamp, tray or similar appliance, whether fixed or movable, used in connection with the raising or lowering of persons, or loads by use lifting machines.

### **SECTION 30. REVOLVING MACHINERY**

(1) In every factory in which the process of grinding is carried on there shall be permanently affixed to or placed ear each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measure shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, flywheel pulley, disc or similar appliance driven by power is not exceeded.

### **SECTION 31. PRESSURE PLANT**

(1) If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.



(2) The State Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1) and prescribing such other safety measures in relation thereto as may in its opinion, be necessary in any factory or class or description of factories.

(3) The State Government may, by rules, exempt, subject to such conditions as may be specified therein, any part of any plant or machinery referred to in sub-section (1) from the provisions of this section.

### **SECTION 32. FLOORS, STAIRS AND MEANS OF ACCESS**

In every factory-

- (a) all floors, steps, stairs, passages and gangways shall be of sound construction, and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails;
- (b) there shall, so far as is reasonably practicable, be provided, and maintained safe means of access to every place at which any person is at any time required to work;
- (c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working.

### **SECTION 33. PITS, SUMPS, OPENINGS IN FLOORS, ETC**

(1) In every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

(2) The State Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

**SECTION 34. EXCESSIVE WEIGHTS**

(1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him an injury.

(2) 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 in any class or description of factories or in carrying on in any specified process.

**SECTION 35. PROTECTION OF EYES**

In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves-

- (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or
- (b) risk to the eyes by reason of exposure to excessive light, the State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

**SECTION 36. PRECAUTIONS AGAINST DANGEROUS FUMES, GASES, ETC**

(1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapor or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), 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 and to prevent any ingress of such gas, fume, vapor or dust and unless-

- (a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapor or dust:  
or
- (b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.

### **SECTION 36A. PRECAUTIONS REGARDING THE USE OF PORTABLE ELECTRIC LIGHT**

In any factory-

- (a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided; and
- (b) if any inflammable gas, fume or dust is likely to be present in such chambers tank, vat, pipe, flue or other confined space, no lamp or light other than that of flame-proof construction shall be permitted to be used therein.

### **SECTION 37. EXPLOSIVE OR INFLAMMABLE DUST, GAS, ETC**

Where in any factory any manufacturing process produces dust, gas, fume or vapor of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by-

- (a) effective enclosure of the plant or machinery used in the process;
- (b) removal or prevention of the accumulation of such dust, gas, fume or vapour;
- (c) exclusion or effective enclosure of all possible sources of ignition.

(2) Where in any factory the plant or machinery used in a process such as is referred to in sub-section (1), is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents or other effective appliances.

(3) Where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapor under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely:-

- (a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapor into the part of any such pipe shall be effectively stopped by a stop-valve or other means;
- (b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapor in the part or pipe to a atmospheric pressure;
- (c) where any such fastening as aforesaid has been loosened or removed effective measures shall be taken to prevent any explosive or inflammable gas or vapor from entering the part or pipe until the fastening has been secured, or, as the case may be, securely replaced:

Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.

(4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected, in any factory, to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non- explosive or non-inflammable and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(5) The State Government may by rules exempt, subject to such conditions as may be prescribed, any factory or class or description of factories from compliance with all or any of the provisions of this section.

**SECTION 38. PRECAUTIONS IN CASE OF FIRE**

(1) In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain-

- (a) safe means of escape for all persons in the event of a fire, and
- (b) the necessary equipment and facilities for extinguishing fire.

(2) Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be following in such cases.

(3) The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the provisions of sub-sections (1) and (2).

(4) Notwithstanding anything contained in clause (a) of sub-section (1) or sub-section (2), if the Chief Inspector, having regard to the nature of the work carried on in any factory, the construction of such factory, special risk to life or safety, or any other circumstances, is of the opinion that the measures provided in the factory, whether as prescribed or not, for the purposes of clause (a) of sub-section (1) or sub-section (2), are inadequate, he may, by order in writing, require that such additional measures as he may consider reasonable and necessary, be provided in the factory before such date as is specified in the order.

**SECTION 39. POWER TO REQUIRE SPECIFICATIONS OF DEFECTIVE PARTS OR TESTS OF STABILITY**

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing requiring him before a specified date-

- (a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such buildings, ways, machinery or plant can be used with safety, or

- (b) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

## **SECTION 40. SAFETY OF BUILDINGS AND MACHINERY**

(1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures, which in his opinion should be adopted and requiring them to be carried out before a specified date.

(2) If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety he may serve on the occupier or manager or both of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

## **SECTION 40A. MAINTENANCE OF BUILDINGS**

If it appears to the Inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.

## **SECTION 40B. SAFETY OFFICERS**

(1) In every factory-

- (i) wherein one thousand or more workers are ordinarily employed, or
- (ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease or any other hazard to health, to the person employed in the factory,

the occupier shall, if so required by the State Government by notification in Official Gazette, employ such number of Safety Officers as may be specified in that notification.

(2) The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.

## **SECTION 41. POWER TO MAKE RULES TO SUPPLEMENT THIS CHAPTER**

The State Government may make rules requiring the provision in any factory or in any class or description of factories of such further devices and measures for securing safety of persons employed therein as it may deem necessary.

## **PROVISIONS RELATING TO HAZARDOUS PROCESSES**

### **SECTION 41A. CONSTITUTION OF SITE APPRAISAL COMMITTEES. -**

(1) The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee consisting of-

- (a) the Chief Inspector of the State who shall be its Chairman;
- (b) a representative of the Central Board for the Prevention and Control of Water Pollution appointed by the Central Government under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) ;
- (c) a representative of the Central Board for the Prevention and Control of Air Pollution referred to in section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (d) a representative of the State Board appointed under section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (e) a representative of the State Board for the Prevention and Control of Air Pollution referred to in section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (f) a representative of the Department of Environment in the State;

- (g) a representative of the Meteorological Department of the Government of India;
- (h) an expert in the field of occupational health; and
- (i) a representative of the Town Planning Department of the State Government,

and not more than five other members who may be co-opted by the State Government who shall be- ,

- (i) a scientist having specialised knowledge of the hazardous process which will be involved in the factory,
- (ii) a representative of the local authority within whose jurisdiction the factory is to be established, and
- (iii) not more than three other persons as deemed fit by the State Government

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

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

(4) The Site Appraisal Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

(5) Where the State Government has granted approval to an application for the establishment of expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) Act, 1981 { 14 of 1981).



**SECTION 41B. COMPULSORY DISCLOSURE OF INFORMATION BY THE OCCUPIER.-**

(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed, all information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority, within whose jurisdiction the factory is situate, and the general public in the vicinity.

(2) The occupier shall, at the time of registering the factory involving a hazardous process lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.

(3) The information furnished under sub-section (1) shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.

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

(5) Every occupier of a factory shall,-

- (a) if such factory engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 within a period of thirty days of such commencement; and
- (b) if such factory purposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process,

inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed.

(6) Where any occupier of a factory contravenes the provisions of sub-section (5), the license issued under section 6 to such factory shall, notwithstanding any penalty to which the occupier of the factory shall be subjected to under the provisions of this Act, be liable for cancellation.

(7) The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the manner prescribed among the workers and the general public living in the vicinity.

#### **SECTION 41C. SPECIFIC RESPONSIBILITY OF THE OCCUPIER IN RELATION TO HAZARDOUS PROCESSES.-**

Every occupier of a factory involving any hazardous process shall-

- (a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed;
- (b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed:

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

- (c) provide for medical examination of every worker-
  - (i) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and
  - (ii) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months in such manner as may be prescribed,

**SECTION 41D. POWER OF CENTRAL GOVERNMENT TO APPOINT INQUIRY COMMITTEE.-**

(1) The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in future in such factory or elsewhere.

(2) The Committee appointed under sub-section (1) shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.

(3) The recommendations of the Committee shall be advisory in nature.

**SECTION 41E. EMERGENCY STANDARDS.-**

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

(2) The emergency standards laid down under sub-section (1) shall, until they are incorporated in the rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

**SECTION 41F. PERMISSIBLE LIMITS OF EXPOSURE OF CHEMICAL AND TOXIC SUBSTANCES.-**

(1) The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule.

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

**SECTION 41G. WORKERS' PARTICIPATION IN SAFETY MANAGEMENT.-**

(1) The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a Safety Committee consisting of equal number of representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf.

Provided that the State Government may, by order in writing and for reasons to be recorded, exempt the occupier of any factory or class of factories from setting up such Committee.

(2) The composition of the Safety Committee, the tenure of office of its members and their rights and duties shall be such as may be prescribed.

**SECTION 41H. RIGHT OF WORKERS TO WARN ABOUT IMMINENT DANGER.-**

(1) Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may, bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.

(2) It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forth-with of the action taken to the nearest Inspector.

(3) If the occupier, agent, manager or the person in-charge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forth-with to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

NOTES.- New Chapter IVA inserted in the Act.- The Factories (Amendment) Act, 1987, has inserted this new chapter in the Act after Chapter IV.

The new Chapter lays down provisions relating to hazardous process in sections 41A to 41H.

Under provisions of section 41A of this Chapter the State Government is empowered to form a Site Appraisal Committee to examine the application for establishment of a factory involving hazardous process and send its recommendations to the State Government. The chairman and members of the Committee will be persons as specified in the section. Powers of the Committee are also specified. The proposal for establishment or expansion of such a factory, if approved by the State Government, has to be further approved by the authorities mentioned in the section. Duties and responsibilities of the occupier of such a factory have been specified in sections 41B and 41C.

Section 41D empowers the Central Government to appoint Inquiry Committee to enquire whether such a factory is observing the standards of health and safety of workers as well as of the general public as prescribed and make recommendations. Its recommendations shall be however of advisory nature. The Committee shall have a chairman and two members. The Central Government shall determine the tenure of office of the members.

Section 41E empowers the Central Government to take certain steps for laying down emergency standards and enforcement thereof in case no standard of safety has been prescribed for hazardous processes.

Section 41F enjoins that the maximum permissible limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule. The section empowers the Central Government to make suitable changes in the said Schedule by notification in the Official Gazette.

Section 41G requires the occupier of a factory in which a hazardous process takes place to set up a Safety Committee with equal number of representatives of workers for the purpose of enforcing the safety measures in the factory. The State Government may, however, exempt any factory for reasons to be recorded in writing, any factory from setting up such a Committee.

Section 41H gives the right to workers of a factory in which a hazardous process takes place to bring to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the Inspector of the area, of their apprehension about any imminent danger and the person or persons informed must enquire immediately on receipt of the information and take remedial action.

## **WELFARE N OF THE WORKERS**



### **SECTION 42. WASHING FACILITIES.-**

(1) In every factory-

- (a) adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein;

- (b) separate and adequately screened facilities shall be provided for the use of male and female workers;
- (c) such facilities shall be conveniently accessible and shall be kept clean.

(2) The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

#### **SECTION 43. FACILITIES FOR STORING AND DRYING CLOTHING.-**

The State Government may, in respect of any factory or class or description of factories make rules requiring the provision therein of suitable place for keeping clothing not worn during working hours and for the drying of wet clothing.

#### **SECTION 44. FACILITIES FOR SITTING.-**

(1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

(2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room, are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.

(3) The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

#### **SECTION 45. FIRST-AID-APPLIANCES.-**

(1) There shall, in every factory, be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the

number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.

(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

(3) Each first-aid box or cupboard shall be kept in the charge of a separate responsible person, who holds a certificate in first-aid treatment recognized by the State Government and who shall always be readily available during the working hours of the factory.

(4) In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

## **SECTION 46. CANTEENS**

(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice in the generality of the foregoing power, such rules may provide for-

- (a) the date by which such canteen shall be provided;
- (b) the standard in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) the foodstuffs to be served therein and the charges which may be made therefor;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer ;
- (e) the delegation to Chief Inspector subject to such conditions as may be prescribed, of the power to make rules under clause (c).



**SECTION 47. SHELTERS, REST-ROOMS AND LUNCH-ROOMS**

(1) In every factory wherein more than one hundred and fifty workers are ordinarily employed adequate and suitable shelters or rest-rooms and a suitable lunch-room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers:

Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch-room exists no worker shall eat any food in the work-room.

(2) The shelters or rest-room or lunch-room to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) The State Government may-

- (a) prescribe the standards, in respect of construction accommodation, furniture and other equipment of shelters, rest-rooms and lunch-rooms to be provided under this section;
- (b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

**SECTION 48. CRECHES**

(1) In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The State Government may make rules-

- (a) prescribing the location and the standards in respect of construction, accommodation; furniture and other equipment of rooms to be provided, under this section;
- (b) requiring the provision in factories to which the section applies, of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;
- (c) requiring the provision in any factory of free milk or refreshment or both for such children;
- (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

## **SECTION 49. WELFARE OFFICERS**

(1) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1). 50. Power to make rules to supplement this Chapter. -

The State Government may make rules-

- (a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter,
- (b) requiring in any factory or class or description of factories that representatives of the workers employed in the factories shall be associated with the management of the welfare arrangements of the workers.

**WORKING HOURS AND HOLIDAYS:****SECTION 51. WEEKLY HOURS**

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

**SECTION 52. WEEKLY HOLIDAYS**

(1) No adult worker shall be required or allowed to work in a factory on first day of the week (hereinafter referred to as the said day), unless-

(a) he has or will have a holiday for whole day on one of three days immediately before or after the said day, and

(b) the manager of the factory has, before the said day or the substituted day under clause (a), whichever is earlier,-

(i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and

(ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be canceled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be canceled, whichever is earlier.

(3) Where, in accordance with the Provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

### **SECTION 53. COMPENSATORY HOLIDAYS**

(1) Where, as a result of the passing of an order of the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

### **SECTION 54. DAILY HOURS**

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day.

Provided that subject to the previous approval of the Chief Inspector the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.

### **SECTION 55. INTERVALS FOR REST**

(1) The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(2) The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for the reason specified therein, exempt any factory from the provisions of sub-section (1) so however that the total number of hours worked by a worker without an interval does not exceed six.

**SECTION 56. SPREADOVER**

The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spread over more than ten and a half hours in any day:

Provided that the Chief Inspector may, for reasons to be specified in writing, increase the spread over up to twelve hours.

**SECTION 57. NIGHT SHIFTS**

Where a worker in a factory works on a shift which extends beyond midnight,-

(a) for the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;

(b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

**SECTION 58. PROHIBITION OF OVERLAPPING SHIFTS**

(1) Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

(2) The State Government or subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of sub-section (1).

**SECTION 59. EXTRA WAGES FOR OVERTIME**

(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

(3) Where any workers in a factory are paid on a piece-rate basis, the time-rate shall be deemed to be equivalent to the daily average of their full- time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar months during which the overtime work was done, and such time-rates shall be deemed to be the ordinary rates of wages of those workers:

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time-rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done.

Explanation. - For the purposes of this sub-section in computing the earnings for the days on which the worker actually worked, such allowances including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.

(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of food grains and other articles admissible to a standard family.

Explanation I. - "Standard family" means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2. - "Adult consumption unit" means the consumption units of a male above the age of fourteen years, and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6, respectively of one adult consumption unit.

(5) The State Government may make rules prescribing-

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and

(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

## **SECTION 60. RESTRICTION ON DOUBLE EMPLOYMENT**

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

## **SECTION 61. NOTICE OF PERIODS OF WORK FOR ADULTS**

(1) There shall be displayed and correctly maintained in every factory in accordance with the provisions for sub-section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 55, 56 and 58.

(3) Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in such group.

(5) For each group, which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work.

(6) Where any group is required to work on system of shifts and the relays are to be subject to pre-determined periodical changes or shifts, the manager of the factory shall fix the periods during which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to pre-determined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts, where under the period during which any relay or group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The State Government may prescribe forms of the notice required by sub-section (1) and the manner in which it shall be maintained.

(9) In the case of a factory beginning work after the commencement of this Act, a copy of the notice referred to in sub-section (1) shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

(10) Any proposed change in the system of work in any factory which Will necessitate a change in the notice referred to in sub-section (1) shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since that last change.

## **SECTION 62. REGISTER OF ADULT WORKERS**

(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing-

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shift, the relay to which he is allotted; and
- (e) such other particulars as may be prescribed:

Provided that if the Inspector is of opinion that any muster-roll or register maintained as a part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster-roll or register



shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

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

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

### **SECTION 63. HOURS OF WORK TO CORRESPOND WITH NOTICE UNDER SECTION 61 AND REGISTER UNDER SECTION 62**

No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

### **SECTION 64. POWER TO MAKE EXEMPTING RULE**

(1) The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the Chief Inspector to declare any person, other than a person defined by such rules as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed and the provision of this Chapter, other than the provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared :

Provided that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed the wage limit specified in sub-section (6) of section 1 of the Payment of Wages Act, 1936 (4 of 1936), as amended from time to time, be entitled to extra wages in respect of overtime work under section 59.

(2) The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed-

(a) of workers engaged on urgent repairs, from the provisions of sections 51, 52, 54, 55 and 56;

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of sections 51, 54, 55 and 56;

(c) of workers engaged in work which is necessarily so intermittent that intervals during which they do not work while on duty, ordinarily amount to more than the intervals for rest required by or under section 55, from the provisions of sections 51, 54, 55 and 56;

(d) of workers engaged in any work which for technical reasons must be carried on continuously from the provisions of sections 51, 52, 54, 55 and 56;

(e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of section 51 and section 52;

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons, from the provisions of section 51, section 52 and section 54;

(g) of worker engaged in a manufacturing process, which cannot be carried on except at times dependent on the irregular action of natural forces, from the provisions of sections 52 and 55;

(h) of workers engaged in engine-rooms of boiler-houses or in attending to power-plant or transmission machinery, from the provisions of section 51 and section 52; (i) of workers engaged in the printing of newspapers, who are held up on account of the breakdown of machinery, from the provisions of sections 51, 54 and 56.

Explanation. - In this clause the expression "newspapers" has the meaning assigned to it in the Press and Registration of Books Act, 1867 (XXV of 1867);

(j ) of workers engaged in the loading or unloading of railway wagons or lorries or trucks, from the provisions of sections 51, 52, 54, 55 and 56;

(k) of workers engaged in any work, which is notified by the State Government in the Official Gazette as a work of national importance, from the provisions of section 51, section 52, section 54, section 55 and section 56.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of section 61 which the State Government may deem to be expedient, subject to such conditions as it may prescribe.

(4) In making rules under this section, the State Government shall not exceed, except in respect of exemption under clause (a) of sub-section (2), the following limits of work inclusive of overtime : -

(i) the total number of hours of work in any day shall not exceed ten;

(ii) the spread over, inclusive of intervals for rest, shall not exceed twelve hours in any one day;

Provided that the State Government may, in respect of any or all of the categories of workers referred to in clause (d) of sub-section (2), make rules prescribing the circumstances in which, and the conditions subject to which, the restrictions imposed by clause (i) and clause (ii) shall not apply in order to enable a shift worker to work the whole or part of a subsequent shift in the absence of a worker who has failed to report for duty;

(iii) the total number of hours of work in a week including overtime, shall not exceed sixty;

(iv) the total number of hours of overtime shall not exceed fifty for any one quarter.

Explanation.- "Quarter" means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October.

(5) Rules made under this section shall remain in force for not more than five years.

## **SECTION 65. POWER TO MAKE EXEMPTING ORDERS**

(1) Where the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is reasonable to require that the periods of work of any adult worker in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The State Government or, subject to the control of the State Government the Chief Inspector may, by written order, exempt on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional pressure of work.

(5) Any exemption granted under sub-section (2) shall be subject to the following conditions, namely:

- (i) the total number of hours of work in any day shall not exceed twelve;
- (ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- (iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;
- (iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

Explanation. - In this sub-section "quarter" has the same meaning as in sub-section (4) of section 64.

## EMPLOYMENT OF YOUNG PERSONS AND WOMEN



### SECTION 66. FURTHER RESTRICTION ON EMPLOYMENT OF WOMEN

(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:-

- (a) no exemption from the provisions of section 54 may be granted in respect of any woman;

(b) no woman shall be required or allowed to work in any factory except between the hours 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, vary the limits laid down in clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M..

(c) there shall be no change of shifts except after a weekly holiday or any other holiday.

(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions, is necessary to prevent damage to, or deterioration in any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

## **SECTION 67. PROHIBITION OF EMPLOYMENT OF YOUNG CHILDREN**

No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

## **SECTION 68. NON-ADULT WORKERS TO CARRY TOKENS**

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory, unless -

(a) a certificate of fitness granted with reference to him under section 69, is in the custody of manager of the factory, and

(b) such child or adolescent carries while he is at work, a token giving a reference to such certificate.

**SECTION 69. CERTIFICATE OF FITNESS**

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.

(2) 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;

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year and is 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.

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

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

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

(4) 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.

(5) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

(6) 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.

(7) 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.

## **SECTION 70. EFFECT OF CERTIFICATE OF FITNESS GRANTED TO ADOLESCENT**

(1) An adolescent, who has been granted certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VIII;

(1A) 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, however, 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 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.

## **SECTION 71. WORKING HOURS FOR CHILDREN**

(1) No child shall be employed or permitted to work in any factory-

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

(b) 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.

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

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

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

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

## **SECTION 72. NOTICE OF PERIOD OF WORK FOR CHILDREN**

(1) There 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.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.

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



**SECTION 73. REGISTER OF CHILD WORKERS**

(1) 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 working hours or when any work is being carried on in a factory, showing -

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted, and
- (e) the number of his certificate of fitness granted under section 69.

(1A) 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.

(2) 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.

**SECTION 74. HOURS OF WORK TO CORRESPOND WITH NOTICE UNDER SECTION 72 AND REGISTER UNDER SECTION 73**

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 beforehand against his name in the register of child workers of the factory.

**SECTION 75. POWER TO REQUIRE MEDICAL EXAMINATION**

Where an Inspector is of opinion -

- (a) that any person working in factory without a certificate of fitness is a young person, or
- (b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, -

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

## **SECTION 76. POWER TO MAKE RULES**

The State Government may make rules-

- (a) prescribing the forms of certificate of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificate, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;
- (b) prescribing the physical standards to be attained by children and adolescents working in factories;
- (c) regulating the procedure of certifying surgeons under this Chapter;
- (d) 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.

## **SECTION 77. CERTAIN OTHER PROVISIONS OF LAW NOT BARRED**

The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938 (XXVt of 1938).

## ANNUAL LEAVE WITH WAGES



### SECTION 78. APPLICATION OF CHAPTER.-

(1) The provisions of this Chapter shall not operate to prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement including settlement or contract of service:

Provided that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourable therein, the provisions of sections 79 to 82, so far as may be, shall apply.

(2) The provisions of this Chapter shall not apply to workers in any factory of any railway administered by the Government, who are governed by leave rules approved by the Central Government

### SECTION 79. ANNUAL LEAVE WITH WAGES

(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of -

- (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;

- (ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

Explanation 1. - For the purposes of this sub-section-

- (a) any days of lay-off, by agreement or contract or as permissible under the standing orders;
- (b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.

Explanation 2. - The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

(2) A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (t) or, as the case may be, clause (ii) of sub-section (1) if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

(3) If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in sub-section(1) or sub-section (2) making him eligible to avail of such leave, and such payment shall be made -

- (i) where the worker is discharged or dismissed or quits employments before the expiry of the second working day from the date of such discharge, dismissal or quitting; and

- (ii) where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

(4) In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

(5) If a worker does not in any one calendar year takes the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year:

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child:

Provided further that a worker, who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down in sub-sections (8) and (9) or in contravention of sub-section (10) shall be entitled to carry forward the leave refused without any limit.

(6) A worker may at any time apply in writing to the manager of a factory not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year:

Provided that the application shall be made not less than thirty days before the date on which the worker wishes his leave to begin, if he is employed in a public utility service as defined in clause (n) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947):

Provided further that the number of times in which leave may be taken during any year shall not exceed three.

(7) If a worker wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (6); and in such a case wages as admissible under section 81 shall be paid not later than fifteen days, or in the case of a public utility service not later than thirty days from the date of the application for leave.

(8) For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee for the factory constituted under section 3 of the Industrial Disputes Act, 1947 (XIV of 1947), or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the grant of the leave allowable under this section may be regulated.

(9) A scheme lodged under sub-section (8) shall be displayed at some conspicuous and convenient place in the factory and shall be in force for a period of twelve months from the date on which it comes into force, and may thereafter be renewed with or without modification for a further period of twelve months at a time, by the manager in agreement with the Works Committee or a similar Committee, or as the case may be, in agreement with the representatives of the workers as specified in sub-section (8), and a notice of renewal shall be sent to the Chief Inspector before it is renewed.

(10) An application for leave which does not contravene the provisions of sub-section (6) shall not be refused, unless refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9).

(11) If the employment of a worker who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable under section 80 in respect of the leave not taken, and such payment shall be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination, and where a worker who quits his employment, on or before the next pay day.

(12) The unavailed leave of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

**SECTION 80. WAGES DURING LEAVE PERIODS**

(1) For the leave allowed to him under section 78 or section 79, as the case may be, a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the day on which he actually worked during the months immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of advantage accruing through the concessional sale to the worker of food grains and other articles:

Provided that in the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles.]

(2) The cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of food grains and other articles admissible to a standard family.

Explanation 1. - "Standard family" means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2. - "Adult consumption unit" means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years, and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

(3) The State Government may make rules prescribing -

- (a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and
- (b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

**SECTION 81. PAYMENT IN ADVANCE IN CERTAIN CASES**

A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child, shall, before his leave begins, be paid the wages due for the periods of the leave allowed.

**SECTION 82. MODE OF RECOVERY OF UNPAID WAGES**

Any sum required to be paid by an employer, under this Chapter but not paid by him, shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (IV of 1936).

**SECTION 83. POWER TO MAKE RULES**

The State Government may make rules directing managers of factories to keep registers containing such particulars as may be prescribed and requiring the registers to be made available for examination by Inspectors.

**SECTION 84. POWER TO EXEMPT FACTORIES**

Where the State Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion, are not less favourable than those for which this Chapter makes provisions, it may by written order, exempt the factory from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.

Explanation. - For the purposes of this section, in deciding whether the benefits which are provided for by any leave rules are less favourable than those for which this Chapter makes provision, or not, the totality of the benefits shall be taken into account.



**SPECIAL PROVISIONS****SECTION 85. POWER TO APPLY THE ACT TO CERTAIN PREMISES**

(1) The State Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that -

- (i) the number of persons employed therein is less than ten, if working with the aid of power, and less than twenty if working without the aid of power, or
- (ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, to be a worker.

Explanation. - For the purpose of this section "owner" shall include a lessee or mortgagee with possession of the premises.

**SECTION 86. POWER TO EXEMPT PUBLIC INSTITUTION**

The State Government may exempt, subject to such conditions as it may consider necessary, any workshop or workplace where a manufacturing process is carried on and which is attached to a

public institution maintained for the purposes of education training, research or information, from all or any of the provisions of this Act:

Provided that no exemption shall be granted from the provisions relating to hours of work and holidays unless the persons having the control of the institution submit, for the approval of the State Government, a scheme of the regulation of the hours of employment, intervals for meals, and holidays of the persons employed in or attending the institution or who are inmates for the institution, and the State Government is satisfied that the provisions of the scheme are not less favorable than the corresponding provisions of the Act.

## **SECTION 87. DANGEROUS OPERATIONS**

Where the State Government is of opinion that any manufacturing process or operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may order or make rules applicable to any factory or class or description of factories in which manufacturing process or operation is carried on -

- (a) specifying the manufacturing process or operation and declaring it to be dangerous;
- (b) prohibiting or restricting the employment of women, adolescents or children in the manufacturing process or operation;
- (c) providing for the periodical medical examination for persons employed or seeking to be employed, in the manufacturing process or operation, and prohibiting the employment of persons not certified as fit for such employment and requiring the payment by the occupier of the factory of fees for such medical examination;
- (d) providing for the protection of all persons employed in the manufacturing process or operation or in the vicinity of the places where it is carried on;
- (e) prohibiting, restricting or controlling the use of any specified materials or processes in connection with the manufacturing process or operation;
- (f) requiring the provision of additional welfare amenities and sanitary facilities and the supply of protective equipment and clothing, and laying down the standards thereof, having regard to the dangerous nature of the manufacturing process or operation;

**SECTION 87A. POWER TO PROHIBIT EMPLOYMENT ON ACCOUNT OF SERIOUS HAZARD**

(1) Where it appears to the Inspector that conditions in a factory or part thereof are such that they may cause serious hazard by way of injury or death to the persons employed therein or to the general public in the vicinity, he may, by order in writing to the occupier of the factory, state the particulars in respect of which he considers the factory or part thereof to be the cause of such serious hazard and prohibit such occupier from employing any person in the factory or any part thereof other than the minimum number of persons necessary to attend to the minimum tasks till the hazard is removed.

(2) Any order issued by the Inspector under sub-section (1) shall have effect for a period of three days until extended by the Chief Inspector by a subsequent order.

(3) Any person aggrieved by an order of the Inspector under sub-section (1), and the Chief Inspector under sub-section (2), shall have the right to appeal to the High Court.

(4) Any person whose employment has been affected by an order issued under sub-section (1), shall be entitled to wages and other benefits and it shall be the duty of the occupier to provide alternative employment to him wherever possible and in the manner prescribed.

(5) The provisions of sub-section (4) shall be without prejudice to the rights of the parties under the Industrial Disputes Act, 1947 (14 of 1947)<sup>1</sup>.

**SECTION 88. NOTICE OF CERTAIN ACCIDENT**

(1) Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, in such form and within such time, as may be prescribed.

(2) Where a notice given under sub-section (1) relates to an accident causing death, the authority to whom the notice is sent shall make an inquiry into the occurrence within one month of the

receipt of the notice or if there is no such authority, the Chief Inspector cause the Inspector to make an inquiry within the said period.

(3) The State Government may make rules for regulating the procedure inquires under this section.

### **SECTION 88A. NOTICE OF CERTAIN DANGEROUS OCCURRENCES**

Where in a factory any dangerous occurrence of such nature as may be prescribed, occurs, whether causing any bodily injury or disability, or not, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

### **SECTION 89. NOTICE OF CERTAIN DISEASES**

(1) Where any worker in a factory contracts any disease specified in the Third Schedule the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

(2) If any medical practitioner attends on a person, who is or has been employed in a factory, and who is, or is believed by the medical practitioner to be suffering from any disease specified in the Third Schedule the medical practitioner shall without delay send a report in writing to the office of the Chief Inspector stating -

- (a) the name and full postal address of the patient,
- (b) the disease from which he believes the patient to be suffering, and
- (c) the name and address of the factory in which the patient is, or was last employed.

(3) Where the report under sub-section (2) is confirmed to the satisfaction of the Chief Inspector, by the certificate of the certifying surgeon or otherwise, that the person is suffering from a disease specified in the Third Schedule, he shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land revenue from the occupier of the factory in which the person contacted the disease.

(4) If any medical practitioner fails to comply with the provisions of sub-section (2), he shall be punishable with fine which may extend to one thousand rupees.

(5) The Central Government may, by notification in the Official Gazette, add to or alter the Third Schedule and any such addition or alteration shall have effect as if it had been made by this Act.

## **SECTION 90. POWER TO DIRECT INQUIRY INTO CASES OF ACCIDENT OR DISEASE**

(1) The State Government may, if it considers it expedient so to do, appoint a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in the Third Schedule has been, or is suspected to have been, contracted in a factory, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(2) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects and may also, so far as may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the inquiry to furnish any information, shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code (XLV of 1960).

(3) The person holding an inquiry under this section shall make a report to the State Government stating the cause of the accident, or as the case may be, disease, and any attendant circumstances, and adding any observations which he or any of the assessors may think fit to make. (4) The State Government may, if it thinks fit, cause to be published any report made under this section or any extracts there from.

(5) The State Government may make rules for regulating the procedure of inquiries under this section.

**SECTION 91. POWER TO TAKE SAMPLES**

(1) An Inspector may at any time during the normal working hours of a factory, after informing the occupier or manager of the factory or other person for the time being purporting to be in-charge of the factory, take, in the manner hereinafter provided, a sufficient sample of any substance used or intended to be used in the factory, such use being -

- (a) in the belief of the Inspector, in contravention of any of the provisions of this Act or the rules made there under, or
- (b) in the opinion of the Inspector, likely to cause bodily injury to, or injury to the health of, workers in the factory.

(2) Where the Inspector takes a sample under sub-section (1), he shall, in the presence of the person informed, under that sub-section unless such person willfully absents himself, divide the sample into three portions and effectively, seal and suitably mark them, and shall permit such person to add his own seal and mark thereto.

(3) The person informed as aforesaid shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section.

(4) The Inspector shall-

- (a) forthwith give one portion of the sample to the person informed under sub-section (1);
- (b) forthwith send the second portion to a Government analyst for analysis and report thereon;
- (c) retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.

(5) Any document purporting to be a report under the hand of any Government analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceeding instituted in respect of the substance.

**SECTION 9LA. SAFETY AND OCCUPATIONAL HEALTH SURVEYS**

(1) The Chief Inspector, or the Director-General of Factory Advice Service and Labour Institutes, or the Director-General of Health Services, to the Government of India, or such other officer as may be authorised in this behalf by the State Government or the Chief Inspector or the Director-General of Factory Advice Service and Labour Institutes or the Director-General of Health Services, may, at any time during the normal working hours of a factory, or at any other time as is found by him to be necessary, after giving notice in writing to the occupier or manager of the factory or any other person who for the time being purports to be in-charge of the factory, undertake safety and occupational health surveys and such occupier or manager or other person shall afford all facilities for such survey, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

(2) For the purpose of facilitating surveys under sub-section (1) every worker shall, if so required by the person conducting the survey, present himself to undergo such medical examinations as may be considered necessary by such person and furnish all information in his possession and relevant to the survey.

(3) Any time spent by a worker for undergoing medical examination or furnishing information under sub-section (2) shall, for the purpose of calculating wages and extra wages for overtime work, be deemed to be time during which such worker worked in the factory.

Explanation. - For the purposes of this section, the report, if any, submitted to the State Government by the person conducting the survey under sub-section (1) shall be deemed to be a report submitted by an Inspector under this Act.

**PENALTIES IN FACTORIES ACT**

Rules are an important part of any institution. They help in maintaining discipline and uniformity in work. But nobody can deny the fact that the seriousness of the rules can only be maintained if its breaking leads to some sort of punishments.

Under the law, such punishments for breaking a law, rule or contract are called 'Penalties'. Penalties vary with the level of damage to the organization, repetition of mistakes, etc. Factories to define certain rules and regulations in order to maintain discipline in the factory.

Similarly, the factories Act has certain rules in the form of provisions, breaking of which leads to penalties. In this article, we will look at the various provisions related to penalties under the Factories Act, 1948.

**Penalties (Under the Factories Act, 1948)****SECTION 92: GENERAL PENALTY FOR OFFENSES**

This section states that in case there is any kind of contravention with the laws of the Act, then the occupier and the manager of the factory will be equally responsible for the breaking of the law. They will be punishable for with imprisonment up to 2 years and fine up to Rs.2 lakhs. In case, they continue the breach, they will be punishable with Rs. 10 thousand each day of the continuing breach.



**SECTION 93: LIABILITY OF OWNER OF PREMISES UNDER SPECIAL CIRCUMSTANCES**

This section states that in case a factory is on lease to various occupiers, the owner of the factory is still responsible for providing and maintaining certain services like drainage, approach roads, water supply, electricity, lighting, sanitation, etc.

**SECTION 94: ENHANCED PENALTY AFTER A PREVIOUS CONVICTION**

This section states:

- (a) Firstly, if there is any person in a factory who does any general offense and repeats it, then he will be punishable with imprisonment up to 3 years or fine of atleast Rs. 10 thousand (up to Rs. 2 lakhs) or both.
- (b) Secondly, in order to find the applicability of this provision, the managers should only count the offenses within the last 2 years of the latest offense.

**SECTION 95: PENALTY FOR OBSTRUCTING AN INSPECTOR**

This section states that whoever obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector, then that person will be punishable with imprisonment up to 6 months or fine up to Rs. 10 thousand or both. This also applies to the cases where a person prevents any worker in a factory from appearing before or being examined by an Inspector.

**SECTION 96: PENALTY FOR WRONGFULLY DISCLOSING RESULTS OF ANALYSIS UNDER SECTION 91**

This section states that any person who publishes or discloses to any other person the results of an analysis made by taking samples shall be punishable with imprisonment for a term which may extend to six months. Moreover, he will be punishable with a fine of atleast Rs. 10 thousand.

**SECTION 97: WORKER'S OFFENSES**

This section states that if any worker working in the factory contravenes with the rules or provisions of the Act, creating liabilities for other workers, will be punishable with a fine of atleast Rs.500.

**SECTION 98: FALSE CERTIFICATE OF FITNESS**

Fitness Certificate states the level of fitness of an individual for a particular job or work. In factories, this certificate plays an important role. This section punishes those workers who try to present a false 'Certificate of Fitness'. If anyone tries to do so, he will be punishable with imprisonment of 2 months. Moreover, he may be punishable with a fine of atleast Rs. 10 thousand. In certain cases, he is punished with fine and imprisonment.

**SECTION 99: DOUBLE EMPLOYMENT OF CHILD**

This section states:

- (a) Firstly, if any child works in a factory and works with another factory on the same day, then his parents will be punishable. They will be punished with a fine of Rs.1000.
- (b) Secondly, this case also applies to the person who gets benefit from such child's wages.

**SECTION 101: EXEMPTION OF OCCUPIER FROM LIABILITY IN CERTAIN CASES**

This section provides an opportunity to the managers and the occupiers of the factories who have done an offense to prove themselves non-guilty. So, in order to prove themselves right, they have to give notice to the inspector within 3 days stating their interest of proving themselves non-guilty. Moreover, they have to prove 2 things by themselves:

- (a) Firstly, he has complied with all the provisions of the act.
- (b) Secondly, someone else is the real culprit and he didn't know about the offense being done by the real offender.

**SECTION 102: POWER OF COURT TO MAKE ORDERS**

This section states that powers of the courts in case any manager does any offense under the Act. The court along with punishing the offenders can take steps in remedying the situation.

**SECTION 103: PRESUMPTION AS TO EMPLOYMENT**

This section states that if any person is near any machinery in the factory during the working hours, then he will be considered as a worker of the factory. This provision does not apply in the case when a person is near any machinery during the intervals.

## UNIT II

Workmen's compensation Act 1923  
Scope and Coverage – Applicability  
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

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### **WORKMEN'S COMPENSATION ACT 1923**

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen (or their dependants) in case of personal injury caused by accident or certain occupational diseases arising out of and in the course of employment and resulting in disablement or death. The Act was last amended in 1976.

### **SCOPE & COVERAGE**

The Employees' Compensation Act is social security legislation. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions. The Act also seeks to help the dependents of the employee rendered destitute by the 'accidents' and from the hardship arising out from such accidents.

The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law. The Act extends to the whole of India.

### **OBJECTIVE OF THE WORKMEN COMPENSATION ACT**

The Workmen's Compensation Act of 1923 was formed majorly to give compensations to workmen in the event of an accident.

The Act has it that employers should have duties and obligations that include the welfare of workers after an injury resulting from employment in the same way they

have reserved the right to make profits. The Act aims to see workmen have a sustainable life after an employment-related accident.

### **APPLICABILITY OF THE ACT**

The Act is applicable throughout India except the State of Jammu & Kashmir. The Act does not apply to those areas which are covered by the Employees' State Insurance Act, 1948.

### **THE SALIENT FEATURES OF THE ACT ARE AS FOLLOWS:**

#### **EXTENT AND APPLICATION:**

The Act extends to whole of India. It is also applicable to the workman recruited by companies/establishments registered in India and sent for work abroad.

It applies to:

- (a) All railway servants not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any capacity as is specified in Schedule II to the Act;
- (b) Persons employed in any such capacity as is specified in Schedule II to the Act. Schedule II includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations. In all, there are 48 employments listed in the Schedule; and
- (c) Persons employed in employments added to Schedule II by the State Government in exercise of the powers conferred on them under section 2(3) of the Act. In this connection, a statement indicating the additions made so far by different State Governments is enclosed (Annex-I).

There is no wage limit for coverage under the Act. All the employees employed in

Scheduled employment including the railway servants mentioned at (a) above, are therefore, covered under the Act.

## DEFINITIONS UNDER WORKMEN'S COMPENSATION ACT

Some important definitions are given below:

### DEPENDANT

- (i) Dependant Section 2(1)(d) of the Act defines “dependant” as to mean any of the following relatives of a deceased employee, namely: (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother, and
- (ii) (ii) if wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and
- (iii) (iii) if wholly or in part dependent on the earnings of the employee 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 employee is alive

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

**EMPLOYEE**

The following persons are included in the definition of “employer”:

- (a) anybody of persons incorporated or not;
- (b) any managing agent of the employer;
- (c) Legal representative of a deceased employer. Thus, one who inherits the estate of the deceased, is made liable for the payment of compensation under the Act. However, he is liable only up to the value of the estate inherited by him;
- (d) any person to whom the services of a employee are temporarily lent or let on hire by a person with whom the employee has entered into a contract of service or apprenticeship.  
[Section 2(1)(e)]

A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer (*Bajinath Singh v. O.T. Railway*, A.I.R. 1960 All 362).

“**SEAMAN**” under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.

**WAGES** According to Section 2(1)(m), the term “wages” include any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer to an employee towards any pension or provident fund or a sum paid to employee to cover any special expenses entailed on him by the nature of his employment. Wages include dearness allowance, free accommodation, overtime pay, etc. (*Godawari Sugar Mills Ltd. v. Shakuntala*; *Chitru Tanti v. TISCO*; and *Badri Prasad v. Trijugi Sitaram*). The driver of a bus died in an accident. On a claim for compensation made by widow it was held that line allowance and night out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing compensation as part of wages (*KSRTC Bangalore v. Smt. Sundari*, 1982 Lab. I.C. 230). The claim of bonus being a right of the workman is a benefit forming part of wages and the same can be included in wages (*LLJ-II 536 Ker.*).

**WHAT IS AN ACCIDENT?** Lord Macnaughten in *Fenton v, Thorley & Company* defined an accident as “an unlocked for mishap or untoward event which What is an accident? Lord Macnaughten in *Fenton v, Thorley & Company* defined an accident as “an unlocked for mishap or untoward event which is not expected or designed”. Thus a self inflicted injury is not an accident ordinarily. In *Grim.e v. Fletcher* a person became insane as a result of accident and then committed suicide. It was held that death was the result of the accident and compensation was awarded. But where insanity was not the direct result of the accident compensation cannot be awarded. e.g., where suicide was due to brooding over the accident. *Withers v. L. B. & S. C. Railways.* A series of tiny accidents, each producing some unidentifiable result and operating cumulatively to produce the final condition of injury, would constitute together an accident to furnish a proper foundation for a claim under the Act.

**PERSONAL INJURY.** A personal injury is not necessarily confined to physical or bodily injury. Injury includes psychological at physiological injury such as nervous shock, insanity etc. The injury must be personal. An injury to the belonging of a workman does not come within the Act. A workman had to go into a heating room and from there to cooling plant. The changes of temperature caused pneumonia an, the workman died. Held, the death was due to personal injury. *The Indian News Chronick Ltd. v. Mrs. Luis Lazarus.*” Death was the result of heat-stroke. Held that dependant was entitled to compensations. *Santon Fernandez v. B.P. (India) Ltd.*”

**"OCCUPATIONAL DISEASE"** Definitions of "occupational disease" should always be checked against the purpose for which they were uttered. Among the purposes for which definitions have been formulated are: defeating compensation because an injury is not an accident, but an occupational disease in jurisdictions which had at the time of the decision no occupational disease coverage; getting around the exclusive coverage provisions of the compensation act so as to sue for damages under a statute relating to safe working conditions; 22 limiting benefits or applying unusual procedural rules in those states where special restrictions are placed on occupational diseases, but not on accidents; and, finally, getting awards for occupational disease under general definitions of the term, as against the contention that the disease is an ordinary nonindustrial illness.

No ordinary disease of life to which the general public is exposed outside of the employment shall be compensable, except:



- (1) When it follows as an incident of occupational disease as defined in this title; or
- (2) When it is an infectious or contagious disease contracted in the course of employment in a hospital or sanitarium or public health laboratory. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon

### **CONSIDERATION OF ALL THE CIRCUMSTANCES:**

- (1) A direct causal connection between the conditions under which work is performed and the occupational disease,
- (2) It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment,
- (3) It can be fairly traced to the employment as the proximate cause,
- (4) It does not come from a hazard, to which workmen would have been equally exposed outside of the employment,
- (5) It is incidental to the character of the business and not independent of the relation of employer and employee, and,
- (6) It must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

### **JUDICIAL EXPANSION OF THE OCCUPATIONAL DISEASE CONCEPT**

Under schedule-type occupational disease statutes, there is relatively little occasion for judicial interpretation of the extent of coverage, although occasionally a question may arise as to what is included within some such generic term as "poisoning,"<sup>63</sup> or on how wide a range of similar or related conditions a named disease embraces. Tennessee, for example, has held that silicosis includes pulmonary fibrosis,<sup>64</sup> and that contact dermatitis includes panniculitis and dermatomyositis.<sup>5</sup> The schedule list is exclusive, and it is not within the power of the courts to add new items, however obvious an occupational disease the omitted item may be.<sup>6</sup> " But when the statute contains a general coverage of occupational diseases, with or without a schedule or definition, the courts are confronted with the continuing task of inclusion and exclusion of borderline diseases.

## SPECIAL OCCUPATIONAL DISEASE RESTRICTIONS

In most states the benefits for occupational diseases, and the conditions controlling compensability, are the same as for other kinds of disability. In spite of a marked trend toward abolition of special restrictions in recent years,<sup>24</sup> there remains a significant number of states which retain special provisions affecting occupational diseases, and especially dust diseases. Eight states, for example, place unusual limits on medical benefits for silicosis, asbestosis, and other occupational diseases.<sup>25</sup> There are also to be found special rules on benefits for partial disability, periods of exposure, and time of death or disability following exposure. In view of the persistence of this substantial array of restrictive provisions, a brief review of their background may be useful. The original reason for these restrictions was the fear that the compensation system could not bear the financial impact of full liability for dust diseases, simply because they were so widespread in particular industries. As investigators began to examine the granite works, mines, quarries, foundries, monument works, and other establishments where silica dust was prevalent, they discovered that almost every employee had silicosis in one stage of development or another. When a state introduced full silicosis coverage, it might discover, as Wisconsin did, that the insurance premium for monument workers, for example, promptly soared higher than the payroll itself, with the result that the entire industry was closed down. To some extent this problem may be thought of as a temporary one because of the backlog of advanced cases left over from an era of poorer preventive methods and less complete understanding of the disease. Some states nevertheless met this problem by introducing a sliding scale of silicosis benefits which would reach full size in a number of years, by barring benefits for partial disability, and by throwing up a variety of barriers based on relation of time or degree of exposure to time of disability, death, or claim.

**Monthly Wages.** Section 5 of the Act defines "monthly wages" and states the methods of calculating it. "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 rate). Monthly wages are calculated as follows : (a) Where the workman was in service for a continuous period of 12 months immediately preceding the accident, monthly wages shall be one-twelfth of the total wages due for the last twelve months of the period. (b) Where the whole

of the period of continuous service was less than one month, monthly wages 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.

(c) 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. A period of service is deemed to be continuous which has not been interrupted by a period of absence exceeding 14 days. Workman. The definition of the term workman is important because only a person coming within the definition is entitled to the reliefs provided by the Workmen's Compensation Act. "Workman" is defined in Section 2(n) read with Schedule II to the Act. In Schedule II, a list (consisting of 32 items) is given of persons who come within the category of workmen. Examples: Persons employed otherwise than in a clerical capacity or in a railway to operate or maintain a lift or a vehicle propelled by steam, electricity or any mechanical power ; person employed otherwise than in a clerical capacity in premises where a manufacturing process is carried on; seamen in ships of a certain tonnage; persons employed in constructing or repairing building or electric fittings ; persons employed in a circus or as a diver; etc. Subject to the exceptions noted below, the term workman means ~ (a) a railway servant as defined in Section 3 of the Indian Railways Act of 1890 who is not permanently employed in any administrative, district or sub divisional office of a railway and not employed in any capacity as is specified in schedule II or (b) employed on monthly wages not exceeding Rs. 1000 in any such capacity as is mentioned in Schedule II. I From 1st April 1976, the limit of monthly wages for purposes of this Act, was raised from Rs. 500 to Rs. 1000. I The words used in clause (b) mean that the wages must not exceed on average (now Rs. 1000) a month. The contract of employment may be expressed or implied, oral or in writing.

**Notional Extension.** . As a rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is subject to the theory or notional extension of employer's premises so

as to include an area which the Workman passes and repasses in going to and in leaving the actual place of work".

## **OTHER PROVISIONS REGARDING COMPENSATION**

**Payment of Compensation.** [Sec. 4A.] Compensation shall be paid as soon as it falls due. Where the employer does not accept the liability to the extent claimed, he must make provisional payment based on the extent of liability which he accepts. This is without prejudice to the right of the workman to make any further claim. If an employer fails to pay the compensation within one month of the date on which it fell due, the Commissioner may direct the payment of simple interest thereon at 6%. If the Commissioner thinks that there is no justification for the delay, he may direct the payment of a further sum, not exceeding 50% of the sum due, by way of penalty.

**Protection of Compensation.** Save as provided by this Act, no lump sum or half-monthly payment payable under the Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.--Sec. 9. This section has been framed, to protect as far as possible the workman from moneylenders.

**Notice and Claim.** Section 10 of the Act provides that no claim or compensation shall be entertained by the Commissioner unless notice of the accident has been given in the manner provided as soon as practicable. (This is subject to certain exceptions noted below.) The required notice must be served upon the employer or upon any of several employers or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed. The notice shall give the name and address of the person injured, the cause of the injury and the date of the accident. The notice may be given by the injured workman or by anybody on his behalf. It may be served by delivering it or sending it by registered post. The State Government may require that any prescribed class of employers shall keep at the place of employment a notice book (accessible to all workers or persons acting bona fide on their behalf) where the occurrence of accidents may be recorded. An entry in the notice book is sufficient notice. The want of notice or any defect or irregularity in it shall not be a bar to a claim in the following cases : ( 1 ) Where a workman dies or an accident occurring in

the premises of the employer or while working under the control of the employer or of any person employed by him~ and the workman died on the premises or without leaving the vicinity of the premises. . (2) If the employer or anyone of several employers or any person responsible to the employer for the management of any. Branch of the trade or business in which the injured workman was employed, had knowledge of the accident from any other source at or about the time. When it occurred. (3) If the Commissioner is satisfied that the failure to give notice was due to sufficient cause. A workman is bound to give notice of any accident which is not merely trivial, and it is not for him to decide whether it is likely to give rise to a claim for compensation. Section 10 also provides s that a claim for compensation must be preferred before the Commissioner. Within two years of the occurrence of the accident or the date of death as the case may be. In case the accident is the contracting of a disease the date of its occurrence is the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease. The Commissioner may entertain a claim filed after the prescribed time, if he is of opinion that the failure to file it within time, was due to.

**Fatal Accident.** Section 10 A provides that where a Commissioner receives information that a workman has died as a result of an accident arising out of and in course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether in the opinion of the employer, he is or is not liable to deposit compensation on account of the death. If the employer is of opinion that he is liable, he shall make the deposit within thirty days of the service of the notice. If he is of opinion that he is not liable, he must state his grounds. In the latter case, the Commissioner, after such enquiry as he may think fit inform any of the dependents of the .deceased workman that it is open to them to prefer a claim and may give them such further information as he may think fit. Section 10 B provides that where by any law for the time being in force, notice is required to be given to any authority by or on behalf of an employer, at any accident resulting in death or serious bodily injury, the person required to give the notice shall also send a report to the Commissioner. The report may be sent alternatively to any other authority prescribed by the State Government. The State government may extend the scope of

the provision requiring reports of fatal accidents to any class of premises. But Sec. 10 B does not apply to factories to which the Employees' State Insurance Act applies.

### **Medical Examination. [Sec. 11.]**

1. After a workman gives notice of an accident, the employer may, within three days of the service of the notice, offer to have him examined free of charge by a qualified medical practitioner.

2. Any workman in receipt of half-monthly payments may also be required to submit for examination from time to time.

3. The Examination must be in accordance with the rules framed for the purpose. .

4. If the workman refuses, without sufficient cause, to submit to the examination or if he leave the vicinity of the place in which he was employed, his right to receive compensation shall be suspended during the continuance of the refusal or until his return to the vicinity and examination

5. In case the workman, who refused medical examination, subsequently dies, the Commissioner has discretionary powers of direct payment of compensation to the dependents of the deceased workman.

6. The condition of an injured workman may be aggravated by refusal to submit to medical examination or refusal to follow the instructions of the medical examiner or failure to be attended by or follow the instructions of a qualified medical practitioner

7. In such a case he would get compensation, not for the aggravated injury, but for what the injury would have been had he been properly treated. Employment by contractors. [Sec. 12.] When an employer engages contractors who engage workmen, any workman injured may recover compensation from the employer if the following conditions are satisfied

- (a) the contractor is engaged to do a work, which is part of the trade or business of the principal
- (b) the engagement is in the course of or for the purposes of his trade or business, and
- (c) the accident occurred in or about the vicinity of the employer's premises. The workman may also proceed against the contractor. So he has alternative remedies. When the employer pays compensation, he is entitled to be indemnified by the contractor.

Remedies of employer against stranger. [Sec. 13.] Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of

some person over than the person by whom the compensation was paid and any person who has been called on to pay an indemnity under Section 12 shall be indemnified by the Person so liable to pay damages as aforesaid. Insolvency of Employer.

[Sec. 14.] The liability to pay workmen's compensation can be insured against. If an employer who has entered into a contract of insurance for this purpose, becomes insolvent or enters into a scheme of composition or arrangement or (being a company) is wound up, the rights or the employer as against the insurer shall be transferred to and vest in. the workman. The liability to pay compensation to a workman is to. be treated as a preferred debt under insolvency and winding" up. For this purpose, the liability to pay half-monthly payments is to be taken as equivalent to the lump sum payment into which it can be commuted. This section does not apply where a company is wound up voluntarily merely for the purpose of reconstruction or amalgamation with another company. Transfer of Assets by Employer. [Sec. 14A..] Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefore accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of .he assets so transferred as consists of immovable property. Master and Seamen. So far as masters and seamen are concerned, the provisions of the Act apply with certain modifications laid down in

Section 15. Returns. The State Government may, by notification in the official Gazette, direct employers to submit returns regarding compensation paid by them and particulars relating to the compensation. Sec. 16. Contracting Out.

Section 17 provides that any contract by which a worker relinquishes his right to receive compensation for injury is null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. Penalties.

Section 18A provides for penalties for failure to perform the duties prescribed under the Act, e.g., failure to send returns or maintain notice books etc. Bar to Civil Suits. A Civil Court has no jurisdiction to settle, decide or deal with any question which, because of the provisions of the Act, is required to be decided or dealt with by the Commissioner or to enforce any liability under this Act.

Sec. 19(2). Recovery of the amount awarded. Any amount payable under the Act, whether under an agreement or otherwise, shall be recovered as an arrear of land revenue.--Sec.

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## **NOTICE AND CLAIM**

(1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death :

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work the period of two years shall be counted from the day the workman gives notice of the disablement to his employer :

Provided further that if a workman who having been employed in an employment for a continuous period specified under sub-section (2) of section 3 in respect of that employment ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment the accident shall be deemed to have occurred on the day on which the symptoms were first detected :

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim -

(a) if the claim is preferred in respect of the death of a 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 under the control of the employer or of any person employed by him



and the workman died on such premises or at such place or on any premises belonging to the employer or died without having left the vicinity of the premises or place where the accident occurred or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred :

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given or the claim has not been preferred in due time as provided in this sub-section if he is satisfied that the failure so to give the notice or prefer the claim as the case may be was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened and shall be served on the employer or upon any one of several employers or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at these premises at which workmen are employed a notice book in the prescribed form which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served or where a notice book is maintained by entry in the notice-book.

## **DISABLEMENT**

The Act does not define the word Disablement. It only defines the partial and total disablement. After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the

nature of injury and percentage of loss of earning capacity will be partial or total. The Act has classified disablement into two categories, viz. (i) Partial disablement, and (ii) Total disablement.

### **Partial disablement**

Partial disablement can be classified as temporary partial disablement and permanent partial disablement. (a) Where the disablement is of a temporary nature: Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and (b) Where the disablement is of a permanent nature: Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time. [Section 2(1)(g)] But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. Schedule I contains list of injuries deemed to result in Permanent Total/Partial disablement. In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the employee's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity in not only the employment in which he was engaged at the time of accident but in all other employments. Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in Part II of Schedule I.

If after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement (General Manager, G.I.P. Rly. v. Shankar, A.I.R. 1950 Nag. 307). Deemed to be permanent partial disablement: Part II of Schedule I contains the list of injuries which shall be deemed to result in permanent partial disablement. Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member. Note to Schedule I – On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could be said that the words limb or member include any organ of a person and in any case it includes the eye (Lipton (India) Ltd. v. Gokul Chandran Mandal; 1981 Lab. I.C. 1300).

**Total disablement**

Total disablement can also be classified as temporary total disablement and permanent total disablement. “Total disablement” means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement. Provided further that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more. [Section 2(1)(l)]

Where the worker lost his vision of one eye permanently in an accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 Part II in Schedule I (Katrass Jherriah Coal Co. Ltd. v. Kamakhya Paul, 1976 Lab.I.C.751). In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the Supreme Court in Pratap Narain Singh Deo v. Srinivas Sabata, 1976 ILab.L.J.235, that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

**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.

**SCHEDULE I****PART I****LIST OF INJURIES DEEMED TO RESULT IN PERMANENT TOTAL  
DISABLEMENT**

Serial No.	Description of injury	% Percentage of loss of earning capacity
1	Loss of both hands or amputation at higher sites	100
2	Loss of a hand and foot	100
3	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye sight is essential	100
5	Very severe facial disfigurement	100
6	Absolute deafness	

**PART II****LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT****Amputation Cases - Upper limbs - Either arm**

1	Amputation through shoulder joint	90
2	Amputation below shoulder with stump less than 20.32 cms. from tip of acromion	80
3	Amputation from 20.32 cms. from tip of acromion to less than 4" below tip of olecranon	70

4	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 cms. below tip of olecranon	60
5	Loss of thumb	30
6	Loss of thumb and its metacarpal bone	40
7	Loss of four fingers of one hand	50
8	Loss of three fingers of one hand	30
9	Loss of two fingers of one hand	20
10	Loss of terminal phalanx of thumb	20
<b>Amputation cases - Lower limbs</b>		
10A	Guillotine amputation of tip of thumb without loss of bone	10
11	Amputation of both feet resulting in end bearing stumps	90
12	Amputation through both feet proximal to the metatarso-phalangeal joint	80
13	Loss of all toes of both feet through the metatarso-phalangeal joint	40
14	Loss of all toes of both feet proximal to the proximal inter-phalangeal joint	30
15	Loss of all toes of both feet distal to the proximal inter-phalangeal joint	20
16	Amputation at hip	90
17	Amputation below hip with stump not exceeding 12.70 cms. in length measured from tip of great trochanter but not beyond middle thigh	80

18	Amputation below hip with stump exceeding 12.70 cms. in length measured from tip of great trochanter but not beyond middle thigh	70
19	Amputation below middle thigh to 8.89 cms. below knee	60
20	Amputation below knee with stump exceeding 8.89 cms. but not exceeding 12.70 cms.	50
21	Amputation below knee with stump exceeding 12.70 cms.	50
22	Amputation of one foot resulting in end bearing	50
23	Amputation through on foot proximal to the metatarso-phalangeal joint	50
24	Loss of all toes of one foot through the metatarso-phalangeal joint	20
<b>Other injuries</b>		
25	Loss of one eye, without complications, the other being normal	40
26	Loss of vision of one eye, without complications or disfigurement of eyeball, the other being normal	30
26A	Loss of partial vision of one eye	10
<b>Loss of -</b> <b>A - Fingers of right or left hand</b> <b>Index finger</b>		
27	Whole	14
28	Two phalanges	11

29	One phalanx	9
30	Guillotine amputation of time without loss of bone	5
<b>Middle finger</b>		
31	Whole	12
32	Two phalanges	9
33	One Phalanx	7
34	Guillotine amputation of tip without loss of bone	4
<b>Ring or little finger</b>		
35	Whole	7
36	Two phalanges	6
37	One Phalanx	5
38	Guillotine amputation of tip without loss of bone	2
<b>B - Toes of right or left foot</b>		
<b>Great toe</b>		
39	Through metatarso-phalangeal joint	14
40	Part, with some loss of bone	3
<b>Any other toe</b>		
41	Through metatarso-phalangeal joint	3
42	Part with some loss of bone	1
<b>Two toes of one foot, excluding great toe</b>		
43	Through metatarso-phalangeal joint	5
44	Part, with some loss of bone	2

<b>Three toes of one foot, excluding great toe</b>		
45	Through metatarso-phalangeal joint	6
46	Part, with some loss of bone	3
<b>Four toes of one foot, excluding great toe</b>		
47	Through metatarso-phalangeal joint	9
48	Part-with some loss of bone	3

Circumstances under which employer is liable to pay compensation to the employee

Compensation in case of death of employee [Sec 4(1) (a)]

While calculating the compensation of the workman, age of the workman and relevant factor is taken in to account.

50% of monthly wages of the deceased employee X relevant factor with corresponding age of injured workman specified in Schedule IV.

or

1,20,000/- rupees of compensation.

Whichever is more.

**Example:** Muniyappa, a worker aged 35 meets with an accident and dies while at work (i.e. in the course of employment). At the time he drew a monthly wage of Rs.2,500/-. As per Schedule IV of the Act the relevant factor applicable to his case would be Rs. 197.06. As such, the amount of compensation payable to his dependants will be arrived at in the following way:

- (i)  $50\% \text{ of Rs. } 2,500 = 1,250$
- (ii)  $1,250 \times \text{relevant factor (i.e. } 197.06) =$

Rs.2,46,325.00/- (total compensation payable)



Compensation in case of permanent total disablement [Sec 4(1) (b)]

60% of monthly wages of employee X relevant factor with corresponding age of injured workman specified in Schedule IV .  
or  
1, 40,000/- rupees of compensation.  
Whichever is more.

For above the calculation of the compensation in case of death or permanent partial disablement, the monthly wage of workman is limited to 4000/- Rupees only. Or the government may prescribe and change the monthly wage amount for calculation of the compensation.

## **TYPES OF DIABLEMENT**

Accidents happen, and sometimes employees are injured and cannot return to work immediately. It's important to understand **your claim benefits**. Workers' Compensation disability benefits provide a portion of your income while you're unable to work due to a work injury. The type of injury that was sustained (temporary or permanent) will determine your benefit. Below are the 4 types of disability benefits:

### **1. Temporary Total Disability**

This is when an employee temporarily cannot perform **any of their regular work duties** while they are recovering. After the recovery period, the worker can return to work. The state the employee works in sets the benefits received. Some states may place limits on the dollar amounts a worker receives.

### **2. Temporary Partial Disability**

This occurs when an employee is unable to perform all of their regular duties. Since the employee cannot perform their complete job, the Employer does not pay them their complete salary. TPD benefits will compensate for the lower income and vary from state to state. This

is **calculated by the difference** between the employee's regular salary and their lowered income during recovery.

### **3. Permanent Total Disability**

An employee suffers an injury that permanently prevents them from working in the capacity in which they were trained. Depending on the State in which the benefits are coming from, they may provide the worker with **lifetime benefits** or stop at retirement age. However, most states pay benefits based on nature and severity of the injury, and length of time varies from state to state.

### **4. Permanent Partial Disability**

An employee is able to return to work but has some permanent impairment which prevents the employee from working as they did before the injury. This means the worker often can work in a different role but typically earns less than they would have made prior to the injury.

The type of Permanent Partial Disability will determine how the benefit is paid. **The two types of Permanent Partial Disabilities** are:

- Schedule loss of use, covers lost body parts (i.e. finger, etc.). Benefits are paid by set number of weeks based on the body part.
- Non-Schedule covers all other injuries (i.e. earring loss). Benefits are paid based on the employees earning capacity.

### UNIT III

Industrial Disputes Act 1947-Object-Definitions-Conciliation-Machinery-Adjudication  
Machinery-Power and Duties of Authorities-Procedures-Voluntary reference to arbitration-  
Award-Strike-and Lockouts-Lay off-Retrenchment-Transfer and Closing down of their  
undertaking-Penalties.

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#### MEANING

Industrial dispute act was enacted in the year 1947 Section 2(J) defines industry under industrial dispute Act. Industry means any business, trade manufacturing process which includes systematic activities. Such systematic activities must be carried by employer and employee. Industrial disputes are collective dissent and protest against the terms and conditions of employment and work.

Section 2(3) defines the workman who is employed in any industry.

Section 2(k) defines industrial dispute. If any dispute arises between, - Employer and employee.  
- Employer and employer. - employer and workmen - 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: ⇨
- To safeguard the workers against exploitation.
- To maintain good relationship between employees and employers.
- To provide and improve the welfare, amenities of workers.
- To settle industrial disputes.
- The Act provides machinery for the settlement of disputes by arbitration or adjudication.
- It attempts to ensure social justice and economic progress by fostering industrial harmony.
- It enables workers to achieve their demands by means of legitimate weapon of strike and thus facilitates collective bargaining.
- It prohibits illegal strikes and lockouts.

- It provides relief to the workman in the event of layoff or retrenchment.

The industrial disputes are divided into two types,

(i) Individual dispute

(ii) Collective dispute.

If any dispute related with a single workman will be called as individual dispute.

If any dispute related with wages bonus will be called as collective dispute.

Section 2(s) of industrial dispute act defines workman. –

Workman means any person employed in any industry to do any manual or other works, whether the terms of employment be expressed or implied. The persons working in armed forces, police service, any other managerial or administrative, supervisory capacities shall not comes within the definition of workman

Every country wishes to be a sound economy country. The economy of a country depends upon two factors; they are (i) agriculture (ii) industry. The industries in a country play a major role to strengthen the economy. So every government concentrates very much in the welfare of industry. Keeping peace in industry results good, in the development of other areas in country. So every government is taking much effort by making separate laws and organizations to maintain peace in factory. Here in this topic we are going to see the various machineries of conciliation in factories:

## **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

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:

1. The conciliator or mediator tries to remove the difference between the parties.
2. He/she persuades the parties to think over the matter with a problem-solving approach, i.e., with a give and take approach.
3. He/she only persuades the disputants to reach a solution and never imposes his/her own viewpoint.
4. 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:

- Works committee
- Conciliation Officer
- Board of Conciliation
- Court of Enquiry

**Works committees:**

Section (3) deals about works committee where there are more than 100 workers in a factory should constitute a works committee. There should be a minimum 2 members and the maximum should not exceed 20. It consist of both the representatives from the employer and employee side. Each side should constitute members equally. The committee should meet ones, at least in a month. The members can take part as a member for 2 years.

The object and purpose of constituting works committee in factories is based on the principle prevention is better than cure. The works committee shall have its office bearers a chairman, a vice-chairman, a secretary. Chairman shall be nominated by the employer, and vice-chairman be elected by members. It is the duty of employer to provide facilities for conducting works committee meeting

**Conciliation Officer:**

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.

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:**

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.

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.

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.

### **Courts of inquiry:**

Section (6) deals about court of inquire. The object of the court is to investigate the disputes and not to mediate .It is temporary in nature. A presiding officer shall lead the court with 2 or more members.

## **2. ARBITRATION:**

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.

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 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:

- Labour Court
- Industrial Tribunal
- 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.



**Powers of Labour court:**

- The Labour court has the powers to enter in to any factory regarding dispute.
- The Labour court has the power of a civil court.
- The Labour court has the power to examine any person or documents regarding dispute.
- The court has the power to average a commission to examine witness.

**Duties of Labour court:**

- The court has the duty to solve the problems before it.
- The court has the duty to enquire and investigate the problem before it.
- The decision even by the Labour court is called as “award”. It is an order of court.
- The award should be signed by the officer in chief.

**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:**

Section 7(b) deals 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. The national tribunal enquires the disputes which related more than one state. The national tribunal shall submit the award to the government within three months. The national tribunal presides by one person namely presiding officer. The presiding officer must be a judge of high court. The presiding may appoint two persons to assist him. The presiding officer shall not exceed 65 year of age must be a independent persons.

**Distinction between Award and Settlement**

Sr	Award	Settlement
	Section 2(b) of the Industrial dispute Act 1947 defines Award.	Section 2(p) of the Industrial dispute Act 1947 defines Settlement.
	Award means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A.	Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.
	It is the decision given by the arbitrator, Labour Court or Industrial Tribunal.	It is arrived at as a result of conciliation between the parties to the settlement.

	It resembles the judgment of a Court. It is to be signed by the Presiding Officer.	It resembles a gentleman agreement. It is signed by the parties to the dispute.
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**STRIKE:**

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 concentrate action.

**Kinds of strike**

1. General strike
2. Stay-in Strike
3. Pen / Tool down strike
4. Go slow strike
5. Hunger strike
6. Gherao strike, etc

**General strike:**

It is a strike done by the works to compel the employer to accept their demands.

**Stay-in strike:**

The employees will be in their works spot but they do not do their work.

**Pen/ tool down strike:**

The employees will occupy their usual position of work, but will not operate machines or do any other work.

**Go slow strike:**

The employees used to do their work very slowly, to give a mental torture to the employers.

**Hunger strike:**

The employees used to sit in a place avoiding food for a certain period to focus their demands.

**Gherao strike:**

The workers used to surround the employer for some little time with a sound of demands, is called Gherao.

**LOCKOUT:**

Section 2(1) of industrial disputes act defines lock- out. 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.
- d) No employer is allowed to do lock-out within seven days from the decision day of conciliation proceeding
- e) If any employer exercises illegal lock-out by violating the above said rules shall be punished with an imprisonment of one month or a fine up to 1000 rupees.

**Difference between Lockout and strike**

<b>Lockout</b>	<b>Strike</b>
It is a weapon in the hands of employer to press his demands among workers.	It is weapon in the hands of employees to press their demands.
Done by employer	Done by employee
It can be done by a single employer.	It is a refused to continue to work by a group.
Employer refuses to provide work to employees.	Employees refuse to continue to work.
The place of employment is closed or the work is suspended.	The work is stopped by the workers.
The workers jointly have to do planted refusal	Employer can alone make the decision to lock out

**LAY OFF:**

Section 2(kkk) of industrial disputes act, deals about 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:**

Section 2(oo) of industrial disputes act defines retrenchment. 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.

**Difference between lockout and lay off:**

<b>Lockout</b>	<b>Lay off</b>
It is temporary closing of the place of business by the employer.	It is due to shortage of raw materials, accumulation of stock, breakdown of machinery, etc.,
Industrial disputes	Not an industrial dispute
Voluntary act of the employer	Compulsion act of employer
No compensation payable	Compensation is payable
It is not related to production	Mainly concerned with production

Government permission is not required	Government permission is necessary
Lock out arises to compel the workers to accept the employer's conditions.	Lay off arises for trade reasons beyond the control of the employer.

## **CLOSURE OF INDUSTRY**

Section 2 (cc) of industrial disputes act defines closure. Closure means permanently closing the place of employment. The closure is an act done by the employer. The employer shall close a factory for some reasonable ground. The employer should apply to the government before ninety days from the date of closure. The employer should give a copy of such closure notice to the trade unions and to the workers.

The government should reply to the employer, either grant or refusal within sixty days from the receipt date of notice. If the employer does not receive any orders from government within sixty days, it can be taken as closure order granted. An appeal can be made within thirty days, in case of refusal to grant permission. It is duty of the employer to give compensation to the workers at the time of closure. Every worker should be compensated by a fifteen days average pay for every year of service given by him.

## **PENALTY INDUSTRIAL DISPUTES ACT 1947**

Penalties are imposed when the act is done which is prohibited or illegal under any law. Penalties are a way of imposing restriction upon the person not to do any activity or act which is prohibited.

## **SECTION 26. PENALTY FOR ILLEGAL STRIKES AND LOCK OUTS.**

Section 26(1) prescribes a penalty which can be imposed on any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this act.

Thus to penalise a workman under 26(1) two conditions must be fulfilled namely:-

- A workman must commence, continue or in some other manner act in furtherance of a strike and
- Such strike must be illegal under this act.

Section 26(2) provides that an employer shall be punishable with imprisonment extending to one month or with maximum fine of rupees one thousand or with both if,

Such employer commences, continues or otherwise acts in furtherance of a lock out and such lock out is illegal under this act.

### **SECTION 27. PENALTY FOR INSTIGATION, ETC.**

This section makes the following acts punishable, namely-

Instigation to others to take part in an illegal strike or lock-out

Incitement to others to take part in illegal strike or lock-out

Otherwise acting in furtherance of a strike or lock-out which is illegal under this act

### **SECTION 28. PENALTY FOR GIVING FINANCIAL AID TO ILLEGAL STRIKES AND LOCK -OUTS.**

To attract this provision of section 28 it should be proved that the strike or lock – out was illegal and the accused had knowledge that it was illegal.

### **SECTION 29. PENALTY FOR THE BREACH OF SETTLEMENT OR AWARD**

In order that a person may be penalised under section 29 of the act the following facts must be proved which are as follows

- An award or settlement in operation at the time of breach
- Such award or settlement must be valid
- The award or settlement must be binding on the accused
- The accused must be responsible for committing breach of such award or settlement
- The appropriate government must have made complaint regarding the breach



If the above mentioned requirements are cumulatively fulfilled the accused shall be punishable with imprisonment extending to six months or with fine or with both.

### **SECTION 30. PENALTY FOR DISCLOSING CONFIDENTIAL INFORMATION.**

Section 21 provides that certain matters are to be kept confidential. Any person who discloses any information in contravention of section 21 shall be penalised under section 30 of the act.

Punishment provided imprisonment extending to six months or fine up to rupees one thousand or both.

### **SECTION 30-A. PENALTY FOR CLOSURE WITHOUT NOTICE.**

Any employer who closes down any undertaking without complying with the provisions of section 25- FFA shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

### **SECTION 31. PENALTY FOR OTHER OFFENCES.**

Section 31(1) provides that any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Section 31 (2) provides that whoever contravenes any of the provisions of this act or any rule made there under, shall, if no other penalty is elsewhere provided by or under this act for such contravention ,be punishable with fine which may extend to one hundred rupees.

## UNIT IV

### The Trade Unions Act, 1926- Consumer Act 1986.

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#### **TRADE UNION ACT, 1926**

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.

The Trade Unions Act, 1926 [Act 16 OF 1926] An Act to provides for registration of trade unions with a view to render lawful organization of labor to enable collective bargaining. It also confers on a registered trade union certain protection and privileges.

The Act extends to the whole of India and applies to all kinds of unions of workers and associations of employers, which aim at regulating labor management relations. A trade union is a combination whether temporary or permanent, formed for regulating the relations not only between workmen and employees but also between workmen and workmen or between employers and employers.

#### **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.

#### **DEFINITION**

According to the **Trade Unions Act, 1926** as per Sec. 2 (6) “A trade union is a combination of persons. Whether temporary or permanent, primarily for the purpose of regulating the relations between workers and employers or between workers for imposing restrictive conditions on the conduct of any trade or business and includes the federations of two or more trade unions”

## **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.

## **OBJECT OF TRADE UNIONS ACT**

The object of passing the Act was to make necessary provisions in regard to the registration of Trade Unions and to define the law relating to registered Trade Unions.

The Royal Commission on Labor in India observed that the object is to give trade unions the necessary protection from civil suits and criminal laws relating to conspiracy in order to enable them to carry on their legitimate activities.

The Act extends to the whole of India including the state of Jammu and Kashmir. It came into force on the first day of June, 1927.

## **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.

## **OBJECTIVES**

**Following are the objectives of trade unions:**

### **1. Ensure Security of Workers:**

This involves continued employment of workers, prevent retrenchment, lay off or lock-outs. Restrict application of “fire” or dismissal or discharge and VRS.

### **2. Obtain Better Economic Returns:**

This involves wages hike at periodic intervals, bonus at higher rate, other admissible allowances, subsidized canteen and transport facilities.

### **3. Secure Power To Influence Management:**

This involves workers’ participation in management, decision making, role of union in policy decisions affecting workers, and staff members.

### **4. Secure Power To Influence Government:**

This involves influence on government to pass labor legislation which improves working conditions, safety, welfare, security and retirement benefits of workers and their dependents, seek redressal of grievances as and when needed.

## **CHARACTERISTICS OF TRADE UNION**

1. A union normally represents members in many companies throughout the industry or occupation.
2. A union is fundamentally an employer regulating device. It sharpens management efficiency and performance while protecting the interests of the members.
3. A union is a part of the working class movement.
4. A union is a pressure organization originating in the desire on the part of a group with relatively little power to influence the action of a group with relatively more power.

5. A union is a political institution in its internal structure and procedures.

## **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

- (a) 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,
- (d) The maintenance of a list of the members
- (e) The admission of ordinary members and also the admission of the number of honorary or temporary members

- (f) 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,
- (g) The conditions for member to get benefits
- (h) The manner for amending, varying, rescinding the rules
- (i) The manner for appointing a removing from executive
- (j) The safe custody of the funds, audit, and adequate facilities for the inspection of the account books
- (k) 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]**

- a) The Societies Registration Act, 1860
- b) The Co-operative Societies Act, 1912,
- c) 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

- a) Who has not attained the age of 18years.
- b) 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 AND LIABILITIES OF REGISTERED TRADE UNIONS:****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**

- a) The payment of any candidate of any legislative body(or)
- b) The holding of any meeting for candidate(or)
- c) The maintenance of any member of any legislative body or of any local authority(or)
- d) The registration of electors of a candidate for any legislative body or for any local authority;(or)
- e) The holding of political meetings

3) No member shall be compelled to contribute to the fund constituted under sub-section (1)

**Right to Change It's 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.

**ADVANTAGES OF TRADE UNION**

(a) Time is saved in pay negotiations when dealing with a union as compared to dealing with individuals. This is particularly relevant in respect of supervisors and managers where it helps to promote equitable schemes of remuneration and to avoid inequalities and possible consequent resentment.

(b) Where there is mutual respect that is, where morale is good employees can more easily be given a picture of the organization's problems and thus obtain a better understanding of them through meetings with shop stewards and local union officials. Improved industrial relations should thus result.

(c) Workers feel the strength of association and thus are able to have, through union representatives, constructive discussions on procedures relating to working practices, disciplinary measures and the like. Where relations are good, worker dissidents are often contained by the majority of workers.

(d) Cooperation with trade unions may help an organization to meet more easily the obligations placed on employers by government regulations and statutes.

(e) Changes in working practices and necessary redeployment of workers can be more easily effected if implemented with union co-operation. Where redundancies are inevitable union cooperation can be particularly helpful in obtaining fair compensation for those affected.

(f) Joint consultation is made possible and easy.

## **SHORTCOMINGS OF TRADE UNIONS**

**Trade union movement in our country suffers from the following weaknesses:**

### **1. Uneven Growth:**

Trade unions are concentrated in large scale industry sector and in big industrial centers. There is very little trade union activity in small sector, agricultural labour and domestic sector. Trade unionism has touched only a portion of the working class in India.

### **2. Small Size:**

Most of the unions have low membership though the number of unions and union membership are increasing, average membership is inadequate.

### **3. Weak Financial Position:**

The average yearly income of unions is very low and inadequate. The subscription rates are low and many members do not pay the subscription in time. Due to their financial weakness, most of the unions are not in a position to undertake welfare programmes for workers.

### **4. Political Leadership:**

Trade unions are under the leadership and control of political parties and outsiders. Politicians exploit unions and workers for their personal and political gains. Thus, the political leadership is very harmful to the trade union movement in India.

### **5. Multiplicity of Unions:**

There exist several unions in the same establishment or industry. The existence of rival unions with conflicting ideology is greatly responsible for unhealthy growth of trade union movement. In some cases employers encourage split in unions to undermine their bargaining power.

### **6. Problem of Recognition:**

Employers are under no obligation to give recognition to any union.

#### **7. Absence of Paid Office-Bearers:**

Most of the unions do not have full-time paid office-bearers. Union activists working on honorary basis devote only limited time and energy to union activities. Union officers lack adequate knowledge and skill due to lack of proper training, weak financial position and political leadership are the main reasons for this state of affairs.

#### **8. Apathy of Members:**

Majority of workers do not take keen interest in union activities. The attendance at the general meetings of unions is very poor.

#### **9. Opposition from Employers:**

Trade unions in India have to face opposition from employers. Many employers try to intimidate or victimize labor leaders, start rival union and bribe union officials.

#### **10. Inter-Union Rivalry:**

Multiple unions create rivalry. Unions try to play down each other in order to gain greater influence among workers. Employers take advantage of infighting. Inter-union rivalry weakens the power of collective bargaining and reduces the effectiveness of workers in securing their legitimate rights.

### **CONSUMER ACT 1986**

#### **CONSUMER PROTECTION ACT, 1986**

The Consumer Protection Act, 1986 contains the provisions relating to the protection of consumers, prevention of unfair trade practices, improving high standards of goods and services at reasonable price, provision of choice in consumer goods and services and safeguard the health and safety of consumers.

**ACT 68 OF 1986**

The Consumer Protection Bill, 1986 was passed by both the Houses of Parliament and it received the assent of the President on 24<sup>th</sup> December, 1986. It came on the Statutes Book as THE CONSUMER PROTECTION ACT, 1986 (68 of 1986).

**COMMENCEMENT AND APPLICATIONS**

- (1) This Act may be called the Consumer Protection Act, 1986.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.
- (4) Save as otherwise expressly provided by the Central Government by notifications, this Act shall apply to all goods and services.

**DEFINITIONS**

- (1) In this Act, unless the context otherwise requires,-

Section [2(1)(a)] "appropriate laboratory" means a laboratory or organization

- (i) Recognized by the Central Government;
- (ii) Recognized by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or
- (iii) any such laboratory or organization established by or under any law for the time-being in force,

Section [2(1)(d)] Complainant means

- (i) A consumer or
- (ii) Any voluntary consumer association registered under the Companies Act 1956 or any other law for the time being in force or
- (iii) The Central Government or any State Government.
- (iv) One or more consumers where there are numerous consumers having the same interest.
- (v) In case of death of a consumer, his legal heir or representative who or which makes a complaint.

**SECTION [2(1)(G) DEFICIENCY:**

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

**SECTION [2(1)(E)] CONSUMER DISPUTE:**

Consumer dispute means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

**DISTRICT FORUM**

District Forum means a Consumer Disputes Redressal Forum established under clause (a) Of section 9;

(i) "Goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);

**NATIONAL COMMISSION**

National Commission means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

(l) "Notification" means a notification published in the Official Gazette.

**STATE COMMISSION**

State Commission means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9; (q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof

**OBJECTS OF THE CENTRAL COUNCIL.**

The objects of the Central Council shall be to promote and protect the rights of the consumers such as,

- (a) The right to be protected against the marketing of goods <sup>1</sup>[and services] which are hazardous to life and property;

- (b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods <sup>1</sup>[or services, as the case may be], so as to protect the consumer against unfair trade practices;
- (c) The right to be assured, wherever possible, access to a variety of goods <sup>2</sup>[and services] at competitive prices;
- (d) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- (e) The right to seek redressal against unfair trade practices <sup>2</sup>[or restrictive trade practices] or unscrupulous exploitation of consumers; and
- (f) The right to consumer education.

### **FEATURES OF CONSUMER PROTECTION ACT:**

Following are the features of Consumer Protection Act.

1. Since the consumers' interest is protected, it may be considered as welfare plan of consumers.
2. It is simple and economical method to redress the grievances of consumers.
3. Before the implementation of the Act, the maxim "Let the buyer beware" was adopted.

At the time of buying the goods, the buyer must be very careful about the quality, price and the necessary information about the products. But after the implementation of the Act, the maxim "Let the seller beware" was adopted. That is before selling the goods, the seller must be very careful about the Quality, unadulterated, price etc. of the product. If there is any defect or deficiency arises then the seller must pay compensation to the consumers.

4. Consumer education is provided through through this Act. So consumers can get the necessary information about the product to be purchased.
5. Three tier Consumer Dispute Redressal Agencies were formed.
  - i) District consumer forum
  - ii) State commission
  - iii) National commission
6. Two tier consumer protection councils were formed to protect the interest of consumers.
  - i) Central Consumer Protection Council

ii) State Consumer Protection Council

7. This Act is applicable to all firms and institutions.

8. It acts as a welfare Act to all consumers.

**CONSUMER:**

The Consumer Protection Act defines a consumer as a person who buys goods or services for own consumption. It is not purchased for resale. A consumer is a person who purchases a product or avails a service for consideration, either for his personal consumption or to earn his livelihood by means of self employment. The consideration may be paid or promised or partly paid and partly promised.

To constitute a consumer, following conditions are to be fulfilled.

- i) Goods or services must be purchased for cash or credit.
- ii) With the permission of buyer, products or services must be used for consumption.
- iii) Hire charges must be paid or agreed to pay the price
- iv) Consideration may be in the form of cash or in kind.

**Example:**

- i) House allotted from Housing Board.
- ii) Two wheeler purchased for own use.
- iii) Services received for hire charges.
- iv) Tenant

As per section [2(1)(d)], Consumer is a person who buys any goods for a consideration, or hires or avails of any services for a consideration.

**Who is not a Consumer?**

A person is not a consumer if he/she

- i) Purchase any goods or avails any services, at free of charge
- ii) Purchase goods or hires as a service for commercial purpose
- iii) Avails any service under contract of service.

Following person may not be considered as consumers.

- i) One who purchase goods for resale
- ii) One who purchases good for trade purpose
- iii) One who receives goods or services at free of cost
- iv) Personal work is received on contract basis.

### **RIGHTS OF CONSUMERS:**

- 1. Right to safety
- 2. Right to choose
- 3. Right to be informed
- 4. Right to consumer education
- 5. Right to be heard
- 6. Right to seek redressal

#### **1. Right to safety**

Consumers have the right to be protected against the marketing of goods and services, which are hazardous to life and property. Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products such as ISI, AGMARK, etc.

#### **2. Right to choose**

Consumers have the right to be assured, wherever possible of access to variety of goods and services at competitive price. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices.

#### **3. Right to be informed**

Consumers have the right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices. Consumer should insist on getting all the information about the product or service before making



a choice or a decision. This will enable him to act wisely and responsibly and also enable him to desist from falling prey to high pressure selling techniques.

#### **4. Right to consumer education**

Consumers have the right to acquire the knowledge and skill to be an informed consumer throughout life. Ignorance of consumers, particularly of rural consumers, is mainly responsible for their exploitation. They should know their rights and must exercise them. Only then real consumer protection can be achieved with success.

#### **5. Right to be heard**

Consumers have the right to be represented in various forums formed to consider the consumer's welfare.

- i) Voice their grievances or suggestions, if any
- ii) Get redressal of their grievances.

#### **6. Right to seek redressal**

Consumers have the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer. Consumers must make complaint for their genuine grievances. They can also take the help of consumer organisations in seeking redressal of their grievances.

### **SERVICES:**

Section [2(1)(o)] of the Consumer Protection Act, 1986 defines services, while Section 2(42) of the current Act defines the same. Service means any kind of service which is made available to the consumers for their use for payment of consideration. A service is an activity or benefit that one party can offer to another that is essentially intangible and does not result in the ownership of anything. Its production may or may not be tied to a physical product.

**Types of services:**

Services may be mainly:-

1. Professional services
2. Consumer oriented services

Professional services are rendered by professional service firms. They serve the business market, the private individual or may serve both segments. Professional services are advisory and problem solving. These include financial advice, advertising, business and management consultancy, engineering, legal and medical.

Consumer oriented services are those in which the consumers are more acquainted with. Example: Entertainment companies provide these types of services.

**CONSUMER EXPLOITATION:**

A consumer is a king of the market. But this is not so consumers are exploited. It is a situation in which a consumer is cheated or given false information by the producer. Some of the exploitations are given below.

1. Supplied materials are of inferior quality
2. Consumers pay more and receive much less in real terms
3. Goods in many cases, fall short of their weight
4. More prices are charged
5. Adulterated goods are supplied to consumers
6. False advertisement to induce customers to purchase the goods
7. By way of competition or prizes, consumers are exploited
8. To earn more profits businessmen artificially creates shortage of goods
9. Unfair trade practices by traders
10. Mail order business is another form of crookedness
11. Hoarding and black marketing
12. Monopoly for a particular product or services.

## LEGISLATIONS

To protect the interest of consumers, much legislation was enacted. Some of them are given below:

- Sale of Goods Act, 1930
- The Prevention of Foods Adulteration Act, 1954
- The Essential Commodities Act, 1955
- Weight and Measures Act, 1958
- Monopolistic and Trade Practices Act, 1969
- Drugs and Cosmetics Act, 1940
- Packed Commodities Order, 1975
- The Bureau of Indian Standards Act, 1986
- Consumer Protection Act, 1986

## CONSUMER PROTECTION

Consumers

- i) are exploited
- ii) are deceived
- iii) have to face unfair trade practices
- iv) rights are denied
- v) have to pay high prices due to acute shortage of essential commodities in different ways by traders, not all.

To protect the interest of the consumers, from the above circumstances the necessary of consumer protection arises.

## ROOT CAUSES OF CONSUMER PROTECTION:

- i) Consumers are not satisfied after the purchase of goods
- ii) Unfavorable opinion about the goods after the purchase of goods

iii) Dejection about the goods

iv) Exploitation

### NEED OR IMPORTANCE OR NECESSITY OF CONSUMER PROTECTION:

Consumer Protection means protection of consumers from various unfair trade practices. The purpose of such protection is to avoid exploitation and check various business malpractices. Commercial organizations are well organized, better informed and have a better dominating position. Because of this, they easily exploit consumers. The worst affected victims of these commercial organizations need to be protected and the consumer is protected through consumer protection. Following are the causes which necessitate consumer protection.

1. **To shape Consumers-** Indian customers are not well-organised, and vendors exploit them easily.
2. **Impart Market Information-** Most of the consumer is clueless, and have no information about the product they are buying and this might cause them losses.
3. **Physical Safety-** Some products are adulterated and can hamper consumer health. So, they need to be protected.
4. **Avert Monopoly-** Irrespective of different restriction many organisation follows monopoly practice and consumers gets influenced and should be protected.
5. **Malpractices-** Company pursues biased trade practices, and unlawful trade practices and this protection plays a crucial role.
6. **Misleading advertisement-** Many enterprises, intentionally trick consumers through incorrect or deceptive advertisements. This act will shield consumers from getting exploited.
7. **Education Consumers about their Basic Rights-** Most consumers ignore or do not know about their rights. The Consumer Protect Act educates them and secures their rights and interests.

## HOW CONSUMERS ARE PROTECTED?

Consumers are protected by the following four methods.

1. Self regulation
2. Government regulation
3. Consumer organisation
4. Self help

### **1. Self regulation:**

Self regulation is the self discipline of an individual. When an organisation adopts fair trade practices, then it is a self regulation. It protects consumers from exploitation and fraud. When an organization gives more importance to consumer satisfaction, then the consumers may not be exploited or cheated.

### **2. Government regulation:**

Government regulation means the interest of consumers are protected through enactment of different Acts by the Central Government and State Government. To protect the interest of consumers, a number Acts were enacted. Among them, some of them are given below:

1. Sale of Goods Act, 1930
2. The Prevention of Foods Adulteration Act, 1954
3. The Essential Commodities Act, 1955
4. Weight and Measures Act, 1958
5. Monopolistic and Trade Practices Act, 1969
6. Drugs and Cosmetics Act, 1940
7. Packed Commodities Order, 1975
8. The Bureau of Indian Standards Act, 1986
9. Consumer Protection Act, 1986

### **3. Consumer Organisation:**

To protect consumer interest, different consumer organizations were formed. With the help of consumer organization, consumer education was provided and consumer awareness was created. Grievances of consumers are removed through consumer organizations. In this way, consumers are protected.

### **4. Self help:**

When a consumer is exploited or cheated, he claims the producer to redress his grievance or defects in services. This activity is known as self help. Self help is the best help. By way of self help, protection is given to the customers.

### **DISTRICT CONSUMER FORUM:**

District Forum was established by the State Government in each district of the State. The State Governments may establish more than one District Forum in a district. It is a district-level court that deals with cases valuing up to rupees 20 lakh.

The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to (f) of section 6.]

### **Composition of the District Forum:**

District forum consists of 3 members. Among the three members, one member may act as the President of the Forum.

### **Qualification of members:**

(1) Each District Forum shall consist of--

(a) A person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) Two other members, one of whom shall be a woman, who shall have the following qualifications, namely:--

(i) Be not less than thirty-five years of age,

(ii) Possess a bachelor's degree from a recognized university,

(iii) Be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

**Disqualifications of members:**

(a) Has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) Is an undischarged insolvent; or

(c) Is of unsound mind and stands so declared by a competent court; or

(d) Has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) Has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) Has such other disqualifications as may be prescribed by the State Government

**Appointment of Members:**

Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee formed by the State Government.

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

**Members of Selection Committee:**

Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier. The selection committee consists of

1. President of the State Commission- Chairman
2. Secretary Law Department of the State- member
3. Secretary, in-charge of the Department dealing with consumer affairs in the state- member.

The member shall be eligible for reappointment for another period of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment.

**Jurisdiction of the District Forum.**

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed (does not exceed rupees twenty lakhs.)

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction

(3) A complaint shall be filled in a district forum, where the opposite party resides or carries business or has a branch office within the local limits.

**Who may file a complaint? Or Mode of filling a complaint:**

A complaint may be given by any one or more of the following persons:

1. A consumer
2. Agent of the consumer
3. Any voluntary consumer association
4. More than one consumer
5. Central Government or any State Government
6. In case of death of a consumer, his legal heir or representative.

**Contents of a complaint:**

A complaint shall contain the following particulars:

1. Name and address of the complainant
2. Name and address of opposite party/ parties
3. Date of goods or services availed
4. Amount paid for the goods or services
5. Particulars of goods purchased or services availed
6. Details of complaint
7. Copy of bill or receipt of connected correspondence



8. Amount of relief or compensation sought
9. Signature of the complainant or his authorized agent.

**Time Limit:**

A complaint has to be filled with the District Forum within 2 years from the date on which the cause of action / deficiency in service / defect in goods arises. However, a complaint may also be filled after two years, if the complainant satisfies the District Forum that the complainant has sufficient reasons for not filing the complaint within such period.

**When a complaint be made?**

A complaint may be made by a consumer in writing under the following circumstances

- Loss or damage is caused to consumer in writing due to unfair trade practices of a trader or service provider
- The article purchased by a consumer is defective
- The services availed of by a consumer suffer from any deficiency
- A trader or service provider as the case may be, has charged for the goods or for the services mentioned in the complaint.

**Procedure on the receipt of the complaint:**

Following procedure is followed

- A copy of the complaint letter is to be sent to the opposite party within 30 days from the date of receipt of complaint or such extended period not exceeding 15 days as may be granted by the District Forum. The service of notice is a necessity to pass a decree and if the respondent is not served a notice, the District Forum cannot proceed against its ex parte.
- The opposite party on receipt of the copy of the complaint shall
  - a) deny the allegation or
  - b) dispute the allegation or
  - c) fails or omits to take any action to represent his case within the time given by the District Forum, then the Forum shall proceed to settle the dispute in the following manner.

- A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by--
  - (a) The consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
  - (b) any recognized consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;
  - (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or
  - (d) The Central or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.
- Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.
- On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:
  - Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant;
  - Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.
- Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:
  - Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

**Finding of the District Forum:**

(1) If the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or

more of the following things, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
- (e) to remove the defects in goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to provide for adequate costs to parties.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

(2A) every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

### **Appeal**

Any person aggrieved by an order made by the District Forum may prefer an appeal

against such order to the State Commission within a period of thirty days from the date of the order and to be accompanied by a certified copy of the order.

**STATE CONSUMER COMMISSION:**

State Consumer Commission is established by the respective state government and ordinarily functions at the state capital. State Commission has a jurisdiction to entertain complaints where value of goods and services paid as consideration exceeds 20 lakh but does not exceed one crore rupees. If any of the parties are not satisfied by the order of State Commission can appeal against such order to the National Commission within a period of thirty days of such order.

**Jurisdiction of State Commission:**

The State Commission has a jurisdiction to entertain cases where the value of goods or services or the compensation claimed, if any, exceeds the number of Rs. twenty lakhs but does not exceed Rs. one crore. It also entertains appeals against any District Forum within the state and also looks after any pending disputes or cases decided by any of the District forums in which the forums have exercised a jurisdiction not vested in them by the law, or has been exercised illegally or with any material irregularity

**Composition of the State Commission:**

Each State Commission shall consist of the following

- There is a President who is or was a judge of the High Court, appointed by the State Government
- Apart from the President, there are two other members, one being a woman.
- The number of members in the State Commission cannot be less than 2 in number.

**Qualification of members**

The member should have the following qualification in order to be a member in the state commission for consumer disputes redressal

- (a) Be not less than thirty-five years of age;

(b) Possesses a bachelor's degree from a recognised University; and

(c) Is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine.

### **Term of office [section 16(3)]**

Every member of the State Commission shall hold office for five years or up to the age of 67 years whichever is earlier and he shall not be eligible for re-appointment for another term of five years or up to the age of sixty seven whichever is earlier.

### **Resignation**

A member of the Commission may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted his office shall become vacant and may be filled in the place of the person who has resigned jurisdiction of the State Commission.

### **Jurisdiction of the State Commission**

Subject to the other provisions of this Act, the State Commission shall have jurisdiction

#### **1) Pecuniary Jurisdiction**

Complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore, then it comes under the pecuniary jurisdiction of State Commission.

#### **2) Territorial Jurisdiction**

A complaint shall be instituted in a State Commission within the limits of whose jurisdiction:

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

### **3) Appellate Jurisdiction (Section 15)**

Section 15 of the Act gives the right to prefer an appeal to the state commission within a period of thirty days from the date of order of the District Forum to any person who has been aggrieved by the order. The time limit may be extended by the state commission on showing sufficient cause.

#### **Transfer of cases (section 17A):**

As per section 17A of the Amendment Act, the State Commission has the power to transfer a case from one District Forum to another within the State. It may be made on the basis of the application of a complaint or its own motion if the interest of justice so requires.

#### **Disqualifications of members:**

Section 16 1(A) of the Amendment Act 2002, a member of the state commission is disqualified to act as a member of the commission under the following circumstances:

- (i) A convict sentenced to imprisonment which breaches moral conduct according to the State Government
- (ii) An undischarged insolvent
- (iii) A person of an unsound mind as declared by a competent court

- (iv) One removed from a government job or a government controlled corporate job
- (v) A person with such financial interest that will create a prejudice in his functions as a member.

**Appointing of members:**

The members of the State Commission is appointed by the State Government on the basis of the recommendation of selection committee consisting of the following, namely

- (i) President of the State Commission- Chairman.
- (ii) Secretary of the Law Department of the State- Member.
- (iii) Secretary, in charge of Department dealing with consumer affairs in the State-Member.

**Appeal against the order of State Commission**

An appeal against the order of State Commission shall be filed to the National Commission within a period of thirty days from the date of the order and to be accompanied by a certified copy of the order. The limitation may be extended for sufficient reasons.

An appeal by a person is required to pay any amount in terms of an order of the State Commission. The appeal can be entertained by the National Commission only when the appellant has deposited fifty percent of the amount or Rs 35000, whichever is less.

**NATIONAL COMMISSION**

The National Consumer Disputes Redressal Commission, better known as National Commission was set up in 1988 is the highest structure of redressal agencies, subordinate to the Supreme Court. It is the court that deals with the appeals against the State Commission.

**Composition of National Commission:**

National Commission shall consists of

1. A person who is or has been a Judge of the Supreme Court to be appointed by the Central Government who shall be its President after c consultation with the Chief Justice of India
2. Four other members who shall be person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in

consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, one of whom shall be a woman.

### **Procedure to be followed by the National Commission [Section 22]**

Section 22 of the Act provides that the National Commission shall follow such procedure as prescribed by the Central Government. The Consumer Protection Rules, 1987 framed by the Central Government lay down the procedure which is as follows:

(1) A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the National Commission or be sent by registered post, addressed to the National Commission:

- (a) The name, description and the address of the complainant;
- (b) The name, description and address of the opposite party
- (c) The facts relating to the complaint and when and where it arose;
- (d) Documents in support of complaint;
- (e) The relief which the complainant claims.

(2) The National Commission shall, in disposal of any complaint before it, as far as possible, follow the procedures laid down section 13 of the Act.

(3) On the date of hearing, it shall be obligatory on the parties or their agents to appear before the National Commission. Where the complainant or his agent fails to appear, the National Commission may either dismiss the complaint for default or decide it on merits. Where the opposite party or its agent fails to appear on the date of hearing the National Commission may decide the complaint ex parte.



(4) The National Commission may adjourn the hearing of the complaint shall be decided as far as possible

i) within a period of three months from the date of notice received by opposite party where complaint does not require analysis or testing of commodities and

ii) within five months if it requires analysis or testing of commodities.

(5) If the National Commission is satisfied with the allegations contained in the complaint, it shall issue orders to the opposite party or its agents directing them to fulfill any one or more of the following conditions.

i) To replace the goods to the complainant

ii) To refund the money to the complainant

iii) To pay compensation to the complainant

**Term of office:**

Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years whichever is earlier and he shall not be eligible for re-appointment. The President and members of the Commission shall hold such office as the case may be till the completion of his term.

**Jurisdiction of National Commission:**

The National Commission shall have jurisdiction

a) To entertain

i) Complaints where the value of goods and services and compensation if any claimed exceeds rupees one crore and

ii) Appeals against the orders of State Commission

b) If the State Commission has seemingly acted beyond its power or has failed in its duty, then the National Commission can call for records.

The National Commission may receive a transfer of a complaint from the State Commission at any stage of the proceeding in the interest of justice. This can be on the application of the complainant or its own motion. The National Commission may also outside of its ordinary place of the capital of India, New Delhi. These are called Circuit Benches.

**Limitation period:**

The District Forum, the State Commission or the National Commission shall not admit a complaint unless if it is filed within 2 years from the date on which the cause of action has arisen.

A complaint may be entertained after the period of 2 years if the complainant satisfies the District Forum, the State Commission or the National Commission as the case may be that he had sufficient cause for not filing the complaint within such period.

**Appointment:**

The President and members of the National Commission are appointed by the Central Government on the recommendation of selection committee consisting of the following, namely

- A judge of the Supreme Court nominated by Chief Justice of India as the Chairman
- The Secretary in Department of Legal Affairs of the Government of India as a Member
- The Secretary of the department dealing in consumer affairs in the Government of India as a Member.

**Disqualifications of Members Section 16(1)**

A new provision has been added to Section 16(1), by the Consumer Protection Amendment Act, 2002. They are as following

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the State Government.

### **Appeal against the order of State Commission**

An appeal against the order of National Commission shall be filed to the Supreme Court within a period of thirty days from the date of the order and to be accompanied by a certified copy of the order.

### **CENTRAL CONSUMER PROTECTION COUNCIL:**

As per section 4 of the Act, the Central Government has the power to constitute Central Consumer Protection Council by notification in the official gazette. It is called as Central Council. It is the highest body to decide the policy of consumer protection.

### **Composition of Central Council.**

The Central Government shall, by notification in the Official Gazette, establish the Central Council which shall consist of the following members, not exceeding thirty-six, namely:

- (a) the Minister in-charge of Consumer Affairs in the Central Government who shall be the Chairperson of the Central Council;

- (b) the Minister of State (where he is not holding independent charge) or Deputy Minister in charge of Consumer Affairs in the Central Government who shall be the Vice-Chairperson of the Central Council;
- (c) Minister of Food and Civil supplies or Minister in charge of Consumer Affairs in the States;
- (d) Eight Members of Parliament (five from the Lok Sabha and three from the Rajya Sabha);
- (e) representatives of Departments of the Central Government, autonomous organisations or regulators concerned with consumer interests, not exceeding five to be nominated by the Central Government;
- (f) the Commissioner for scheduled castes and scheduled tribes
- (g) not exceeding twenty representatives of the Central Government departments and autonomous organization concerned with consumer interest
- (h) not exceeding thirty five representatives of the Central Organisations of consumers
- (i) atleast ten representatives of woman;
- (j) not exceeding twenty members as representatives of farmers, trade and industries
- (k) not exceeding fifteen members capable of representing consumer interests not specified in (i to ix)
- (l) the Secretaries in the Department of civil supplies may act as member secretary of the Department of civil supplies.

The membership of the council is restricted to 150 members. As per the amendment of the Act, the membership is restricted to 35 members.

### **Meetings of the Central Council**

- The Central Council shall meet as and when necessary,
- At least one meeting shall be held in every year.
- The time and place of the meeting will be fixed by the Chairman
- The council shall observe such procedure in regard to the transaction of its business as may be prescribed by the Central Government.

- The chairman shall preside over the meeting. In the absence of the Chairman, Vice chairman shall preside. If both of them are absent then a member is elected by the Central Council to preside over the meeting.
- Not less than ten days notice must be given to the members for each meeting.
- The resolution passed by the Central council shall be recommendatory in nature.

**Tenure:**

The tenure of the Central Consumer Protection Council is three years. Any member of the council who wants to resign must give his willingness in writing to the Chairman of the council. This vacancy is filled by Central Government. The member appointed to such vacancy shall occupy the post for the remaining period of three years of the members who resigned the post.

**POWERS OF THE REDRESSAL AGENCIES**

The Redressal Agencies namely District Forum, State Commission & National Commission have all the powers of Civil courts such as

- (a) Summoning & enforcing of witnesses and examining the witnesses on oath
- (b) Discovery & production of any document or other material as evidence
- (c) Receiving evidence on affidavit
- (d) Requisitioning report of test or analysis from concerned council laboratory
- (e) Issuing commission for examination of witnesses
- (f) Any other matter that may be prescribed by central or state government by rule.

**Powers of the Consumer Forums [Sections 13(4), 14(1) and Rule 10]**

For the purpose of adjudicating a consumer dispute, section 13(4) has vested the Consumer Forums with certain powers of a civil court. Apart from these powers, the Central Government has provided some additional powers to them under Rule 10 of the Consumer Protection Rules, 1987. Finally section 14 of the Act has provided them with the power to issues orders.

**Powers akin to those of civil court [Section 13(4)]** – The Forums are vested with the Civil Court powers with respect to the following:

- Summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
- Discovery and production of any document or other material object producible as evidence
- Receiving of evidence on affidavits;
- requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- Issuing of any commission for the examination of any witness; and
- Any other matter which may be prescribed.

**Power to issue order [Section 14(1)]** – If, after the proceedings, the Forum is satisfied that the complainant suffer from any defect in goods or deficiency in service, it may issue an order to the opposite party directing him to do one or more of the following things, namely :—

- (a) To remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) To replace the goods with new goods of similar description which shall be free from any defect?
- (c) To return to the complainant the price, or, as the case may be, the charges paid by the complainant
- (d) To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- (e) To remove the defects or deficiencies in the services in question;
- (f) To discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) Not to offer the hazardous goods for sale;
- (h) To withdraw the hazardous goods from being offered for sale;
- (i) To provide for adequate costs to complainant.

## UNIT V

The Employees' State Insurance Act, 1948  
The Payment of Gratuity Act 1972

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### THE EMPLOYEES' STATE INSURANCE ACT, 1948

The Employees' State Insurance Act incorporates a number of sections, these sections provide for medical benefits and insurance for any employees working under factories registered under the ESI Corporation. This is an exciting prospect from both an employee's and a legal perspective as the beginning of a formal social security program in India.

This article will explain the highlight sections of the Act, as well as elaborate landmark cases that prove the authenticity of the scheme, and how it worked for the benefit of its employees at times of need.

### APPLICATION AND SCOPE OF THE ACT

The Employees' State Insurance Act, 1948 (ESI), enables the financial backing and support to the working class in times of medical distress such as:

- Sickness.
- Maternity Leave.
- Disorders (mental or physical).
- Disability.
- Death.

It is a self-financed initiative, which serves as a type of social security scheme, to prevent the working class from any financial problems arising out of the above medical issues.

**CONSTITUTIONALITY OF THE ACT:**

The ESI Act serves as a constitutional instrument because of its practice of providing insurance and medical insurance. While the ESI Act is mostly executed through the ESI Corporation, the Central Government takes control of most of the proceedings.

This control by the Central Government largely contributes to the constitutionality of the Act, because Insurance, be it public or private, is listed in the Seventh Schedule of the Indian Constitution as a Union List subject i.e. it can only be legislated by the Central Government.

**CORPORATION, STANDING COMMITTEE & MEDICAL COUNCIL****ESTABLISHMENT OF EMPLOYEES' STATE INSURANCE CORPORATION:**

The ESI Act exercises its function through the Employees' State Insurance Corporation, established via Section 3, a body created to maintain social security. It was established on 24 February, 1952. The corporation is supposed to grant relief to the employees in case of medical emergencies.

**CONSTITUTION OF CORPORATION:**

The composition of the ESIC is defined in Section 4, and it is as follows:

- The Director-General.
- Chairman, appointed by the Central Government.
- Vice-Chairman appointed by the Central Government.
- Not more than 5 persons nominated by the Central Government.
- 1 person to represent each state.
- 1 person representing the Union Territories.
- 10 persons representing employers.
- 10 persons representing employees.
- 2 persons representing the medical profession.
- 3 members of parliament (2: Lok Sabha and 1: Rajya Sabha).



**TERM OF OFFICE OF MEMBERS OF THE CORPORATION:**

Via Section 5, the following members are appointed for up to a 4 year period:

- Director-General.
- Chairman.
- Vice-Chairman.
- The 5 people nominated by Central Government.
- The members representing each state.
- The members representing each Union Territory.

**ELIGIBILITY FOR RE-APPOINTMENT OR RE-ELECTION:**

An outgoing member of ESIC, the Standing Committee of ESIC, or the Medical Benefit Council is automatically eligible for re-appointment or re-election into office as the case may be, at the pleasure of the appointing Central Government.

**AUTHENTICATION OF ORDERS, DECISIONS, ETC.:**

The signature of the Director-General of ESIC is the only necessary requirement to authenticate an outgoing order or a decision, there is no other way to authenticate or enforce an order.

The Director-General can also temporarily delegate his authority to any other officer. In this case, the signature of the authorised officer will also suffice to authenticate an order.

**CONSTITUTION OF STANDING COMMITTEE:**

The composition of the Standing Committee of ESIC is as follows:

- A chairman appointed by Central Government.
- 3 members within the corporation representing 3 state governments.
- 3 members within the corporation representing employers.
- 3 members within the corporation representing employees.

- 1 member within the corporation representing the medical profession.
- One MP belonging to the corporation.
- The Director-General.

#### **TERMS OF OFFICE OF MEMBERS OF STANDING COMMITTEE:**

The following members are appointed for a two year period:

- The Chairman.
- The 3 members representing the states.

#### **MEDICAL BENEFIT COUNCIL:**

The Medical Benefit Council is an advisory body on matters related to the administration of medical benefits under the ESI scheme. It consists of:

- The Director-General of ESIC as Chairman.
- The Director-General of Health Services as co-Chairman.
- The Medical Commissioner of ESIC.
- One member for each state appointed by State Government.
- Three members representing employers.
- Three members representing employees.
- Three members including one woman representing the medical profession.

#### **TENURE OF THE MEMBERS OF THE MEDICAL BENEFIT COUNCIL:**

The following members of the Medical Benefit Council are appointed for a period of 4 years, these are:

- The Director-General of ESIC as Chairman.
- The Director-General of Health Services as co-Chairman.
- The Medical Commissioner of ESIC.
- One member for each state appointed by State Government.

**RESIGNATION OF MEMBERSHIP:**

The resignation of a member of the Corporation is complete when a notice for the same, in writing, is delivered to the Central Government, and his seat shall fall vacant upon acceptance of his resignation.

**CESSATION OF MEMBERSHIP:**

A member of the ESIC shall cease to be a member of his respective body (Corporation, Standing Committee or Medical Council) upon failing to attend three consecutive meetings. However, the same member can be restored by the concerned body via the rules made by the Central Government.

If in the opinion of the Central Government, any employer, employee or medical representative fails to represent their qualification, they shall cease to be members of ESIC.

**DISQUALIFICATION:**

A person can be disqualified as a member of ESIC if:

- If he is declared to be of unsound mind by a qualified court.
- If he is an undischarged insolvent.
- If at any time, he has been convicted of an offence regarding moral turpitude.

**FILLING OF VACANCIES:**

Any vacancy in the office of ESIC shall be filled by appointment or election, as the case may be.

A member of ESIC can only hold the ex-member's spot in the respective committee, if the original holder of that position was found to be eligible for the same. Otherwise, the position is void.

**FEES AND ALLOWANCES:**

The fees which are payable to the members of the ESIC for their services can be payable at any time, at the discretion of the Central Government. There is no definitive schedule.

**PRINCIPAL OFFICERS:**

The Principal Officers referred to under this Section are the Director-General and/or Financial Commissioner, to act as the CEO for ESIC. They serve as whole-time officers and are not permitted to undertake any work outside of office jurisdiction without the sanction of the Central Government.

The time period for the appointment of any principal officer may not exceed 5 years. The operation of their fees, disqualification, and cessation of seats operate in the same manner as that of their subordinates.

**STAFF:**

ESIC has the jurisdiction to employ staff of officers as may be necessary for the optimum running of the corporation, however, according to the prerequisites in [Section 17](#), the sanction for creating any staff position has to be acquired from the Central Government. Their salary shall be prescribed by the Central government within a particular range, which cannot be exceeded.

The scale of pay will be determined on the basis of their educational qualifications, method of recruitment, duties, and responsibilities, etc.

**POWERS OF THE STANDING COMMITTEE:**

The Standing Committee, with its powers defined in [Section 18](#), shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation, while authorised and under the jurisdiction of the corporation.

The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

The Standing Committee also, in its discretion, may submit any other case or matter for the decision of the Corporation.

### **CORPORATION'S POWER TO PROMOTE MEASURES FOR THE HEALTH OF INSURED PERSONS:**

ESIC, in its jurisdiction, may take initiatives that promote health and welfare amongst its employees, while also promoting rehabilitation and re-employment for past employees who were injured or disabled in the course of employment.

The funding and expenditure for such initiatives is at the discretion of the Central Government.

### **MEETINGS:**

ESIC, its Standing Committee, and its Medical Council shall meet periodically to observe rules and procedures in regard to the efficient functioning of the corporation. Such observations can be specified as per the regulations in regard to the meeting.

### **SUPERSESSION OF THE CORPORATION AND STANDING COMMITTEE:**

The supersession of the Corporation and the Standing Committee occurs when there is a persistent failure to perform the duties prescribed to both parties. In such a case, the Central Government, via a notification in the Official Gazette, can take the place of the corporation, or with the consultation of the corporation, can take the place of the Standing Committee.

The supersession of the corporation will take place by rendering all of the seats of the corporation, previously occupied by the members, as vacant.

In the case of the Standing Committee, a new one shall be constituted immediately as per Section 8 of the ESI Act.

#### **DUTIES OF THE MEDICAL BENEFIT COUNCIL:**

The Medical Council's functions are as follows:

- Advise the other two ESIC bodies on matters relating to the implementation that would be beneficial in the medical field. It acquires certification for the grant of medical benefits.
- Investigate against complaints lodged against medical practitioners with relevance to the medical relief offered.

#### **DUTIES OF DIRECTOR GENERAL AND THE FINANCIAL COMMISSIONER:**

The duties of the Director-General and Financial Commissioner are prescribed by the ESI Act itself in accordance with the Central Government. These tasks may concern various arenas from management to miscellaneous tasks.

#### **VALIDITY OF THE ACT OF THE CORPORATION:**

No act of any ESIC body shall be termed as invalid with respect to their own rules and regulations. Invalidity cannot be claimed on the eligibility or ineligibility of a particular member of that office.

#### **REGIONAL BOARDS, LOCAL COMMITTEES, REGIONAL AND LOCAL MEDICAL BENEFIT COUNCIL**

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them powers and functions.

## **FINANCE AND AUDIT**

### **EMPLOYEES' STATE INSURANCE FUND:**

The Employees' State Insurance Fund is the primary monetary source for the ESIC to perform its functions. All contributions paid under this Act and all other money received on behalf of the Corporation shall be paid into this fund to be held and administered by the Corporation.

These could be in the form of grants, donations or gifts by the government.

### **EXPENSES OF THE FUND:**

The ESI Fund is responsible for maintaining the expenses of ESIC, which are as follows:

- Payment of benefits and provision of medical treatment and attendance to insured persons and their families, if required.
- Payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils.
- Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, etc.
- Establishment and maintenance of hospitals, dispensaries, and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and their families, if required.
- Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and their families, if required.

### **ADMINISTRATIVE EXPENSES:**

Administrative expenses are termed so, those expenses which cover the costs of administration of ESIC, prescribed by the Central Government.

**HOLDING OF PROPERTY:**

ESIC is subject to conditions prescribed by the Central Government, in terms of acquiring, hold, sell or transfer any property, movable or immovable, vested in or acquired by it, so as to fulfill the purposes of the corporation. The ESIC also has the ability to invest in property as and when required, under the jurisdiction of the Central government. It can also delegate property for the benefit of its staff.

**VESTING OF THE PROPERTY IN THE CORPORATION:**

Any and all property acquired by ESIC, before its establishment, will be brought into the accounting books of the corporation.

**BUDGET ESTIMATES:**

Every year, ESIC frames and projects a potential budget showcasing how much expenditure it proposes to incur, and how it will discharge its liabilities during the following year. This is then submitted to the Central Government for approval.

**ACCOUNTS:**

The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.

**AUDIT:**

The Corporation prepares accounts regularly which are audited annually by the comptroller and Auditor-General of India, and any audit which leads to an expenditure will be payable to the above parties.

Any person appointed by the Comptroller and Auditor-General to act on their behalf will temporarily have the same powers as the above parties and are authorised to demand the



production of books, accounts, connected vouchers, and other documents and papers. They shall also be authorised to inspect any offices of ESIC at any time.

The accounts of the Corporation, before being forwarded to the Central Government, have to be verified by the Comptroller and Auditor-General, or any of their representatives. After verification, the accounts can be forwarded to the Central Government along with any comments on the report, given by the above parties.

### **ANNUAL REPORT:**

The Corporation shall submit an annual report of its work and activities to the Central Government.

### **BUDGET ETC. TO BE PLACED BEFORE PARLIAMENT:**

The annual report, the audited accounts of the Corporation along with the report of the Comptroller and Auditor-General of India, and the comments of the Corporation on such report under section 34 and the budget, as finally adopted by the Corporation, shall be placed before the Parliament.

### **VALUATION OF ASSETS AND LIABILITIES:**

The Corporation shall, at intervals of three years, have a valuation of its assets and liabilities made by a value appointed with the approval of the Central Government: Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

### **CONTRIBUTIONS**

All employees to be insured

All employees employed in the factories which meet ESIC prescribed rules (under Section 2) are insured for all the benefits offered by it.

**CONTRIBUTION:**

- The contribution is a determinable amount of money payable by both the employer and the employee, as per the situation, to the corporation.
- The rates, while usually prescribed by the government, are not set in stone, and are subject to change. Rates defined by the government are mostly set as the unit standard for the contribution payable by the employer.
- In the case of the employee's contribution, the wage period in relation to the respective employee shall be held as a unit to determine the compensation payable, and are normally due on the last day of the wage period.
- Failure to pay contributions by the employer will make him liable to pay an interest rate of 12%.

**PRINCIPAL EMPLOYER TO PAY CONTRIBUTION IN THE FIRST INSTANCE:**

- The primary employer has to collectively pay the contribution, both his own and that of his employees, regardless of whether they are directly employed under him or are working through an immediate employer.
- If a directly employed employee fails to pay his contributions, then the employer can recover that contribution only by deducting the wages of said employee.
- The employer bears all the transfer costs of the payment to the Corporation.

**RECOVERY OF CONTRIBUTION FROM THE IMMEDIATE EMPLOYER:**

In the case of an employee who is indirectly employed under the principal employer, via an immediate employer, the principal employer shall be entitled to recover the payment made on behalf of an indirect employee, from the immediate employer, as a debt payable to him. The immediate employer also has to prepare a list of all the employees under him and submit the same to the principal employer, before paying his dues.

**GENERAL PROVISIONS AS TO PAYMENT OF CONTRIBUTION:**

In case an employee's wage falls below the prescribed wage range prescribed by the Central Government, the employee shall not be liable for his contribution and it shall not be payable.

**METHOD OF PAYMENT OF CONTRIBUTIONS:**

The manner for payments which the Act provides regulations for, has been elaborated in the following conditions:

- The nature and time of contribution being paid.
- Payment which involves the usage of stamps or other adhesives fixed upon the books of accounts, or any other documents.
- The evidence of the contributions, which reaches the Corporation, is to be dated.
- The different entries in the books of accounts along with the details of the insured persons.
- The replacement of documents which have been lost, destroyed or defaced.

**EMPLOYERS TO FURNISH RETURNS AND MAINTAIN REGISTERS IN CERTAIN CASES:**

According to the provisions given as per the ESI Act, the principal and immediate employers are to submit all the investment profits, as well as any and all details relating to their employees in any factory under their jurisdiction. In case of failure to submit a return, that the corporation had reasonable cause to believe, should have been submitted, the corporation can require the employers to present all the details.

**SOCIAL SECURITY OFFICERS AND THEIR FUNCTIONS:**

ESIC has the power to appoint persons as Social Security Officers. Their functions are mostly to serve a role in inspecting the function of the corporation.

- If required, he can acquire any information from any employer as he sees fit.

- He can enter any corporation at any time and can get all the accounts, books and other employment documents presented to him without any due notice. This can include information like wages, expenses, etc.
- He can inspect and look into any matter regarding the employers and employees as and when required under the jurisdiction of the court.
- He can make copies or take extracts from any register or account back as per his discretion.

### **DETERMINATION OF CONTRIBUTION IN CERTAIN CASES:**

A Social Security officer is restricted from exercising his functions and discharging his duties, if the accounting statements of the factory/establishment are not submitted, or not maintained in accordance with Section 44 of the ESI Act. As such, the Corporation may, with the available information, determine the contribution (defined under Section 39) amount payable to employees. However, this procedure will not take place until after the person in charge has been given a reasonable opportunity to be heard regarding the absence of such records.

### **APPELLATE AUTHORITY:**

In the scenario specified in Section 45A, once the employer in charge is heard, and he is not satisfied with the verdict given by the corporation, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of the verdict. He must also pay a sum of 25% of his calculated contribution, in order to file the appeal. In case he is successful, the corporation will also refund the contribution paid by him.

### **RECOVERY OF CONTRIBUTIONS:**

Any and all contributions which are payable under the provisions of ESI Act, can be recovered, termed as 'arrear of land revenue'.

**ISSUE OF CERTIFICATE TO THE RECOVERY OFFICER:**

In lieu of Section 45B, where the contribution is to be recovered, an authorised officer of the corporation issues a certificate bearing his signature and the amount to be recovered, to a Recovery Officer, who then proceeds to recover the amount specified from the factory where the default took place. He does this via:

- Attachment or sale of the property of the factory, or the employer, as per the situation.
- The arrest of the employer and getting him detained in prison.
- Appointing a receiver for the management of the property acquired, be it from the factory or the employer.

**RECOVERY OFFICER TO WHOM THE CERTIFICATE IS TO BE FORWARDED:**

For the contribution certificate to be forwarded to the Recovery Officer, the factory employer must be under the jurisdiction of the Officer in the following ways:

- The location where the employer carries on his business and where the factory is located.
- The location where the employer resides or he has any personal property situated within the Officer's jurisdiction.
- The inability to recover the amount solely through the sale of property alone.

**THE INABILITY TO RECOVER THE AMOUNT SOLELY THROUGH THE SALE OF PROPERTY ALONE:**

The analysis of the recovery amount, as per the certificate issued to the Recovery Officer, operates on his word only. The factory or any authority related to it cannot question the Officer on the correctness of the amount, and no objection shall be entertained. However, with a prior

intimation, an arithmetical mistake can be corrected by an authorised officer, along with any orders about withdrawal or cancellation of a certificate.

### **STAY OF PROCEEDINGS UNDER CERTIFICATE AND AMENDMENT OR WITHDRAWAL THEREOF:**

It is at the discretion of the Recovery Officer, within the boundaries of the ESI Act, to halt legal proceedings if the time he has allocated for the recovery of an amount, has expired. The Recovery Officer is also entitled to receive constant updates about the status of payment of any due amount. If, as a result of an appeal, the amount due is decreased, then the Recovery Officer temporarily halts the recovery of the now decreased amount.

### **OTHER MODES OF RECOVERY:**

Some of the other modes of recovery are elaborated within Section 45G. These are rarer modes of recovery, due to the primary modes of recovery often being preferred:

- The defaulting employer may be required to pay a sum which was deducted from the arrears after the sale of the property.
- There might not be any penalty issued but the defaulting employer would be required to pay the entire outstanding amount directly to the Director-General of the Corporation.
- Any joint shareholders who held money with the defaulting employer might be forced to give up their shares to the Corporation until they are equal to the defaulting employer's shares, as compensation.

### **APPLICATION OF CERTAIN PROVISIONS OF THE INCOME-TAX ACT:**

The arrears of the amount of contributors, which are to be sold to cover the remaining costs, can be affected by decisions from the Assessing Tax Officer or Tax Recovery Officer. They can make changes which shall apply to all the interests and damages.

**BENEFITS:**

Section 46 of the ESI Act grants benefits to employees as social security in case of injury, which can be availed during the course of employment. There are 6 types of benefits that can be availed:

1. Medical benefit.
2. Sickness benefit.
3. Maternity benefit.
4. Dependants' benefits.
5. Disablement benefits.
6. Other benefits.

**1. MEDICAL BENEFITS:**

These benefits are guaranteed to the employee as soon as he/she is hired, with the benefits extending to their family members as well.

This benefit covers the payment of all treatment expenses in lieu of medical issues faced by the employee

**2. SICKNESS BENEFITS:**

The employees covered by the ESI Act can avail periodical payments in case of sickness as per Section 46(1)(a), as long as the medical condition is verified by the appointed medical practitioner.

The compensation is approximately 70% of their wages, with the upper limit for availing compensation being 91 days in a year.

In a period of 6 months of employment, the employee must have been working for a minimum of 78 days, else the benefit cannot be claimed.

### 3. MATERNITY BENEFITS:

As per Section 46(1)(b) of the ESI Act, an insured woman can claim periodical payments in case of occurrence of any of the following situations:

- confinement (labour leading to birth or birth after 26 weeks)
- miscarriage
- sickness arising out of pregnancy
- premature birth of child

The benefit is payable for three months, with an extension of one month, if required. The minimum work duration must be 70 days in the year preceding the year of pregnancy.

### 4. DEPENDANTS' BENEFITS:

Section 46(1)(d) prescribes periodical payments (often made monthly) to the dependants/family members of the person who dies during the course of employment, with the cause of death being an employment injury or an occupational hazard. Compensation is generally 90% of the employee's wages.

### 5. DISABLEMENT BENEFITS:

In case an employee suffers an injury during the course of employment which results in their disablement. The nature of the disablement may be temporary or permanent. Unlike the other benefits, there is no minimum work contribution required to avail the disablement benefit, although eligibility for the same will be determined by the Medical Board.

This determination also affects the amount of compensation granted, if any, with the general percentage of wages granted being around 90%.



**6. OTHER BENEFITS:**

‘Other benefits’ refer to the miscellaneous benefits apart from the five major benefits that can be availed by the employees. These are as follows:

- Funeral Expenses: Compensation of Rs. 10,000 is granted to the eldest surviving member of an employee’s family to perform his last rites.
- Vocational Rehabilitation: The benefit is payable to disabled employees undergoing rehabilitation.
- Old age medical care: This benefit is available for retired employees, or those who left employment after suffering an injury, with general compensation being Rs. 120 p/m.

**SCHEME FOR OTHER BENEFICIARIES:****SCOPE OF SECTION 53 AND 61**

Section 53 of the ESI Act acts as a deterrent for employees, in order to prevent them or their families from claiming benefits provided under the scope of Workmen’s’ Protection Act, so long as they are still insured under the reliefs offered by the ESI Act.

Section 61 acts like an extension to Section 53, in the sense that while Section 53 only bars employees from receiving compensation under the Workmen’s’ Compensation Act, Section 61 bars employees from receiving compensation from any other enactment so long as they are still insured under the ESI Act.

**POWER TO FRAME SCHEME:**

The Central Government holds the power to frame schemes for other beneficiaries and their family members, mostly for providing medical facilities in ESI hospitals. However, this must be within the framework of the ESI Act and must be notified in the Official Gazette.

## **SCHEME FOR OTHER BENEFICIARIES**

Schemes implemented for beneficiaries may cover for a number of matters such as:

- The time and nature of the usage of medical facilities.
- The presentation of particulars and details about the beneficiary and his family as per the needs of the Corporation.
- Miscellaneous matters which may be necessary to fully implement the scheme.

### **POWER TO AMEND SCHEMES:**

Via a notification in the Official Gazette, the Central Government may add to, amend, introduce variations, or rescind the scheme.

### **ADJUDICATION OF DISPUTES AND CLAIMS:**

Constitution of Employees' Insurance Court Via a notification in the Official Gazette, an Employees' Insurance Court will be constituted by the State Government, with a set amount of judges as per the decision of the State Government.

The same court may be appointed for two or more local areas, or two courts or more courts may be appointed for the same local area.

### **POWER OF EMPLOYEES' INSURANCE COURT:**

The Employees' Insurance Court will function with the same powers as that of a Civil Court, in which, to enforce the provisions of the ESI Act, it can enforce witness attendance, compel document and material evidence to be presented, it can administer an oath and can record evidence.

All expenses incurred before a proceeding are subject to the discretion and liability of the court itself.

**REFERENCE TO HIGH COURT:**

An Employees' Insurance Court, according to Section 81 may submit any question of law for the decision of the High Court and if it does so, the answer to the question shall hold precedence before any judgment.

**APPEAL :**

Section 82 defines that no appeal can be laid down as against an order from the Employees' Insurance Court. However, appeals from the High Court can stand if they involve a substantial question of law.

**PENALTIES:****PUNISHMENTS:-**

Sections 84, 85, and 85A cover all the punishments for default listed within the ESI Act.

- False Statement: Any person caught increasing the payment or benefit to avoid payment by himself is known to make a false statement. Punishable with up to six months and/or with fine not greater than Rs. 2000. Insured persons convicted of this will not be entitled to cash benefits.
- Failure to pay contribution: Persons failing to pay the contribution, unlawfully deducts wages or benefits, unfairly punishes an employee, obstructs inspector's duties, etc. can be punishable for up to three years, no less than one year with a fine up to Rs. 10000.
- Subsequent Punishment: If a person is found committing the same offence twice, he shall be punished with imprisonment for a term extending up to two years with a fine of Rs. 5000 for each subsequent offence.

**POWER TO RECOVER DAMAGES:**

If an employer fails to pay the contributions due in any aspect, whether it be from his side or his employee's side, the Corporation can recover the deficit from him by way of penalty.

However, this recovery of contribution will not take place until after the person in charge has been given a reasonable opportunity to be heard regarding the failure to pay the contribution.

### **POWER OF COURT TO MAKE ORDERS:-**

Along with the power of the court to recover damages, it also has provisions to enforce judicial orders. If the defaulting employer fails to meet the time conditions for payments that have been stated by the Court, the employer will be deemed to have committed another offence, which can be punishable with imprisonment and/or fines.

### **PROSECUTION:-**

Section 86 dictates that any sort of prosecution cannot take place under the provisions of ESI Act unless it has previously obtained the sanction of the Insurance Commissioner or any other authorised authority such as the Director-General of the Corporation. No court lower than a First Class Magistrate can try an offence under the ESI Act, and no Court will take cognizance of any offence reported under this Act.

### **OFFENCES BY COMPANIES:-**

Taking inference from the concept of business entity, where every company is its own individual i.e. it is a separate legal entity of its own and can sue or be sued in a court of law accordingly.

As such, when an offence is said to have been committed by a company, all of its managerial employees, who were responsible for the company at the time, will be tried along with the company, deemed to be guilty of the same offence. They are liable for punishment accordingly.

## MISCELLANEOUS

### EXEMPTIONS:

Sections 87, 88, 90, 91 and 91A list the criteria under which certain exceptions to benefits can be made under ISA. Via a notification in the Official Gazette, the appropriate government(appropriate here meaning the government exercising more authority, in a closer proximity), can exempt the following from the benefits of the ESI Act(if they were enjoying those same benefits before):

- Factory/establishment or a class of factories/establishments.
- Persons or classes of persons.
- Factories or establishments belonging to the Government or any local authority.
- Any of the above from a particular provision of the Act.
- Any of the above to be exempted prospectively for a specified time period.

### MISUSE OF BENEFITS:

In case of any misuse of benefits by the insured persons, the Central Government can, at its discretion, publish a notice in the Official Gazette that disentitles such persons from their benefits that they have under ESI Act.

### DELEGATION OF POWERS:

The bodies of ESIC possess authority that they can delegate to authorised personnel, at their discretion. These authorised personnel can exercise the powers given to them by their specific ESIC bodies, but only for a temporary period.

#### Medical care for the families of insured persons

Medical care is guaranteed for family members of the insured person, covered at the cost of the Corporation if the funds at the time permit the coverage.

## JUDICIAL PRECEDENCES

### MR. A. TEHAN V/S M/S. ASSOCIATED ELECTRICAL AGENCIES & ANR.

In this case, the plaintiff was under the employment of defendant 1 for carrying out television repairs. On July 17, 1987, he was injured during the course of employment while repairing a television set, when a component burst and he suffered injuries on his face.

After claiming relief from the ESIC Corporation under Section 46 of the Act, he then filed an appeal asking for compensation under the Workmen's' Compensation Act, which required an amount paid by the defendant.

This was challenged by the defendant in the Bombay High Court via an appeal, which contested their payment of the compensation, and called into usage Sections 38 and 46 of the ESI Act, which lay the foundation for the insurance offered by the Act. (Section 38 guaranteeing that every worker is insured and Section 46 defining the relief available to workers).

This was further verified by the High Court, whose Division Bench further stated that the worker's appeal for the amount to be paid by the plaintiff could not be upheld. Instead, he would receive appropriate relief, to be determined by the ESIC.

### WESTERN INDIA PLYWOOD LTD V/S SHRI. P. ASHOKAN

In this case, the defendant, P. Ashokan, was appealing to claim damages from the appellant, his employer, 'Western India Plywood Ltd.' as compensation for an injury which he had suffered during the course of employment. However, the defendant had already claimed compensation from ESIC for his injuries as he was insured under the ESI Act.

The appeal was filed in lieu of the existence of Articles 53 and 61, the former restricting compensation to be availed from the Workers' Compensation Act, and the latter restricted compensation being availed from any law or action other than the ESI Act. This bar would only

hold if the employee who had suffered the injury had received adequate compensation for the same.

The Full Bench assigned to this judgment then attempted to define what could constitute as ‘adequate compensation’ if an injury had been suffered, for which the reliefs received by the ESIC under Sections 38 and 46 of the ESI Act were eligible as ‘adequate compensation’.

The final judgment laid down by the bench was to both, restrict the employee from getting double relief as compensation from his employer, and to define the objective of Section 53, which was then laid down as not only a bar to guarantee only the required amount of relief for an injury by ESIC, but also to save the employer from facing more than one claim in relation to the same accident, i.e. an indirect form of double jeopardy, in which he may have to compensate twice for the same injury.

### **KERALA CBSE SCHOOL MANAGEMENT VS STATE OF KERALA**

This is one of the premier landmark judgments in relation to the ESI Act as the basis of this case is the determination of whether a particular institution can be covered under the ESI Act or not.

The matter originally under contention was the release of a new notification by the Kerala State Government in the Official Gazette, which extended the scope of the ESI Act, i.e. which organisations could fall under it, was extended to schools and other educational institutions. The matter was then decided through the interpretation of the statute in Section 1 of the ESI Act.

It was held that educational institutions, while not being commercial in nature, nor having the functions of a traditional factory, was not completely excluded from the statute itself, and could still be applied as an instrument under the ESI Act.

The deciding contention was when the final responsibility towards educational institutions was discussed. Since the Central Government had a priority to control and manage most

educational institutions, the notification which extended the provision of the ESI Act to schools was held valid.

## **CONCLUSION:**

For a working-class employee in India, the ESI Act is an essential utility that works in their favour, while also being beneficial for sectors outside that of the working class.

The ESI Act is unique in the fact that it works in advantageous ways for both employees and employers. While employees are insured under the act and get financial aid in case of an injury, the employers are also protected from being jeopardized twice in lieu of paying compensation to the employees.

The Employees' State Insurance Act, apart from medical benefits provided to employees, also controls many more indirect aspects of efficiently managing the Corporation established by the Act, be it its sales proceedings, account management or separation of powers amongst its various officers.

## **The Employees' State Insurance Act, 1948**

Employees' State Insurance Act (ESI Act) 1948 is a piece of multidimensional social security system tailored to provide socio-economic protection to worker population and their dependants covered under the scheme. The main object of this act is to provide certain benefits to employees in case of sickness, maternity, temporary or permanent disablement. That is, to provide an environment free from fear. This act provides social insurance to employees.

This act is a landmark in the history of social security in India. Under this scheme, both employers and employees contribute compulsory a fixed percentage of employee's salaries to secure the benefits. The contributions are paid to the Employees State Insurance Corporation.



**SCOPE OF THE ACT:**

The ESI Act 1948 extends to the whole of India including the state Jammu and Kashmir. This Act, shall apply to the central or State Government other than seasonal factories.

This Act also applies to factories and establishments employing 10 or more workers where manufacturing procedure is being carried on with the aid of power or 10 or more workers where manufacturing procedure is being carried on without the aid of power, on any day of the preceding twelve months.

This Act is not applicable to the following:

- i) Seasonal industries
- ii) Factories or establishments which provide benefits to their employees which are similar or superior to the benefits provided under this Act.
- iii) Any member of the Indian Navy, military or air force
- iv) Any employee whose wages exceed such wages as may be prescribed by the Central Government.
- v) Factories working with the aid of power wherein less than 20 persons are employed.
- vi) Mines subject to the operation of the Mines Act 1952
- vii) Railway running sheds.

**DEFINITIONS:****(a) Appropriate Government [sec. 2(1)]:**

It means, in respect of establishments under the control of the Central Government or railway administration or a major port or a mine or oil-field, the Central Government, and in all other cases, the State Government.

**(b) Benefit period [Rule 2(1-c)]:**

It means period corresponding to the contribution period. It must not exceed six consecutive months corresponding to the contribution period as may be specified in the regulations.

**(c) Contribution [sec.2(4)]:**

It means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act.

**(d) Contribution period [Rule 2 (2-A)]:**

It means such period as may be specified in the regulations. It must not exceed six consecutive months.

**(e) Dependant [sec. 2(6-A)]:**

Dependant means any of the following relatives of a deceased insured person, namely:

1. a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter
2. a widowed mother
3. if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 4 [twenty-five] and who is infirm ;
4. if wholly or in part dependent on the earnings of the insured person at the time of his death,
  - (a) a parent other than a widowed mother,
  - (b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,
  - (c) a minor brother or an unmarried sister or a widowed sister if a minor,
  - (d) a widowed daughter-in-law,
  - (e) a minor child of a pre-deceased son,
  - (f) a minor child of a pre-deceased daughter where no parent of the child is alive, or
  - (g) a paternal grand-parent if no parent of the insured person is alive.

**(f)Employment injury [Sec. 2(8)]:**

It means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

**(g) Employee [Sec. 2(9)]:**

It means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and —

(i) Any person who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere ; or

(ii) Any person who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) Any person whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service.

And includes any person

(i) employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment ;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment.

But the term employee does not include

(a) any member of 3 [the Indian] naval, military or air forces ;

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government for this purpose Rs 1600 p.m.

**(h) Immediate employer [Sec. 2(13)]:**

Immediate employer means a person in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

**(i) Insured person [Sec. 2(14)]:**

It means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act.

**(j) Wages [Sec. 2(22)]:**

Wages means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes 1 [any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or layoff and] other additional remuneration, if any, 2 [paid at intervals not exceeding two months], but does not include

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act ;

(b) any travelling allowance or the value of any travelling concession

- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment or
- (d) any gratuity payable on discharge.

### **RULES REGARDING CONTRIBUTION:**

Contribution is the amount contributed by the employee and employer to ESI corporation in accordance with the provisions of this Act. It is a contributory scheme in which employees and employers contribute towards the future social benefits of the employees. Following are the rules regarding contribution.

1. Composition of contribution
2. Rate of contribution
3. Wage period
4. Payment by Principal Employer
5. Recovery of Employee's share
6. Expenses of Remittance
7. Recovery from the immediate employer
8. No employee's contribution
9. No Recovery of employer's share
10. Recovery of contribution
11. Method of payment of contribution
12. Returns and Registers
13. Determination of contribution in certain cases

#### **1) Composition of contribution:**

The contribution payable towards ESI in respect of an employee shall comprise employer's contribution and employee's contribution.

**2) Rate of contribution:**

Rule 51 lays down the method of calculation of employees' and the employers' contribution. As per this rule, the amount of contribution for a wage period shall be paid in a fixed percentage of wages.

**3) Wage period:**

A wage period is the unit in respect of which all contributions are payable in relation to an employee. The contributions in respect of each wage shall fall due on the last day of wages period. If an employee is employed for part of the wage period or is employed under two or more employers during that period, the contribution fall due on the days specified in the regulations.

**4) Payment by Principal Employer:**

It is the duty of the principal employer to pay the contributions of both in respect of every employee, whether directly employed by him or by an immediate employer. The employer can not escape from his liability on the ground that the amount of contribution is not deducted from the remuneration of the employee.

**5) Recovery of Employee's share:**

The employer has the right to deduct the amount of contribution from the employees' directly wages employed by him.

**6) Expenses of Remittance:**

The employer shall bear all the expenses of remitting the contribution to the ESI contribution.

**7) Recovery from the immediate employer:**

As per Section 41 of the Act, a principal employer has the right to recover the amount of contribution paid by him from the immediate employer.

**8) No employee's contribution:**

The employer shall not be entitled to deduct the employee's contribution if the average daily wages of the employee are less than the amount prescribed by the Central Government.

**9) No Recovery of employer's share:**

The employer shall not be entitled to deduct the employer's contribution from any wages payable to an employee.

**10) Recovery of contribution:**

Any contribution payable under this Act shall be recovered as an arrear of land revenue. The employer is liable to pay 12% interest per annum on arrears of contributions payable.

**11) Method of payment of contribution:**

As per section 43 of the Act, the corporation has the power to make regulations regarding the methods of payment of contributions in the following matters.

- Any matter relating or incidental to the payment and collection of contributions payable under this Act.
- The manner and time of payment of contributions.
- The date by which evidence of contributions to be submitted to the corporation.
- The entries to be made in the register.
- The issue, safe custody, production, inspection and delivery of books and cards and the replacements of books or records.

**12) Returns and Registers:**

Every employer is required to submit returns and registers to the corporation the contributions deducted and remitted.

**13) Determination of contribution in certain cases:**

Normally, the contribution is determined according to the method laid down in section 39 (2), section 45 A provides an exception and determines the amount of contribution on adhoc basis.

Under this section, contribution is determined an adhoc basis only if.

- No returns, particulars, registers or records are submitted, furnished or maintained by a factory or establishment in accordance with the provisions of Sec 44; (or)
- Any inspectors or other official of the corporation is prevented in any manner by the employer in exercising his function or discharging his duties under sec 45.

If the above two condition are satisfied, the ESI Corporation may, on the basis of available information, determine the amount of contribution payable in respect of the employee of the establishment or factory.

An order passed by the corporation shall be sufficient proof of the claim of the corporation or for the recovery of the amount determined by the corporation as an arrears of land revenue under sec 45 B

### **Employee State Insurance Corporation**

The Employees' State Insurance Corporation (E.S.I. Corpn.) Which has been set up by the Central Government under the Act (Sec. 3) of the act to administer the ESI. It is a statutory body having perpetual succession and a common seal (Sec 3(2)). Hence, it can sue and be sued in its own name. The corporation was established with effect from 1<sup>st</sup> October 1948.

### **Constitution of the E.S.I. Corporation (Sec. 4).**

The E.S.I. Corporation shall consist of the following members, namely:

- (a) a Chairman a Vice-Chairman and not more than 5 persons to be appointed by the Central Government;
- (b) 1 person each represents each of the States in which the Act is in force to be appointed by the State Government.
- (c) 1 person to be appointed by the Central Government to represent the Union Territories;
- (d) 10 person representing employers to be appointed by the Central Government.



- (e) 10 person Persons representing employees to be appointed by the Central Government.
- (f) 2 persons representing the medical profession to be appointed by the Central Government.
- (g) i3 members of Parliament of whom 2 shall be members of the Lok Sabha and 1 shall be a member of the Rajya Sabha
- (h) the Director – General of the E.S.I. Corporation, ex-officio.

The term of office of the members of the E.S.I. Corporation and shall be 4 years.

**Term of Office:**

- i) The term of office of the members of the corporation, other than the member referred to in clauses (i) to (vi) above and ex-officio member is 4 years from the date of notification of their appointment or election.
- ii) But, they can continue to hold office even after the expiry of four years until the appointment or election of his successor is notified.
- iii) The member referred to in (i) to (v) above shall hold office during the pressure of the Government appointing them.
- iv) A member can resign his office in writing to the Central Government.

An outgoing member of the E.S.I. Corporation shall be eligible for re-appointment or reelection (sec. 6)

**Disqualification:**

A person shall be disqualified from being appointed as or for being a member of the ESI Corporation if he is subject to any of the disqualifications specified in section 13

- i) if he is declared to be unsound mind ; or
- ii) if he is an undischarged insolvent; or
- iii) if he has substantial interest in the ESI Corporation except as a medical practitioner or as a shareholder; or
- iv) if has been convicted of an offence involving moral turpitude.

**Powers of the corporation:**

The Corporation has the following powers under the Act:

**1. Employment of staff:**

The Corporation may employ the necessary staff for the efficient transaction of the business.

**2. Power to promote measure for health:**

The Corporation may promote measure for the improvement of the health and safety welfare of the insure person and for the rehabilitation and re-employment of the insured person who have been disabled or injured and may incur in respect of such measure expenditure from its funds within the prescribed limits.

**3. Power to accept grants:**

The Corporation may accept grants, donations, gift from Central or State Governments, local authority or body corporate for all or any of the purposes of the Act.

**4. Power to hold property:**

The Corporation is a statutory body. Therefore, it can acquire, hold and sell or otherwise transfer any immovable property or movable property it can also invest any money in its own name.

**5. Power to raise loan:**

The Corporation may with the previous sanction of the Central Government, raise loans and takes measure for discharge such loans.

**6. Power to appoint Inspectors:**

It may appoint such person as inspectors for the purposes of the Act within such local limits.

**7. Power to constitute fund:**

The Corporation may constitute for the benefits of its staff provident or other benefits of its staff provident or other benefit fund as it may think fit.

#### **8. Power to determine contribution:**

The Corporation has the power to determine the amount of contribution payable in respect of employees of a factory in respect of which no particulars, register or records are submitted, furnished or maintained.

#### **9. Power to establish and maintain Hospitals:**

The Corporation with the approval of the State Government may establish and maintain in a State Government may establish and, maintain in a State such hospitals, dispensaries and other medical and surgical services for the insured persons and their families.

#### **DUTIES OF THE CORPORATION:**

The Corporation has the following duties.

##### **1) Budget Estimates (Sec. 32):**

The Corporation in each year has to prepare a budget and submit to the Central Government for approval before a specified date.

##### **2) Maintain accounts (Sec.33):**

The Corporation should maintain its accounts of its income and expenditure in such manner as may be prescribed by the Central Government and submit it to the Central Government.

##### **3) Audit of Accounts (Sec.34):**

The account of the Corporation shall be audited annually by the Comptroller and Auditor General of India.

##### **4) Valuation of assets and liabilities ( Sec.35):**

The Corporation shall get its assets and liabilities valued once in five years, have a valuation of its assets and liabilities valued by a value appointed with the permission of the Central Government.

**5) Place before Parliament:**

The annual report the audited accounts together with the audit report and budget as finally adopted by the Corporation shall be placed before parliament.

**STANDING COMMITTEE (SEC.8):**

A standing committee is a committee constituted from among the members of the Corporation to act as its executive body. It can administer the affairs of the Corporation.

**CONSTITUTION:**

The standing committee shall consist of the following.

- i. A chairman appointed by the Central Government.
- ii. Three members of the corporation representing such three states as the Central Government may notify.
- iii. Three members of the corporation appointed by the Central Government.
- iv. Eight members elected by the ESI Corporation as follows:
  - a) 3 members from among the members of the ESI Corporation representing employers.
  - b) 3 members from among the members of the ESI Corporation representing employees.
  - c) 1 member from among the members of the ESI Corporation representing the medical profession
  - d) 1 member from among the members of the ESI Corporation elected by Parliament.
- v. The Director-General of the ESI Corporation

The term of office of its members is two years

**MEDICAL BENEFIT COUNCIL SEC 10:**

A council, which is constituted by E.S.I. Corporation to advise the Corporation and its standing committee on matters relating to the administration of medical benefit is known as medical Benefit Council

**Constitution:**

It consists of the following members, namely;

- The Director-General, Health Services, ex-officio, as Chairman;
- A Deputy Director-General, Health Services.
- The Medical Commissioner of the ESI Corporation Ex-officio.
- One member each, representing each of the State in which Act is in force to be appointed by the State Government concerned.
- Three members representing employers to be appointed by the Central Government in consultation with the recognised organisations of employers.
- Three members representing employees to be appointed by the Central Government in consultation with the recognised organisations of employees.
- Three members of whom not less than 1 shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with the recognised organisations of medical practitioners.

**Term of office of members of Medical Benefit Council:**

The term of office of a member of Medical Benefit Council referred to in clauses (v), (vi) and (vii) shall be 4 years from the date on which his appointment is notified. But a member shall continue to hold office even after the expiry of 4 years until the appointment of his successor is notified.

A member referred to in classes (ii) and (v) shall hold office during the pleasure of the Government appointing him.

**Powers and Duties of the Medical Benefit Council (Sec. 22):**

1. The council shall advise the Government Corporation and the Standing Committee on the following matters.
  - i) Matters relating to the administration of medical benefit.
  - ii) Matters relating to the certification for the purposes of grant of benefits and

- iii) Other connected matter
- 2. It shall investigate the complaints regarding medical treatment and attendance.
- 3. It shall perform such other duties in connection with medical treatment as may be specified in the regulations.

**PRINCIPAL OFFICERS [SEC.16]:**

The Central Government may, in consultation with the Corporation, appoint a Director-General and a Financial Commissioner as Principal Officers of the Corporation.

The Director-General shall be the Chief Executive Officer of the Corporation. The Principal Officer shall be whole-time officers of the Corporation and shall undertake any work with the sanction of the Central Government and the ESI Corporation. They shall hold office for such period, not exceeding five years but shall be eligible for reappointment. They shall receive such salary and allowances as may be prescribed by the Central Government.

**Duties:**

The Principal Officer shall exercise such powers and discharge such duties as may be prescribed. They shall also perform such other functions as may be specified in the Regulations. The Principal Officers of Corporation shall be deemed to be the public servants within the meaning of Sec 21 of the Indian Penal Code 1860.

**Inspector [Sec 45]:**

The Corporation may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

**EMPLOYEES' STATE INSURANCE FUND:**

All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. The fund created for

- i) payment of benefits to be insured persons
- ii) meeting cost of administration

iii) making provisions for other authorized purposes.

The ESI Fund is mainly derived from all contributions received from employers and employees. All moneys accruing or payable to the ESI Fund shall be paid into the RBI or such other bank as may be approved by the Central Government.

#### **PURPOSES FOR WHICH THE FUND MAY BE EXPENDED:**

Subject to the provisions of this Act and of rules made by the Central Government in that behalf, the Employees' State Insurance Fund shall be expended only for the following purposes, namely:

##### **(i) Payment of benefits**

The fund may be used for payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith ;

##### **(ii) Payment of fees**

The fund shall be used for payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils.

##### **(iii) Payment of salaries,**

The fund shall be used for payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions etc to officers and servants of the Corporation

##### **(iv) Establishment and maintenance**

The fund shall be used for payment of establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families, their families ;

**(v) Payment of contributions**

The fund shall be used for payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families,

**(vi) Court expenses:**

The fund may be used to defray the cost of the Employees Insurance Court setup under the Act.

**(vii) Expenses of audit and valuation:**

The fund may be used to defray the cost and expenses of auditing the accounts of the valuation of its assets and liabilities of the corporation.

**(viii) Payment under contracts:**

The fund may be used for any sums under any contract entered into for the purpose of the act by the ESI Corporation or the standing committee or by an officer duly authorized by the ESI Corporation or the standing committee in that behalf.

**(ix) Expenditure for disabled persons:**

The fund may be used for the improvement of health and welfare of insured persons and for the rehabilitation and re employment of insured persons who have been disabled or injured.

**(x) Other purposes:**

The ESI Corporation may use the fund for such other purposes as may be authorized by the ESI Corporation with the previous approval of the Central Government.

**BENEFITS PROVIDED TO INSURED PERSONS:**

The main object of ESI Act is to provide an environment free from economic fear. This Act makes provision for certain benefits to employees in case of sickness, maternity or disablement.

Section 46 to 73 deals with various types of benefits. These benefits are as follows:-



- 1) sickness benefit
- 2) maternity benefit
- 3) Disablement benefit
- 4) Dependants benefit
- 5) Medical Benefit and
- 6) Funeral expenses.

All these benefits except the medical benefits are monetary benefits.

### **1. Sickness benefit Sec 46(1):**

Sickness means a state of condition which requires a medical treatment and full rest. The sickness is to be certified by a duly appointed medical practitioner. Sickness benefit is payable to an insured person in the form of periodical payment. An insured person is entitled to claim a sickness benefit for sickness, only if he has paid contribution for not less than 78 days in any contribution period.

An insured person is not entitled to sickness benefit for the first 2 days of sickness. But if the sickness recurs within 15 days, he shall be entitled to recover the benefit even for that two days in the second spell.

An insured person is not entitled to claim sickness benefit for not more than 91 days in any two consecutive contribution period. The daily rate of sickness benefit shall be the standard benefit rate corresponding to the average daily wages of that insured person.

Following conditions should be fulfilled to claim sickness benefit:

- 1) He should remain under a medical treatment in any dispensary, Hospital and strictly observe the medical instructions.
- 2) He should not leave the area without the medical officer's permission.
- 3) He must allow himself to be examined by a duly appointed medical officer.
- 4) He must not do anything which might retard the charges of his recovery.

**2. Maternity benefit Sec 46 (1) (b):**

An insured woman shall be entitled to get maternity benefit in cases of

- a) Confinement
- b) Miscarriage
- c) Sickness arising out of pregnancy, confinement, premature birth of child or miscarriage.

A woman shall be eligible for such benefit only if she produces a medical certificate. The rate of maternity benefit shall be twice than that of the standard benefit rate. To claim maternity benefit contribution shall be payable for not less than 70 days in any two contribution period. The period of maternity benefit in the case of confinement shall be 12 weeks and in the case of miscarriage, it shall be 6 weeks after the date of her miscarriage. In the case of sickness arising out of confinement, miscarriage or premature birth of child, maternity benefit period shall be 1 month.

Following are the rules of maternity benefit:

- a) An insured woman is entitled to maternity benefit for all days, on which she does not work for remuneration during the period of 12 weeks, of which not more than 6 weeks shall be before the expected date of delivery.
- b) If the insured women die at the time of delivery, leaving behind the child, maternity benefit shall be paid for the whole of that period.
- c) If the child and the women die, maternity benefit shall be paid for the day's upto and including the day of the death of the child.

In this case, maternity benefit shall be paid to the person nominated by the woman. If there is no nominee, it shall be paid to her legal heirs.

**3. Disablement benefit Sec 46(1)(c):**

When an insured person is suffering from disablement as a result of an employment injury, he is entitled to receive disablement benefit. Following are the rules, which govern the payment of disablement benefit:

- a) For temporary disablement, the insured person is entitled to receive disablement benefit at the full rate during the period of disablement.
- b) For permanent disablement, the insured person is entitled to receive disablement benefit at the full rate for the life time.
- c) In the case of permanent partial disablement, he is entitled to receive disablement benefit according to the loss of his earning capacity.

No prior contribution is needed for claiming disablement benefit.

**4. Dependant's benefit Sec 46(1)(d):**

When an insured person dies due to employment injury, his dependents are entitled to receive certain benefit. It shall be paid in periodical. The benefit is distributed among the dependents in the following order:

- a) The widow shall get  $\frac{3}{5}$ th of the full rate during her life or until marriage. If there are two or more widows, the benefit is equally divided among themselves.
- b) Each adopted or legitimate son shall get  $\frac{2}{5}$ th of the full rate until he attains 18 yrs of age.
- c) Each adopted or legitimate daughter shall get  $\frac{2}{5}$ th of the full rate until she attains her 18 yrs., of age or marriage whichever is earlier. If the total amount payable to all these dependents exceeds the full rate, it shall be proportionately reduced.

**5. Medical benefit Sec 46(1)(c):**

Medical benefit shall be given to the insured person and his family members. It may be given either in the form of an outpatient treatment or in-patient treatment.

Eligibility for Medical benefit:

An insured person shall be entitled to medical benefit:

- a) during any contribution period payable in respect of him or
- b) during the period of receipt of sickness or maternity benefit or
- c) during the period of receipt of disablement benefit.

The insured person and his family members shall be entitled to receive the medical benefit in such kind and on such scale as may be provided by the state or the E.S.I. corporation. They shall get treatment only in the hospital, clinic, dispensary or other institution to which the Act is applicable.

#### **6. Funeral expenses Sec 46(1)(f):**

When an insured person dies, a funeral benefit not exceeding Rs. 5,500/- shall be payable to the eldest male member of the family. Where the deceased person did not have a family at the time of his death, the funeral benefit shall be payable to the person who actually incurs the expenditure. The benefit shall be made within 3 months from the date of death of the insured person.

#### **General provisions regarding benefits**

1. Benefit not Assignable: The right to receive payment of any benefit under this Act shall not be transferable to any other person.
2. Benefit not Attachable: All cash benefits payable under this Act, shall not be attachable under any decree or order of any court.
3. Bar of benefits under other Act: A Person receiving benefit under this Act, Shall not be entitled to any similar benefit available under any other Act.
4. Cash benefit not commutable: Any periodical payment admissible under the Act, shall not be commuted for a lump sum.

5. Benefit not receivable in certain cases: Where a workman works on any day and he receives wages, then he is not entitled to receive a sickness benefit, maternity benefit or disablement benefit for that day

6. Observance of certain conditions: A person who is in receipt of sickness benefit or disablement benefit shall observe the following conditions

a) He shall remain under medical treatment at a hospital, dispensary or clinic to which this Act is applicable, and carry out the instructions given by the medical officer.

b) He shall not do anything which might retard the chances of his recovery.

c) He shall not leave the area without the permission of the medical officer and

d) He shall allow himself to be examined by any medical officer.

7. Benefit not to be combined: An insured person is not entitled to receive more than one kind of benefit for the same period of time.

8. Default by the Employer in paying contribution: Where the principal employer makes default in paying the contribution, the E.S.I. Corporation can recover the amount along with interest at the rate of 12% per annum or at any higher rate.

9. Liability of Excessive Sickness benefit: Where the insured person suffers from sickness due to insanitary working conditions in the factory, and such insanitary conditions are due to default of the principal Employer, the E.S.I Corporation shall claim the Excessive sickness benefit from the principal Employer.

10. Repayment of benefit Sec 70 improperly received: Where any person has received any benefit improperly, he shall be liable to repay to the E.S.I Corporation.

11. Benefit payable upto and including the day of death If any insured person dies, the benefit shall be received by the nominee or his legal heir, up to and including the day of death.

12. Employer not to reduce wages Sec.72 etc., An employer by reason of his liability for any contribution payable under the Act, shall not reduce the wages of an employee.

13. Not to dismiss or punish employee Sec. 73: The employer should not dismiss or punish an employee who is in receipt of sickness or other benefit, during that period.

### **Adjudication of Dispute and Claims:**

When a dispute arises as to the benefit to be provided under Sec 74 and 75, Employees' Insurance court may be constituted.

### **CONSTITUTION OF EMPLOYEES' INSURANCE COURT (SEC 74):**

According to section 74 of the Act, the State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local areas as may be specified in the notification.

The state government may constitute the same court for two or more local areas or two or more courts for the same local areas.

Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

### **Matters to be decided by Employees' Insurance Court (Sec.75)**

The Employees' Insurance Court shall decide the following questions or disputes:

- (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
- (b) the rate of wages or average daily wages of an employee for the purposes of this Act, or
- (c) the rate of contribution payable by a principal employer in respect of any employee, or
- (d) the person who is or was the principal employer in respect of any employee, or
- (e) the right of any person to any benefit and as to the amount and duration thereof, or

(f) any direction issued by the Corporation under section 55A on a review of any payment of dependant's benefits, or

(g) any other matter which is in dispute

- between a principal employer and the Corporation, or
- between a principal employer and an immediate employer or
- between a person and the Corporation or
- between an employee and a principal or immediate employer.

The above matters shall be decided by the Employee's Insurance Court

Adjudication of claims:

Subject to the provisions of Sec.75 (2-A), the following claims shall be decided by the Employee Insurance Court

- (a) claim for recovery of contribution from the principal employer
  - (b) claim by a principal employer to recover contribution from any immediate employer
  - (c) claim against a principal employer under sec. 68
  - (d) claim under sec .70 for the recovery of the value or amount of benefit received by a person when he is not lawfully entitled there to, and
  - (e) any claim for the recovery of any benefit admissible under the Act and any order of this court is enforceable as if it were a decree passed in a suit by a civil court.
- Following are the powers of Employees' Insurance Court.

- Power to summon and enforce the attendance of witness
- Power to compel the discovery and production of documents and material objects and
- Power to administer oath and record evidence.

All cost incidental to any proceedings before an Employees' Insurance Court shall be in the discretion of the court.

**PENALTIES PRESCRIBED BY ESI ACT 1948:**

When a person knowingly makes or causes to be made any false statement or representation, he shall be punishable with imprisonment for a term which may extend to 6 months or with fine not exceeding Rs.2000.

**Punishment for failure to pay contributions, etc.(sec.85):**

- (a) If any person fails to pay any contribution deducted from his wages he shall be punishable with imprisonment of one to three years and a fine of Rs. 10000
- (b) In any other case, he shall be liable for imprisonment of 6 months to 3 years and a fine of Rs.5000.

Section 85 further provides that if a person does the following one or more of the following activities, he shall be punishable with imprisonment up to 1 year or a fine of Rs.4000 or both.

- (i) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or
- (ii) reduces the wages or any privileges or benefits admissible to an employee, or
- (iii) dismisses, discharges, reduces or otherwise punishes an employee, or
- (iv) fails or refuses to submit any return required by the regulations or makes a false return, or
- (v) obstructs any Inspector or other official of the corporation in the discharge of his duties, or
- (vi) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rule.

**PAYMENT OF GRATUITY ACT, 1972**

Gratuity is a kind of retirement benefit, like provident fund or pension. It is a payment which is intended to help an employee after his retirement. The general principle underlying gratuity schemes is that by faithful service over a long period the employee is entitled to claim a certain amount as retirement benefit. Thus it is earned by an employee as a reward for a long service.



**The Payment of Gratuity Act, 1972** was passed by Parliament in August 1972 and came into force on 16<sup>th</sup> September 1972. It was amended twice in 1984 and then in 1987. The latest amendment to the Act was made in 1998. This Act is largely based on the West Bengal Employees payment of compulsory Gratuity Act 1971.

### **SCOPE OF THE ACT:**

The Payment of Gratuity Act, 1972 extends to the whole of India. It shall, however, not extend to the state of Jammu and Kashmir in so far as it relates to plantations or ports.

According to Section 1(3) the Act shall apply to-

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification published in the Official Gazette specify in this behalf.

The Act does not apply to:

- a) apprentices, and
- b) persons who hold civil posts under the Central Government or a State Government and are governed by any other Act or by any Rules providing for payment of gratuity.

The Government may, however exempt any establishment covered by this Act from the provisions of the Act, if its employees are in receipt of gratuity or pensionary benefits not less favorable than the benefits provided by the Act.

### **OBJECTS:**

Following are the objects of the Act.

i) To ensure the uniform pattern of payment of gratuity to industrial workers throughout the country and

ii) To avoid different treatment to the employees of the establishments having branches in more than one State when the employees were liable to transfer from one state to another.

## DEFINITIONS

### 1. Appropriate Government [sec.2 (a)]:

In relation to any of the following establishments Appropriate Government means the Central Government

- (a) an establishment belonging to, or under the control of, the Central Government.
- (b) an establishment having branches in more than one State,
- (c) an establishment of a factory belonging to, or under the control of, the Central Government;
- (d) an establishment of a major port, mine, oil field or railway company.

In any other case Appropriate Government means the State Government;

### 2) Completed year of Service [Sec 2(b)]:

It means Continuous services for one year.

### 3) Continuous service [Sec.2(c)]:

Continuous service as defined in sec 2-A. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service including service which may be interrupted on account of

- a) sickness
- b) accident
- c) leave
- d) absence from duty without leave
- e) lay-off

f) strike

g) a lock out or

h) cessation of work not due to any fault of the employee

#### **4) Employee [sec.2 (e)]:**

Employee means any person (other than an apprentice) employed on wages, in any establishment, factory, mine. Oil field, plantation, port, railway company or shop. He may be employed to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work. His terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity.

Employee does not, however include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

#### **5. Family [sec. 2(h)]:**

Family in relation to an employee, shall be deemed to consist of-

(i) In the case of a male employee, 'family', shall be deemed to consist of himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,

(ii) In the case of a female employee, 'family', shall be deemed to consist of herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son if any.

#### **6. Retirement [sec.2 (q)]:**

It means termination of the service of an employee otherwise than on superannuation.

#### **7. Superannuation:**

Superannuation, in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which

the employer shall vacate the employment. The term 'superannuation' means retirement of an employee on attainment of a certain age.

### **8. Wages [sec.2(s)]:**

Wages means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

### **9. Controlling authority [sec 2(d)]:**

Controlling authority means an authority appointed by the Appropriate Government. Under sec 3 the Appropriate Government may, by notification published in the Official Gazette, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different authorities may be appointed for different areas.

## **PAYMENT OF GRATUITY (SEC. 4):**

Payment of Gratuity to an employee as defined under the Act is mandatory. The various provisions for payment of Gratuity are

### **1. Circumstances for payment of Gratuity:**

Gratuity shall be payable to an employee on the termination of his employment, after he has rendered continuous service for not less than 5 years

- a) On his superannuation, or
- b) On his retirement or resignation or
- c) On his death or disablement due to accident or disease.

But the completion of continuous service of 5 yrs shall not be necessary where the termination of employment of any employee is due to death or disablement.

### **2. Rate of gratuity:**

To determine the rate of gratuity, employees are grouped into two types.

- i) Employees covered by Payment of Gratuity Act, 1972.
- ii) Employees not covered by Payment of Gratuity Act, 1972.

The employer shall pay gratuity to an employee at rate of 15 days ( in case of seasonal industries 7 days) wages for every completed years of service or part thereof in excess of six months based on the rate of wages last drawn. Here, the number of working days in a month is 26. The salary per day will be calculated by considering the working days as 26.

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 3 months, immediately preceding the termination of his employment, and for this purpose, wages paid for any overtime work shall not be taken into account.

### **3. Maximum gratuity:**

The amount of gratuity payable to an employee shall not exceed Rs.2,50,000/-. The amendment Act of 1998 has raised it to Rs.3,50,000/-

### **4. Better terms of gratuity [sec .4(5)]:**

An employee may sometimes be entitled to receive better terms of gratuity under any award or agreement or contract with the employer. In such case, the provisions of section 4 shall not affect the rights of an employee to receive better terms of gratuity.

### **FORFEITURE OF GRATUITY SEC 4(6):**

Sec 4(6) of the Act deals with cases in which gratuity payable to an employee may be forfeited.

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

2) The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for

- i) his riotous or disorderly conduct or any other act of violence and his part or,
  - ii) any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment
- 3) When a workman is dismissed for misconduct, he must be paid gratuity after deducting the amount of loss caused to the employer by his misconduct.

### **PROTECTION OF GRATUITY:**

The Act protects the amount of gratuity payable to an employee from attachment. According to Section 13, no gratuity payable under this Act to an employee, employed in any establishment, factory, mine, oil field, plantation, port, railway company or shop, exempted under sec 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

### **NOMINATION (SEC 6)**

Each employee is required to make a nomination within a specified period and in the specified names. The rules relating to nomination are as follows:

1. Making the nomination
2. More than one nominee
3. Nomination in favor of family
4. Modification of nomination
5. Death of nominee
6. Safe custody of nomination

#### **1) Making the nomination sec 6(1)]:**

Each employee, who has completed 1 yr of service, after the commencement of the payment of Gratuity (Central) Rules 1972, shall nominate any person within 90/30 days.

**2) More than one nominee [sec 6(2)]:**

An employee may in his nomination distribute the amount of gratuity payable to him amongst more than one nominee. If more than one person has been nominated by the employee, then the amount of gratuity payable to him shall be distributed among the nominees.

**3) Nomination in favor of family [sec .6(3)]:**

If an employer has a family at the time of making a nomination, he shall nominate one or more member of his family. If he nominate any other person, who is not a member of his family, shall be void.

**4) Modification of Nomination:**

A nomination may be modified at any time by an employee, after giving a written notice to his employer, of his intention to do so.

**5) Death of Nominee:**

If a Nominee predeceases the employee, then he shall make a fresh nomination in the prescribed form, in respect of such interest.

**6) Safe custody of Nomination:**

Every nomination sent by the employee to his employer shall be keep in safe custody. And it shall take effect from the date of receipt of the same by the employer.

**DETERMINATION OF GRATUITY [SEC 7]**

Section 7 deals with determination of gratuity. The rules regarding determination are given as follows:

1. Application for Gratuity
2. Determination of the amount of gratuity
3. Payment of gratuity
4. Interest for delayed payment of gratuity
5. Disputes are regards gratuity

**1) Application for Gratuity**

An employee who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within 30 days from the date on which gratuity become payable.

In case of superannuation, or retirement of an employee, application should be made within 30 days from the date on which gratuity become payable.

Where a legal heir of an employee is eligible for payment of gratuity such application shall be made within one year from the date on which gratuity become payable.

**2) Determination of the amount of gratuity:**

The amount of gratuity as soon as it becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

**3) Payment of gratuity:**

The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

**4) Interest for delayed payment of gratuity:**

If the amount of gratuity payable under sub-section (3) is not paid by the employer within 30 days, the employer shall pay, simple interest at such rate, not exceeding the rate notified by the Central Government from the date on which gratuity is payable.

However, such interest need not be paid if the following conditions are fulfilled.

- i) The delay in the payment is due to the fault of the employee
- ii) The employer has obtained permission in writing from the controlling authority for the delayed payment on this ground of default of the employee.

**5) Disputes are regards gratuity:**

If there is any dispute as to

- i) the amount of gratuity payable to an employee under this Act



- ii) the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to
- iii) the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto. As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit--

- (i) to the applicant where he is the employee; or
- (ii) to the nominee, guardian of such nominee, the heir if the applicant is not an employee

The controlling authority shall decide the dispute as to the payment of gratuity and shall make the arrangement for its payment to the applicant.

### **CONTROLLING AUTHORITY [SEC 3]:**

The Controlling authority is appointed by the Appropriate Government. The Appropriate Government shall may, notification appoint any officer to be a controlling authority who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

### **Definition:**

### **Controlling authority [sec 2(d)]:**

Controlling authority means an authority appointed by the Appropriate Government. Under sec 3 the Appropriate Government may, by notification published in the Official Gazette, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different authorities may be appointed for different areas.

**Powers of controlling authority:**

The controlling authority shall have the same powers as are vested in a court for conducting an enquiry as regards disputes. Following are the powers of the controlling authority.

1) Power to decide the disputes as to

- i) the amount of gratuity payable to an employee or
- ii) the admissibility of any claim in relation to payment of gratuity, or
- iii) the person entitled to receive the gratuity

2) Power to conduct and decide the following matters

- i) enforcing the attendance of any person or examining him on oath;
- ii) requiring the discovery and production of documents;
- iii) receiving evidence on affidavits;
- iv) issuing commissions for the examination of witnesses.

**Appeal:**

Any person aggrieved by an order under sub-section (4) may, appeal to the appropriate Government within sixty days from the date of the receipt of the order of the controlling authority. If the appropriate Government is satisfied, the period of making an appeal may be extended to further period of 60 days.

But the appeal by an employer shall be admitted only on satisfaction of the following conditions:

- i) production of a certificate from the controlling authority as to the deposit of gratuity.
- ii) depositing such amount with the appellat authority

The appropriate government or the appellant authority may after giving the parties to the appeal an opportunity being heard, confirm, modify or reverse the decision of the controlling authority.

### **RECOVERY OF GRATUITY (SEC 8):**

The controlling authority shall, on the application made to it by the aggrieved person, issue a certificate to the collector, for that amount. The collector shall recover the amount together with compound interest, as arrears of land revenue and pay the same to the person entitled thereto.

### **INSPECTORS [SEC. 7A]:**

The appropriate Government may, by notification, appoint as many Inspectors as it deems fit, for the purpose the Act. The appropriate Government may by general or special order, define the area to which the authority of an Inspector so appointed shall extend.

### **Powers of Inspectors:**

Subject to any rules made by the appropriate Government under the Act, an Inspector may, for the purpose of ascertaining whether any of the provisions of the act or the conditions, if any, of the exemptions granted there under, have been complied with, exercise all or any of the powers given below –

1. Require an employer to furnish any information as he may consider necessary.
2. enter and inspect at all reasonable hours, with such assistants being person in service of the Government, or local or any public authority, as he thinks fit, any premises or place in factory, mine, oilfield, plantation, port, railway company, shop and other establishment to which this Act applies for the purpose of examining any register, record or notice or, Other documents required to be kept or exhibited under this Act.
3. make copies of, or take extracts from, any register, record, notice or other relevant documents, where he has reason to believe that any offence under the Act
4. exercise such other powers as may be prescribed.

## **THE PAYMENT OF GRATUITY ACT**

The Payment of Gratuity Act is a genre of various statutes like the Minimum Wages Act, Employment and Social Policy, etc. which is an extension of labour laws and it lays down the minimum benefits to be provided to the employees. It is a social security enactment providing for the welfare benefits of the employees working in industries, companies and organisations.

## **SCOPE AND OBJECTIVE**

The Payment of Gratuity Act, 1972 was enacted with sole objective of providing gratuity i.e., a monetary award given for services rendered to the employees working in the factories, oilfields, mines, plantations, railway companies, shops or other establishments upon their superannuation (e.g., old age retirement amount, etc.), retirement, resignation, death or disablement.

## **CONTINUOUS SERVICE**

According to this Act, the continuous service means an uninterrupted service during the employment period. This includes the leave due to sickness, accident, lay off, strike, etc. If the interruption is of six months or one year, then the employee is not entitled to gratuity benefits. He/She should have worked for at least 190 days in mine or coalfield like establishment (where duration of work is only for 6 months) and 240 days in other areas.

Recently, a question arose before the Supreme Court of India that whether the services provided by the employees were regularised or not and whether they are entitled to gratuity amount or not in the case of *Netram Sahu v. State of Chhattisgarh*. The appellant employee had in all rendered 25 years and 3 months of service (22 years and 1 month as daily wager and 3 years and 2 months as regular work charge employees). However, the Appellant was not paid the gratuity amount by the State after his retirement because out of the total period of 25 years of his service, he worked 22 years as daily wager and only 3 years as a regular employee, the Supreme Court of India held that the state should release the gratuity amount of the employee because the Appellant had actually rendered the service for a period of 25 years. Because the services were regularised, the appellant was entitled to claim its benefit for a period of 25 years regardless of the post and the capacity on which he worked for 22 years. This shows that whether the services were regularized or not, is of no significance to the continuous service to the said Act.

**CONTROLLING AUTHORITY**

The controlling authority shall be appointed by the appropriate government for the proper administration of this Act. The government may appoint different controlling authority for different areas also.

**PAYMENT OF GRATUITY**

An employee is entitled for the payment of gratuity if he/she has rendered five years of continuous service on his superannuation, retirement, resignation, death, disablement. However, the five years of continuous service is not mandatory in the case where the termination is due to death or disablement. A retired person is also entitled to gratuity amount along with his pension. This was held in the case of Allahabad Bank and others v. All India Allahabad Bank Retired Employees Association, where the honorable court held that pensionary benefits may include both pension amount and gratuity amount but gratuity amount is a must to be paid to the employees.

In the case of death or disablement by accident or disease, the employer is under obligation to pay the gratuity amount to the employee's nominee or the legal heir, as the case may be, irrespective of the number of years continuous services has been rendered.

The Act also has a provision for the minors as a legal heir in which the controlling authority has to invest the amount in such banks or other financial institutions for the benefit of the minor until he/she becomes a major.

Further, the Act provides for the services rendered for at least 6 months where the gratuity amount will be calculated at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned, provided that the amount paid for the overtime work will not be considered.

**THE AMOUNT OF GRATUITY SHALL NOT EXCEED RS. 10 LAKHS.**

An employee holds a right to receive a gratuity for services rendered, however, this right of an employee can be curtailed in two conditions:

If the termination is due to willful omission or negligence causing loss, or damage, or destruction of property belonging to the employer.

If the termination is due to riotous or disorderly conduct or constitutes of an offence which is immoral in nature.

### **COMPULSORY INSURANCE**

Section 4A of the Act provides for the compulsory insurance to every employer other than those belonging to the Central Government or State Government through Life Insurance Corporation. However, those employers are exempted from this provision who have an established and registered gratuity fund in their company. The government may also make rules for the enforcement of this section as and when necessary. Violation of this provision by anyone may lead to penalty.

### **POWER TO EXEMPT**

The Act provides the power to exempt to the appropriate government by notification to declare any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted from gratuity if the government is of the opinion that the establishment has favourable benefits not less than what this Act has been providing. The same law applies to any employee or class of employees.

### **NOMINATION**

According to this Act, it is necessary for the employee to prescribe for the name/names of the nominee soon after completing one year of service. In case of a family, the nominee should be one among the family members of the employee and other nominees shall be void. Any alteration or fresh nomination must be conveyed by the employee to the employer who shall keep the same in his safe custody.

### **DETERMINATION OF THE AMOUNT OF GRATUITY**

The person entitled to receive the gratuity amount shall send an application in writing to the employer. The employer shall calculate the gratuity amount and provide notice in writing to the concerned employee and the controlling authority. The payment should be made within 30 days from the date payable to the employee. Failure of payment within the prescribed limit will

result in payment of simple interests. However, if the delayed payment is because of the employee then the employer is not entitled to pay the simple interests.

In a landmark case of Y.K. Singla v. Punjab National Bank, the highest court of India, the Supreme Court had to decide whether an employee whose gratuity has been withheld under Regulation 46 of the Punjab National Bank (Employees) Pension Regulations is entitled to get interests because of the delay after the completion of the proceeding? The court held that even though the provisions of the 1995 Regulations, are silent on the issue of payment of interest, the appellant would be entitled to interest, on account of delayed payment under the Payment of Gratuity Act for the benefit of the employee.

The disputes arising between the employee and employer shall be referred to the controlling authority and proceeding for the resolution presided by the controlling authority shall be considered to be judicial proceeding. The controlling authority has the authority to enforce the presence of any person and examine his oath, production of relevant documents and issuing commissions for the examination of witnesses if required. After due inquiry and giving the parties a reasonable opportunity of being heard, the controlling authority may determine the matters and pass appropriate orders. The aggrieved party can apply for appeals to the government.

## **INSPECTORS APPOINTED FOR THE PURPOSE OF THIS ACT AND THEIR POWERS**

The government may appoint an inspector or inspectors who are deemed to be a public servant under Section 21 of Indian Penal Code for the purpose of ascertaining whether any of the provisions of this Act are being violated or not complied with and take necessary measures to ensure the fulfilment of all the provisions of this Act.

## **RECOVERY OF GRATUITY**

If the employer delays in the payment of gratuity amount under the prescribed time limit, then the controlling authority shall issue the certificate to the collector on behalf of the aggrieved party and recover the amount including the compound interest decided by the central government and pay the same to the person. However, these provisions are under two conditions:

The controlling authority should give the employer a reasonable opportunity to show the cause of such an Act.

The amount of interest to be paid should not exceed the amount of gratuity under this Act.

## **PENALTIES**

Violation of the provisions of the Act shall entail certain penalties. They are:

For avoiding any payment, if someone makes a false representation or false statement shall be punishable with imprisonment for 6 months or fine up to Rs. 10,000 or both.

Failure to comply with the provisions of this Act shall be punishable for a minimum of 3 months which may extend upto 1 year or a fine of Rs. 10,000 which may extend upto 20,000.

Non-payment of gratuity under the Act will lead to offence and the employer shall be punishable with imprisonment for at least 6 months and which may extend upto 2 years unless the court provides for the sufficient reason for less payment.

## **EXEMPTION OF EMPLOYER FROM LIABILITY**

An employer if charged with any offence punishable under this Act, shall be exempted from any liability, if he provides sufficient reasons for his conduct of the act or some other person doing that act without his knowledge. The other person if found guilty will be charged with the same punishment as an employer shall be charged.

## **COGNIZANCE OF OFFENCES**

The court cannot take cognizance of the offences punishable under this Act unless the amount of gratuity to be paid has not been paid or recovered within 6 months from the expiry of the prescribed time. In such cases, the government shall authorise the controlling authority to make a complaint where the authority has to make a complaint to the metropolitan magistrate or judicial magistrate of first class within 15 days of the authorisation.

## **PROTECTION OF ACTION TAKEN IN GOOD FAITH**

The controlling authority shall not be under any legal proceeding if the acts done by him is in good faith or under any rule or any order.



**PROTECTION OF GRATUITY**

No exempted gratuity which is payable under this Act to the employee by the employer shall be liable to the attachment of any order or decree by any court.

**ACT TO OVERRIDE OTHER ENACTMENTS**

Since the Payment of Gratuity Act is complete in itself, therefore, this Act has an overriding effect on all provisions, regulations and statutes relating to gratuity. The landmark case for this provision is University Of Delhi vs Ram Prakash And Ors. which states that any provision which is more beneficial for the employees should be considered to be having overriding effect.

**POWER TO MAKE RULES**

The power to make rules in the Payment of Gratuity Act, 1927, shall rest with the appropriate government and declare by notification.

**VALIDATION OF AMENDMENTS MADE IN THIS ACT**

The rules made have to be presented before both the houses of the parliament when in session. If both the houses are in conformity for the annulments or the modifications, then it shall be applicable immediately otherwise such modifications will have no effect.

**CONCLUSION**

The Payment of Gratuity Act, 1927, is a welfare statute provided for the welfare of the employees who are the backbone of any organisation, company or startups. The gratuity amount encourages the employee to work efficiently and improve productivity. Recently, by the Payment of Gratuity (Amendment) Act, 2018, the central government has tried to promote social welfare by providing leverage to the female employees who are on maternity leave from 'twelve weeks' to 'twenty six weeks'.

However, the scope of this Act is limited to large scale companies or organisations and is not applicable to organisations where the number of employees is less than 10. Yet, the Act in its entirety is complete and therefore it overrides other Acts and statues in relation to gratuity. The only need of the hour is to change or modify the implementation of the Act as this Act is still not followed by many companies or corporations.

**MODEL QUESTION PAPER****Sub Code: GMCO63****Reg. No.....****MANONMANIAM SUNDARANAR UNIVERSITY  
B.Com (CBCS) Degree Examination****April 2019  
Sixth Semester****INDUSTRIAL LAW****Duration: 3.00 hrs****Maximum: 75 Marks****PART – A (10 x 1 = 10 Marks)****Answer ALL the Questions  
Choose the correct Answer**

1. The number of persons required for a factory without aid of power in a factory is
  - (a) 5
  - (b) 10
  - (c) 15
  - (d) 20
2. Factories Act deals with \_\_\_\_\_
  - (a) Health
  - (b) Welfare
  - (c) Safety
  - (d) All these
3. Occupational diseases are dealt with under \_\_\_\_\_
  - (a) Schedule II
  - (b) Schedule III
  - (c) Schedule IV
  - (d) Schedule V

4. Workman's compensation Act was enacted in the  
year  
(a) 1921 (b) 1923  
(c) 1925 (d) 1927
5. In an industry where the number of persons  
employed exceeds 100 \_\_\_\_\_ is to be set up  
(a) Works committee  
(b) Shop council  
(c) Joint management council  
(d) Management council
6. In an under taking, joint management council is to  
be set up where the number of employees exceeds  
\_\_\_\_\_  
(a) 50 (b) 100  
(c) 250 (d) 500
7. Trade unions Act was enacted in the year  
(a) 1922 (b) 1924  
(c) 1926 (d) 1928
8. The payment of Gratuity Act was enacted in the  
year  
(a) 1962 (b) 1967  
(c) 1972 (d) 1977
9. Which of the following is not the benefit under ESI  
Act?  
(a) Dependent benefit  
(b) Funeral benefit  
(c) Medical benefit  
(d) Festival advance

10. The minimum number of months taken for gratuity is

- (a) 10                      (b) 12
- (c) 15                      (d) 18

**PART – B (5 x 5 = 25 Marks)**

**Answer ALL the questions, choosing either (a) or (b).**

11. (a). Explain the provisions relating to the employment of women under Factories Act.

Or

(b). Explain the provisions relating to the employment of young person Under Factories Act.

12. (a). Explain the Authorities for the settlement of Disputes.

Or

(b). What is Disabement? Explain its types.

13. (a). State the powers of conciliation officer.

Or

(b). Explain the Objectives of Industrial Dispute.

14. (a). State the rules as to trade union. How is it registered?

Or

(b). What are the objectives Consumer Protection Act?

15. (a). Why is employee insurance necessary?

Or

(b). Explain the concept of gratuity.

**PART – C (5 x 8 = 40 Marks)**

**Answer ALL the questions, choosing either (a) or (b).**

16. (a). Explain the concept of approval and licencing of factory.

Or

(b). State the provisions relating to working hours and holidays under Factories Act.

17. (a). Discuss the employer's liability to pay compensation under Workmen's Compensation Act.  
Or  
(b). How is compensation determined? State the rules relating to it.
18. (a). Explain about 'Arbitration', 'Arbitrator' and 'Arbitration agreement'.  
Or  
(b). State the essentials of valid strike and lockout.
19. (a). Describe the nature and scope of Trade Unions Act.  
Or  
(b). 'Payment of bonus Act is social security legislation' – Discuss.
20. (a). Explain the benefits available under employees State Insurance Act.  
Or  
(b). Explain the provisions relating to payment of gratuity.
-



## ABOUT THE EDITORS



**Dr. SUBATHRA CHELLADURAI**, M.Com, M.Phil, Ph.D in Commerce and M.A.Sociology, PGDHRM, M.Sc.Psychology as additional qualification, Passed UGC – NET in June 2011 and working as an Assistant Professor of Commerce in Pioneer Kumaraswamy College, Nagercoil, Since 2013. She has 18 years of Teaching and Administrative experience in Schools, Colleges and NGO's. She has participated in more than 200 National and International Seminars, Webinars, and Training Programs and published more than 70 Research articles and 14 Books. She is a NLP, Soft Skill Trainer and Counselor. She Served as Resource person and delivered her Expertise in Various Institutions. She acts as the resource person for National and International seminars and Conferences and had delivered several guest lecturers for Academic upliftment. She received Best Women Leader Award, The Real Super Women Award, Women Achiever Award, Young Educator and Scholar Award, Kaviyarasar Kalaimani Award, Agimsai Gandhi Award, Dr. Radhakrishna Shikshana Ratna National Award, Best NSS Program Officer Award, and Best Academician and Educationist Award 2021.



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