

VIDYAVARDHAKA LAW COLLEGE

LABOUR LAW -I

Unit I

Trade Union Act 1926

The Indian **Trade Union Act 1926** was passed to provide for the registration of **trade unions** with a view to render lawful association of workers. The **act** also defined law relating to registered **trade unions** and provided certain privileges and protection to the registered **trade unions**.

Preamble-An act to provide for the registration of trade unions and in certain respects to define the law relating to registered trade unions.

2(g) "**Trade Dispute**" means

- any dispute between employers and workmen or
 - between workmen and workmen, or
 - between employers and employers which is connected with the employment or non-employment, or
 - the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.
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- The definition consists of three parts.
 - The word dispute refers to real dispute.
 - Real dispute is one which is capable of settlement by requiring one of the parties to the dispute to give necessary relief to the other.
 - Secondly it specifies the dispute between employer & workmen or workmen & workmen; employers and employers.
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- Thirdly, the subject matter of the dispute is specified, that such dispute should necessarily be connected with employment or non-employment or terms of

employment or conditions of labour of any person.

- Any person refers to those who services are dismissed, discharged or terminated.

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

- The trade union may be a permanent combination of its members. It may be temporary or permanent.
- It may be temporary only for the purpose of achieving a particular goal or objectives and such combination may cease to exist the moment, that aim or objective is achieved.
- Such trade union are formed primarily for the purpose of regulating relations.

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

REGISTRATION OF TRADE UNIONS

Section3-

- The appropriate Government shall appoint a person to be the Registrar of Trade Unions for each state.
- (2) The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging, under the superintendence and direction of the Registrar, such powers and functions of the Registrar under this Act as it may, by order, specify and define the local limits within which any such Additional or Deputy Registrar shall exercise

and discharge the powers and functions so specified.

- (3) Subject to the provisions of any order under sub-section (2), where an Additional or Deputy Registrar exercises and discharges the powers and functions of a Registrar in an area within which the registered office of a Trade Union is situated, the Additional or Deputy Registrar shall be deemed to be the Registrar in relation to the Trade Union for the purposes of this Act.

Section4-

- (1) Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.
- Provided that no TU of workmen shall be registered unless at least 10% or 100 of the workmen, whichever is less are engaged or employed in the establishment with which it is connected are the members of such TU on the date of making the application.
- Provided further that TU of workmen shall be registered unless it has on the date of making application not less than 7 persons as its members, who are workmen engaged or employed in the establishment with which it is connected.
- (2) Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application,
- For registration of trade union 7 members are necessary.
- The reason for fixing this minimum number as seven is that it is found in the TU act of UK & USA and other countries also.
- The other reason is that employers too can register their trade unions. Therefore in order to make it conveniently applicable to the trade union of the employers seeking registration of TU, the number had to be small.
- Thirdly, the number seven is prescribed in order to encourage formation of more trade unions so that the TU movement which was in its infancy during the period of the act could

grow quickly. This encouraged more trade union to be registered.

- In 1928, there were 29 TU registered under the act whereas the number increased to 213 in the year 1935.
- Registration of TU is not made compulsory under the act so the number was kept small.
- But taking the cognizance of unhealthy growth of TU the National Commission on Labour recommended that the minimum number of 7 for registration should now be increased to a minimum of 10 % or one hundred of the workmen, whichever is less engaged or employed in the establishment or industry with which it is connected.(1969) the minimum number of 7 members required to seek reg is retained. Both these provisions are incorporated by an amendment in the year 2001.

Section5. Application for registration

- (1) Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:--
 - (a) the names, occupations and addresses of the members making the application;
 - (b) the name of the Trade Union and the address of its head office; and (c) the titles, names, ages, addresses and occupations of the of the Trade Union.
- (2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

Section 6. Provisions to be contained in the rules of a Trade Union

- A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely:--
 - (a) the name of the Trade Union;
 - (b) the whole of the objects for which the Trade Union has been established;
 - (c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully

applicable under this Act;

- (d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the TU.
- (e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as required under section 22 to form the executive of the Trade Union;
- f) the appointment of members of the executive body.
- g) the membership or subscription fee
- h) the conditions under which a member can get the benefits or has to pay fines or forfeiture may be imposed on the members
- i) the safe custody of funds and provisions for inspecting or auditing the statements, or other documents of the trade union
- j) Manner in which rules shall be amended, varied or withdrawn;

- k) dissolution of the trade union
- l) Safe custody of the funds of trade union and annual audit, in such manner as may be prescribed
- In the case of **M T Chandersen vs Sukumaran AIR 1974**, SC held that if a member fails to pay subscription fee, he cannot be considered a member of the trade union.
- In the case of **Bokajan Cement Corporation Employees Union vs Cement Corporation of India, 2004**, SC held that membership of the union does not automatically cease upon termination of the employment.

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

- (1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied.
- (2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the

public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

Section 8. Registration

- The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

Section9. Certificate of registration

- The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

Section10. Cancellation of registration

- A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar–
- (a) on the application of the Trade Union to be verified in such manner as may be prescribed, or
- (b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6:

- Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.
- In the case of **Tata Electric Companies Officer's Guild vs Registrar of Trade Unions, 1994,**
- **Bombay HC** held that for a registrar to cancel the registration, willful neglect of the notice is a must. If the trade union sends the account statement upon notice of the registrar, the registrar cannot cancel the registration on the ground that the account statement was not filed earlier.

Section 11. Appeal

- 1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal,--
- (a) where the head office of the Trade Union is situated within the limits of state, to the High Court, or
- (b) where the head office is situated in any other area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the 3*[appropriate Government] may appoint in this behalf for that area.

12. Registered office

- All communications and notices to a registered trade union may be addressed to its registered office.
- Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing, and the changed address shall be recorded in the register referred to in section 8.

Rights & liabilities of Registered TU

- Every registered trade union shall be
- a body corporate by the name under which it is registered, and

- shall have perpetual succession and a common seal
- with power to acquire and hold both movable and immovable property and
- to contract, and
- shall by the said name sue and be sued.

Section 15 The primary object of a TU is to regulate the relationship between employer & workmen; W& W; E& E.

- The strength of the TU is inherent in its membership and its finances raised out of any membership fee or donations towards general funds.
- It is necessary for TU to discharge its functions in the social, economic and welfare fronts so that it can build up its image as a strong TU in the eyes of its members.
- Since funds are necessary to engage in certain functions the act also specifies about funds of reg TU.
- The **general funds** of a registered trade union shall not be spent on any other objects than the following namely-

- (a) the payment of salaries, allowances and expenses to office-bearers of the trade unions;
- (b) the payment of expenses for the administration of the trade union, including audit of the accounts of the general funds of the trade union;
- (c) the prosecution or defense of any legal proceeding to which the trade union or any member thereof is a party, when such prosecution or defense is undertaken for the purpose of securing or protecting any rights of the trade union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
- (d) the conduct of trade disputes on behalf of the trade union or any member thereof;
- (e) the compensation of members for loss arising out of trade disputes;
- (f) allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment of such members;
- (g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or (under) policies insuring members against sickness, accident or unemployment;
- (h) the provision of education, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependents of members;
- (i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

expenses for medical treatment of workers

Political Fund

- The TU were compelled to participate in political functions for the purpose of protection of their rights and in particular to bring pressure on Govt through political instrumentation to secure benefit.
- In England , the Labour unions had established a Labour Party as early as 1899 which took part in the country political election.
- In an English Case **W.V Osborne, Branch Secretary of the Amalgamated Society of Railways Servant** who brought a suit against the TU, ASRS that the union has provided rule to levy certain fee on the members of the TU in order to make payment of allowance to the members of parliament which is not falling within the purview of

the TU activities as such should be declared as ultra vires.

- King's bench gave verdict against Osborne. Again in appeal, Court of Appeal reversed the bench ruling. In second appeal house of lords upheld the decision of court of appeal. Finally the issue was settled and the TU were allowed to levy such fee for political purpose and the UK Trade Union 1913 made provision to levy separate fee for political purpose subject to certain conditions.

Section 16 Constitution of a separate fund for political purposes

- (1) A registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2).
- (2) The objects referred to in sub-section (1) are:

- (a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution] or of any local authority, before, during or after the election in connection with his candidature or election; or
- (b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate; or
- (c) the maintenance of any person who is a member of any legislative body constituted under the Constitution or for any local authority; or
- (d) the registration of electors or the selection of a candidate for any legislative body constituted under the Constitution] or for any local authority ; or
- (e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.
- No member shall be compelled to contribute to the fund constituted under sub-section (1); and
- a member who does not contribute to the said fund shall not be excluded from any benefits of the trade union, or
- placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the trade union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and
- contribution to the said fund shall not be made a condition for admission to the trade union.

Rights and Privileges of a registered Trade Union

1. As per **section 14**, upon registration, a trade union becomes a legal entity and as a consequence, it gets perpetual succession and a corporate seal, it can acquire and hold movable and immovable property, contract through agents, and can sue and get sued.
2. Under **section 15** a registered trade union has a right to establish a general fund.
3. Under **section 16**, a registered trade union has a right to establish a political fund. Subscription to this fund is not necessary for a member.
4. Under **section 17, 18, and 19** a registered trade union gets immunity in

certain criminal, civil, and contractual proceedings.

5. Under Section 20 : right to inspect books of Trade Union

6. Section 21 : right of minors to membership of Trade Union : attained the age of 15 years

7. Under **section 24**, trade unions have the right to amalgamate.

8. Under **section 28-F**, the executive of a registered trade union has a right to negotiate with the employer the matters of employment or non-employment or the terms of employment or the condition of labor of all or any of the members of the trade union and the employer shall receive and send replies to letters and grant interviews to such body regarding such

Immunity from criminal conspiracy & civil suits

Section 17. Criminal conspiracy in trade disputes

No office-bearer or member of a registered trade union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code, 1860 (45 of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section 15, unless the agreement is an agreement to commit an offence.

Restrictions

Section 120B consists of two sub sections

(1) prescribes a more serious punishment for indulging in criminal conspiracy relating to more serious offences for which the punishment prescribed by IPC is imprisonment for a term which may extend to 2 years or more.

Sub section (2) lesser punishment of imprisonment extending only to 6 months is prescribed. Thus TU is protected only against (2) of section 120B and not against (1)

It relates to , Any such agreements made between the members of the reg TU for the purpose of furthering any such object of the TU as are specified in section 15 of the TU act. An agreement between members of a TU should only be for the purpose of carrying out its legitimate and lawful activities as are detailed in section 15 carrying out its legitimate and lawful activities as are detailed in sec 15 and not for any other purpose.

Such immunity is not available if the agreement is an agreement to commit an offence.

In the case of **West India Steel Company Ltd. vs Azeez 1990** a trade union leader obstructed work inside the factory for 5 hrs while protesting against the deputation of a workman to work another section. It was held that while in a factory, the worker must submit to the instructions given by his superiors. A trade union leader has no immunity against disobeying the orders. A trade union leader or any worker does not have any right by law to share managerial responsibilities. A trade union can adopt the cause of workers through legal ways but officials of a trade union cannot direct other workers individually or in general about how to do their work. They do not have the right to ask a worker to stop his work or otherwise obstruct the work of the establishment. An employer may deal with a person causing obstruction in work effectively.

Section 18 immunity from civil suit in certain cases- Section 18 provides immunity from civil proceedings in certain cases to a trade union or its office bears or members.

In general, a person is liable in torts for inducing another person to breach his contract of employment or for interfering with the trade or business of another.

However, a trade union, its officers, and its members are immune from this liability provided that such an inducement is in contemplation or furtherance of a trade dispute.

Further, the inducement should be lawful. There is no immunity against violence, threats, or any other illegal means.

- Immunity against tortious liability is granted under (2) In respect of the acts done by the member of the TU as its agent.
- However this protection is also subject to the condition that it should be proved that such person acted without the knowledge of or contrary to express instructions given by the executive of the TU.

Rohtas Industries Staff Union V State of Bihar

- Whether the TU which resorted to an illegal strike within the meaning of S 24 of the ID act 1947 can still claim protection conferred upon it by virtue of S17 & 18 of the TU act 1926.
- In other words, are the two provisions of TU act & ID act inter-dependent on each other.
- The main argument of the employers in this case was that the TU has resorted to an illegal strike within the meaning of section 24 of IDA 1947 and as such it is not entitled to claim immunity under section 17 or either under s 18 of the TU Act.

The High Court examined the scope of s 24 of the ID Act and said that the provisions of the ID act are in the interest of the public at large to protect it from the effect of stoppage of production either by strike or of the workmen or by lockout of the employers and in case the illegal strike is resorted in contravention to the provisions of s24 of the ID act the remedy is available in the form of

punishment prescribed in s26 of the same act.

Therefore it is open for the employer to avail the remedy under the provisions of S 26(2) of the Act.

The Patna HC -Protection under S 18 of the TU Act is given to reg TU is not prevented mainly because the strike is illegal under s 24 of the ID act.

In Sri Ramavikas Services Ltd V Simpson & Group Companies Workers Union & another the Madras High Court held that if the workers on strike resort to picketing officers and managerial staff from entering or leaving the premises and indulge in threat, intimidation and gherao, the employer can approach the civil court and an injunction restraining the workers from doing such unlawful acts can be obtained. Protection to registered trade union does not bar the jurisdiction of civil court to grant relief to the employer against a TU.

19. Enforceability of agreements

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

Such an agreement among the members of reg TU is not enforceable in any civil court expressly on the ground of claiming any damages from the members of the TU or not to sell their goods transact business, work, employ or be employed.

Agreement made between the members of the TU not to accept employment unless certain conditions as to pay, hours of work etc are accepted will not be void or voidable.

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

21. Rights of minors to membership of trade unions-Any person who has attained the age of fifteen years may be a member of a registered trade union subject to any rules of the trade union to the contrary, and may, enjoy all the rights of a member and execute all instruments and give all acquaintances necessary to be executed or given under the rules.

But such minor member cannot become an office bearer of reg TU until he attains the age of 18yrs.

21A. Disqualifications of office-bearers of trade unions-(1) A person shall be disqualified for being chosen as, and for being member of the executive or any other office bearer of a registered trade union if-

(i) he has not attained the age of eighteen years;

(ii) he has been convicted by court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

22. Proportion of office-bearers to be connected with the industry- Not less than one-half of the total number of the [office-bearers] of every registered trade union in an unorganized sector shall be persons actually engaged or employed in an industry with which the trade union is connected:

PROVIDED that the [appropriate government] may, by special or general order, declare that the provisions of this section shall not apply to any trade union or class of trade unions specified in the order.

National Commission on Labour suggested that-

Where membership of a union is-

Below 1000 the number of outsiders should not be more than -10%

Between 1000- 10000- 20%

Above 10000- 30%

23. Change of name- Any registered trade union may, with the consent of not less than two-thirds of the total number of members and subject to the provisions of section 25, change its name

24. Amalgamation of trade unions-Any two or more registered trade unions may become amalgamated together as one trade union with or without dissolution or division of the funds of such trade unions or either or any of them, provided that the votes of at least one-half of the members of each or every such trade union entitled to vote are recorded, and that at least sixty per cent of the votes recorded are in favor of the proposal.

25. Notice of change of name or amalgamation- (1) Notice in writing of every change of name and of every amalgamation signed, in the case of a change of name, by the Secretary and by seven members of the trade union changing its name, and in the case of an amalgamation, by the Secretary and by seven members of each and every trade union which is a party thereto, shall be sent to the Registrar and where the head office of the amalgamated trade union is situated in a different State, to the Registrar of such State. (2) If the proposed name is identical with that by which any other existing trade union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely 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 is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in section 8, and the change of name shall have effect from the date of such registration.

26. Effects of change of name and of amalgamation- (1) The change in the name of a registered trade union shall not affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

(2) An amalgamation of two or more registered trade unions shall not prejudice any right of any of such trade unions or any right of a creditor of any of them.

S 27 Dissolution- (1) When a registered trade union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the trade union shall, within fourteen days of the dissolution be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the trade union, and the dissolution shall have effect from the date of such registration.(2) Where the dissolution of a registered trade union has been registered and the rules of the trade union do not provide for the distribution of funds of the trade union on dissolution, the Registrar shall divide the funds, amongst the members in such manner as may be prescribed

28. Returns- Every Reg TU is under a legal obligation to submit to the registrar its annual returns on or before the date fixed for this purpose failure to submit the report would lead to cancellation of registration by the registrar.

- The statement of return includes the following-
- Statement of all receipts and expenditure
- Any changes of the office bearer made by the TU
- Any change in the rules of the TU.
- The Registrar may at reasonable time inspect the certificate of reg, accounts books etc

Penalties & Procedure-

31. Failure to submit returns-shall be punishable with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues

S 32 Supplying of false information- Any person who, with intent to deceive, gives to any

member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the intent, gives a copy of any rules of an unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union, shall be punishable with fine which may extend to two hundred rupees.

S 33. Cognizance of offence-(1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) No court shall take cognizance of any offence under this Act, unless complaint thereof has been made by, or with the previous sanction of, the Registrar or, in the case of an offence under section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.

Recognition of Trade Union

- The Trade Union Act 1926 neither contained any provision to require the employer to recognize a TU as a bargaining agent of the workers nor did it prevent him from recognizing more than one TU.
- This was considered as a lacuna in the TU act which was amended in the year 1947 and a new chapter IIIA containing S 28A & 28 I was inserted. This chapter was never brought into force & it lapsed with the dissolution of the Central Legislative Assembly.
- **Section 28 A Maintenance of list of approved unions-**It shall be the duty of the Registrar to maintain in such form as may be prescribed a list of approved unions
 - **S 28 C-** recognition by Agreement- where an employer agrees to recognize TU a memorandum of agreement to that effect may be entered into between the employer and the workmen and it should be presented to the registrar who shall record the memorandum in the register in the prescribed manner.
- Such agreement could be a revoked by either parties on making application to the register.
- However while the memorandum is in force the TU shall have all the rights of a recognised TU and shall be deemed as recognized TU for all purposes.
- Section 28D conditions for recognition by order of a labour court- if in case employer is

not willing to recognize the TU by mutual agreement then it can be done through the order of LC.

- All its members are workmen employed in the same industry or in industry closely allied or connected with one another.
- It is representative of all the workmen in the industry.
- That its rules does not provide for exclusion from membership
- That its rules provide for a procedure for declaring strike.
- That its rules provide for its executive meeting atleast once in every 6 months
- That it is registered under TU act.

Section 28 E-Where TU applies for recognition to an employer and fails to obtain the same within 3 months, it may apply to LC giving necessary particulars as may be prescribed.

LC shall satisfy itself whether TU is entitled to recognition by fulfilling the conditions prescribed under S28D.

Section 28 F-Rights of recognized TU

Executive of a recognized TU shall be entitled to negotiate with the employer in respect of matters connected with the employment, non-employment or the terms of employment or the conditions of labourer of all or any of its members.

The send replies to letters sent by the executive of the recognized TU.employer shall receive and

S 28G withdrawal of recognition-If the TU is recognised under S28E by an order of a LC, the registrar or the employer may apply in writing to the LC for withdrawal of the recognition of TU on any of the following grounds-

- The executive of the TU has committed any Unfair Labour Practice within 3months prior to the date of application
- thatTU has failed to submit any returns under S28I
- That TU has ceased to be representative of the workmen in accordance with S 28D.

Section 28H application for fresh recognition-On the expiry of not less than 6 months from the date of withdrawal of recognition under 28G a registered TU may again apply for recognition and the same procedure ass laid down in this act shall apply to such application as if it were an original application for recognition.

S 28 I- recognition of TU to submit returns- in addition to returns filed under S28 every recognized TU shall submit to the registrar such returns as may be prescribed.

Unit I

Questions

1. Define Trade Union? Explain its significance and importance of Registration of Trade Union
2. Critically examine the historical development of trade union/ trade unionism in India, UK and USA
3. Explain the registration process of trade union
4. Examine the rights and privileges of registered trade union
5. Explain the process amalgamation of trade union
6. Examine the provisions of recognition of trade union
7. What is collective bargaining and explain its significance in trade dispute
8. Master and servant relationship

Unit II

Industrial Disputes Act 1947

Historical background

The legislative history of industrial disputes can be traced from the year 1819. The earliest legislation in India was Bengal Regulation VII of 1819. Under this legislation the breach of contract treated as criminal offence and this was also followed by Merchant Shipping Act (I of 1859) and the Workmen's Breach of Contract Act, 1860.

There were violent disturbances and conflicts and death of one of the contractors took place in the year 1859 consequent to disputes or differences between **European Railway Contractors and their workmen** in Bombay Presidency relating to the failure and delay in payment of wages. In this connection on the request of the Bombay Government, the Government of India enacted the Employers and Workmen's (Disputes) Act, 1860.

According to this Act certain summary procedures were prescribed relating to wages pertaining to the workers engaged in the construction of Railways, Canals and other public works. For the extension of this Act to their territories the Local Governments were given the powers. This step was considered the first legislative venture for governing industrial disputes with a limited objective.

In course of time the Indian Trade Unions Act, 1926 guaranteed the workers, the right to organize and gave them a legal status and immunized them from civil and criminal liability. The Act had been amended several times to suit the changing circumstances.

The Trade Disputes Act, 1929 was codified for five years as an experimental measure. The main object of the Act was to make provisions for establishment of Courts of Inquiry and Boards of Conciliation with a view to investigate and settle trade disputes.

The Act prohibited strikes or lock-outs without notice in public utility services;

it also made any strike or lock-out illegal which had any object other than the furtherance of a trade dispute. The Act was amended in 1932 and was made permanent by the Trade Disputes (Extending) Act, 1934

The Trade Disputes Amendment Act of 1938 provided for the appointment of **conciliation officers** charged with the duty of mediating in or promoting the settlement of trade disputes. Besides extending the term “**trade disputes**” to cover differences between the employers and employees or between workmen and workmen.

The Act also included water transport and tramways under Public Utility Services and made the provisions concerning illegal strikes and lock-outs less restrictive. The Rules have laid the historical foundation of compulsory adjudication in India. The Defence of India Rules in effect empowered the Government to make general or, to suit local requirements, special orders to prohibit strike or lock-outs, to refer any dispute for conciliation or adjudication, to require employers to observe such terms and conditions of employment as might be specified and to enforce the decisions of adjudicators. The Second World War brought about rapid changes in the whole economic structure and also in the field of industrial relations. The necessity of keeping production at the highest level without interruption and the clam of the workers to have their share in the abnormal war profits, led the Government to introduce the Defence of India Rules in January 1942.

The Defence of India Rules (S 81 A) in effect empowered the Government to make general or, to suit local requirements, special orders to prohibit strike or lock-outs, to refer any dispute for conciliation or adjudication, to require employers to observe such terms and conditions of employment as might be specified and to enforce the decisions of adjudicators

Strikes and lock-outs were also prohibited when a trade dispute was referred to a statutory enquiry or for conciliation or adjudication during the entire period of the proceedings and for two months thereafter. Meanwhile the GOI enacted the ID Act 1947 and incorporated the essential principles

st

of rule 81A in section 10 of ID Act 1947 which came in to force on 1 April 1947

Object- To provide for prevention of industrial disputes through works committees;

- To provide for investigating the industrial disputes through Court of Inquiry;
- To provide for the settlement of industrial disputes through a three tier system of Labour Courts, Industrial Tribunals and National Tribunals;
- To impose prohibition on commencement or continuation of strike and lock out during specified period;
- To provide for payment of compensation in case of lay – off, Retrenchment and Closure;
- To define and prohibit the unfair labour practices

Definitions

Section 2(j) of the Industrial Disputes Act, 1947 defines the term '**Industry**', as any business, trade, undertaking, manufacture, calling of employers, and includes any calling, service, employment, handicraft, industrial occupation or avocation of workmen.

Pappamal Annachataram V The Labour Court where the Madras High Court said, having regard to such a wide scope it is difficult or perhaps impossible to evolve a formula and state a clear cut and universally applicable principles and tests with reference to which or any activity may be judged as industry. The question is therefore to be decided in each case depending upon the circumstances.

➤ **Is Municipal Corporation an Industry?**

In 1953 question came before SC in **D.N Banerjee V P.R Mukerjee** for consideration that whether the activities of the municipal corporation would fall within the ambit of the definition of industry. The tribunal held that municipality being run by self govt is not an industry and hence dispute cannot be treated as ID within the meaning of ID act.

But SC reversed the decision and held that a wider interpretation can be given to the word industry or industrial dispute.

Corporation of the city of Nagpur V its employees

Whether all the departments of the municipal corporations are industry?

Corporation may discharge dual function. It may be statutorily entrusted (sovereign function) with

regal functions such as making laws, disposal of certain cases judicially etc. or non- statutory functions (welfare functions).

works like sanitation, sewerage, fee for conveyance, street light or fire brigade which can be done by private persons.

➤ **Is hospital an Industry?**

In 1960 a case came before SC where it had to decide whether Hospital is an Industry?

State of Bombay V Hospital Mazdoor Sabha in considering the question as to whether the group of hospitals run by the appellant for the purpose of giving medical relief to the citizens and for helping imparting medical education are an undertaking or not.

If the hospital is run by private citizen for profit, it would be an undertaking very much like the trade or business in their conventional sense.

If a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under s2(j).

Thus it is the activity which decides whether it attracts s 2 (j).

Management of Safdarjung Hospital V Kuldip Singh Sethi-The hospital mazdoor sabha case was over ruled.

SC held that hospital not to be an industry within the meaning of S 2(j)

Dhanrajgirji Hospital V the Workmen-the hospital was not considered as an industry within the meaning of ID act.

➤ **Is Education Institution an Industry?**

In 1963 in **University Of Delhi V.Ram Nath**-The supreme court while reading Ss.2(g),(j) and (s) together held that it is clear that the work of imparting education conducted by educational institutions like the University of Delhi and the collage run by it is not an industry within the meaning of S.2(j).

Ahmedabad Textile Industry's Research Association V State of Bombay-though ATIRA was

established for research purpose, nevertheless its main object was to benefit its members who are engaged in their trade and business. There is essential cooperation between employer and employee and the object is also ultimately to benefit trade and business, and thus it is an industry.

➤ **Is club an industry?**

Madras Gymkhana Club Employees Union V Management of the Gymkhana Club (1968)

Gymkhana being members club is not an industry

➤ **Is solicitor's firm an industry?**

In 1962 in **National Union of Commercial Employees V M.R Meher, Industrial Tribunal, Bombay**

The employees claimed against **M/s Pereira Fazalbhay & Co**, a solicitor's firm. The firm contended that it is not covered within the definition of industry under s2(j) and therefore the dispute is not ID.

SC- it is not an industry.

Bangalore Water Supply V A. Rajappa

In the year 1978 a seven Judges Bench of the Supreme Court exhaustively examined and considered

the scope of 'industry' and prescribed the Triple test

Triple Test

Where there is

- 1) a systematic activity
- 2) organized by the cooperation between the employer and employee

3) for the production and distribution of goods and services calculated to satisfy the human wants and wishes, not spiritual nor religious wants.

Basic principles for necessary guidance-

1) Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sectors.

2) The true focus is functional and the decision test is the nature of the activity with special emphasis on the employer and employee relations.

3) If the organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

4) If in a pious mission many employ themselves, free or for small honorarium or like return such as lawyers volunteering to run a free legal services clinic, doctors, ashramites, and the services are supplied free or at nominal cost and those who services are not engaged for remuneration or on the basis of master and servant relationship then the institution is not an industry.

Dominant nature test-

There is a dominant test made in the Bangalore Water Supply case

that “where a complex of activities, some of which qualify for exemption, others not involved employees on the total undertaking, some of whom are not workmen or some departments are not productive of goods and services, if isolated, even then the pre-dominant nature of the services and integrated nature of the departments will be true tests, the whole undertaking will be ‘industry’ although those who are not workmen by definition may not benefit by statutes.

the sovereign function strictly understood, alone qualify for exemption, not the welfare activities or economic adventures, undertaken by the Government or statutory bodies

1982 Amended Definition- 2(j) Industry- means any systematic carried on by co-operation between employer and employee for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, whether or not-

a) Any capital that has been invested for the purpose of carrying on such activity: or

b) Such activity is carried on with a motive to make any gain or profit, and includes.

- Any activity of the Dock Labour Board established under

Section 5(a) of the Dock Workers (Regulation of Employment) Act, 1948:

- Any activity relating to the promotion of sales or business or both carried on by an establishment.

But does not include-

- a) Any agriculture operation except where such “agriculture operation” is carried on in an integrated manner with any other activity (being any such activity is referring to in the foregoing provisions of this clause) and such other activity is the predominant one.
- b) Explanation—For the purpose of the sub–clause “agriculture operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantation Labour Act, 1951; or
- c) Hospitals or dispensaries; or
- d) Educational, scientific, research or training institutions; or
- e) Institutions owned or managed by organization wholly or substantially engaged in any charitable, social or philanthropic service; or
- f) Khadi or village industries; or
- g) Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the department of the Central Government dealing with Defense Research, Atomic Energy and Space; or

- h) Any domestic service; or
- i) Any activity, being a profession practiced by an individual or body of individual, if the number of persons employed by the individual or body of individual in relation to such profession is less than ten; or
- j) Any activity, being an activity carried on by a cooperative society or a club or any other like body of individuals, if the number of persons employed by the cooperative society, club or other like body of individuals also in relation to such activity is less than ten.

Section 2(k) The following are the important elements to constitute an industrial dispute

1. A dispute or difference between

- a) employers and employers, or
- b) employers and workmen, or
- c) workmen and workmen;

2. The dispute or difference should be connected with

- (a) employment or non – employment, or
- (b) terms of employment, or
- (c) conditions of labour of any person

3. The dispute may be in relation to any workmen or workmen or any other person in whom they are interested as a body

Ex- Workmen of Dimakuchi Tea Estate V Management of Dimakuchi Tea Estate

Individual Dispute when becomes industrial dispute

There are certain conditions to be fulfilled

1. there must be dispute or difference
2. Such dispute or difference must be b/w employers and employers or employers and workmen or workmen & workmen
3. the The dispute or difference should be connected with
 - (a) employment or non – employment, or
 - (b) terms of employment, or
 - (c) conditions of labour of any person
4. the dispute or difference must relate to an industry

5. the dispute must be sponsored by trade union of the workmen or of majority of workmen or it must comply with requirements of section 2-A

Examples- Bombay Union of Journalists vs. The Hindu

Workmen of Indian Express Newspapers Ltd. vs. Management Indian Express Newspapers News Papers Limited Vs State Industrial U.P., and others.

Central Provinces Transport services Ltd V Raghunath Gopal Patwardhan

Authorities under the Act

There are authorities that make use of conciliation as the sole method of settlement of the dispute they are-

- Works Committee
- Conciliation officer
- Board of Conciliation

There are adjudicating authorities too-

- Court of Inquiry
- Labour Court
- Tribunal
- National tribunal

Section 10 A makes provision for voluntary reference of dispute to arbitration-

Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator or arbitrators.

Reference of disputes Sec - 10 The adjudication of industrial disputes by Conciliation Board, Labour Court, Court of Inquiry, Industrial Tribunal or National Tribunal can take place when a reference to this effect has been made by the appropriate Government under Section 10. The various provisions contained in this Section are summed up below

(A) Reference of disputes to various Authorities Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing make a reference to various authorities in the following ways:

(a) It may refer the dispute to a Conciliation Board for promoting the settlement of the dispute. Duty of the Board is to promote settlement and not to adjudicate the dispute. A failure report of the Board will help the Government to make up its mind as to whether the dispute can be referred for compulsory adjudication.

Case:- Nirma Textile Finishing Mills Ltd. v. Second Tribunal

In this case it was held that any matter appearing to be connected with or relevant to the dispute cannot be referred to a Conciliation Board.

(b) It may refer any matter appearing to be connected with or relevant to the dispute to a Court of Inquiry. The purpose of making such a reference is not conciliatory or adjudicatory but only investigatory.

(c) It may refer the dispute, or any matter appearing to be connected with or relevant to, the dispute if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. However, disputes relating to any matter falling in the Third Schedule can also be referred to a Labour Court, if the appropriate Government so thinks fit provided the dispute is not likely to affect more than 100 workmen.

(d) It may refer the dispute or any matter appearing to be connected with, or relevant to the dispute specified in the Second or Third Schedule, to an Industrial Tribunal for adjudication. [Section 10(1)]

Unit II

Questions

1. With of help of decided cases define Industry
2. Explain the compositions powers and functions of Lsbour Court, Industrial and National Tribunal
3. Works committee, and Court of Inquiry
4. Compositions, powers and functions of conciliation officers and board of conciliations
5. Examine the role of Appropriate Government to refer the dispute u/d sec 10 of the

Industrial dispute Act

6. Define workmen
7. What is industrial dispute? When individual dispute become industrial dispute

Unit III

Law relating to Strike & Lock out

Sec 2(q)"strike" means a cessation of work by a body of persons employed in any industry acting in combination or

a concerted refusal, or

a refusal, under; a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment;

Ex- Standard Vacuum Oil Co V Gunaseelam

Kinds of strike

1. **General strike-** workmen join together for common cause and stay away from work, depriving of their labour needed to run industry. It is for a longer period.

A. **Token strike-** it is also a kind of general strike which may be for few hours or short duration

2. **Stay-in –strike-** also called as tools down strike or pens down strike. Workmen report to duty occupy premises but do not work. The employer is prevented from employing other workers.

3. **Go- slow strike-** the workmen do not stay away from work they do come and also work but with a slow speed in order to lower down the production and thereby cause loss to the employer.

1. **Sympathetic strike-** it is resorted to in sympathy of other striking workmen. Its aim is to encourage or to extend moral support to or indirectly to aid the striking workmen. The sympathizers resorting to such strike have no demand or grievances of their own.

Hunger strike- if group of workmen resort to fasting on or near the place of work or the residence of the employer with a view to coerce the employer to accept their demand.

Work to rule- they strictly adhere to rules while performing their duties which ordinarily they do

not observe. Thus strict observance of rules results in slowing down the tempo of work, causes inconvenience to the public and embarrassment to the employer. It is no strike because there is no stoppage of work at all.

Sec 2(i)"lock-out" means the temporary closing of a place of employment, or the suspension of work, or

- the refusal by an employer to continue to employ any number of persons employed by him;
- The above acts of the employer should be motivated by coercion
- An industry as defined in the act
- A dispute in such industry

Prohibition of Strikes & Lock Out Section22 (2)

- **Section 22(1)** No person employed in a **public utility service** shall go on strike in breach of contract-
- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- (2)- No employer carrying on any public utility service shall lock-out any of his workmen-
- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
- (b) within fourteen days of giving such notice; or
- (c) before the. expiry of the date of lock-out specified in any such notice as aforesaid.
or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

2(kkk) Lay off-means the failure, refusal or inability of an employer on account of

- shortage of coal,
- power or raw materials or
- the accumulation of stocks or the break-down of machinery [or natural calamity or for any other connected reason]
- failure to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.
- ***Explanation*** : Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

S 2(oo) "retrenchment" means

- the termination by the employer of the service of a workman
- for any reason whatsoever,
- But the termination should not be as a measure of punishment inflicted by way of disciplinary action
- but following are not retrenchment-
- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health;

Public Utility Service 2(n) "public utility service" means-

- (i) any railway service or any transport service for the carriage of passengers or goods by air [(ia) any service in, or in connection with the working of , any major port or dock;]
- (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- (iii) any postal, telegraph or telephone service;
- (iv) any industry which supplies power, light or water to the public;
- (v) any system of public conservancy or sanitation;
- (vi) any industry specified in the First Schedule which the appropriate government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

PROVIDED that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at

any one time if in the opinion of the appropriate government public emergency or public interest requires such extension;

3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or,

Existence of lock-out in the public utility service,

but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate government either generally or for a particular area or for a particular class of public utility services.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any person employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate government or to such authority as that government may prescribe, the number of such notices received or given on that day.

Section 23 General prohibition of strikes and Lockouts

No workman who is employed in any industrial establishment shall go on strike in breach of

contract and no employer of any such workman shall declare a lock-out-

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labor Court, Tribunal or National Tribunal] and two months, after the conclusion of such proceedings;

[(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under **sub-section (3A) of section 10A**; or]

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

24. Il-legal strikes and Lockouts

(1) A strike or lock-out shall be illegal if-

(i) it is commenced or declared in contravention of section 22 or section 23; or

(ii) it is continued in contravention of an order made under sub-section (3) of section 10 or sub-section (4A) of Section 10A.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, [an arbitrator, a][Labor Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lockout was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section(3) of section 10 or sub-section (4A) of section 10A].

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Ex- Crompton Greaves V The workmen

Section 10-Reference of disputes to Boards, courts or Tribunals

Section 10 provides a wider power to AG which has absolute authority to take decisions whether infact ID exists or not. But there is no such time limit prescribed in S 10 to refer the dispute

to the authorities

Whether while exercising the power conferred by S 10 refer an ID to tribunal for adjudication, the AG is discharging an administrative or quasi- judicial function?

Ex- State of Madras V CP sarathy

Nath Goyal V Bank of Baroda

Unit III

Questions

- 1. Define strike? Explain kinds and its legality of strike**
- 2. What is lockouts? Examine difference between strike and lockouts**
- 3. Explain the general and special provisions relating to layoff and retrenchment**
- 4. Industrial employment standing order**
- 5. General and special prohibition of strike and lockout**
- 6. Public utility service**

Unit IV

Employee's Compensation Act

Applicable to: - Mines - Factories - Plantations - Transport Establishments - Construction Works
- Railways - Ships - Circuses

Not applicable to: - Members of armed forces of union - Employees covered by ESI Act, 1948.
(Dependent's benefits available) - Casual Workers & workers employed otherwise than for
employer's trade or business

DEPENDANT Sec. 2(1) (d)

Section 2(1) (d) dependent means:- Employees Compensation Act, 1923 Dependents -whether
actually so or not Wholly dependent on the earnings of the employees at the time of death
Dependent- wholly or in part dependent on the earnings of the employee at the time of death

- (a) a widow,
- (b) a minor legitimate or adopted son,
- (c) unmarried legitimate or adopted daughter, or
- (d) a widowed mother a son or a daughter who has attained the age of 18 years and who is infirm
- (a) a widower,
- (b) a parent other than a widowed mother,
- (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or
illegitimate or adopted if married and a minor or if widowed and a minor,
- (d) a minor brother or an unmarried sister or a widowed sister if a minor,
- (e) a widowed daughter-in-law,
- (f) a minor child of a pre-deceased son,
- (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or (h) a paternal
grandparent if no parent of the workman is alive.

Employee, **section 2 (1) (n)** as follows: Employee Means any person who is –

- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 not

permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

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

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

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

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

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

“Partial disablement” means,

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

b.) where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: Provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the workman’s earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity is not only the employment in which he was engaged at the time of accident but in all other employment.

“Total disablement” means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those

injuries, amounts to one hundred per cent or more.

EMPLOYER'S LIABILITY FOR COMPENSATION

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

- 1) Part A of schedule III
- 2) Part B of schedule III
- 3) Part C of schedule III

PERSONAL INJURY:- 1) Personal injury 2) Accident 3) Arising out of employment & in course of employment

EMPLOYER IS NOT LIABLE WHEN:- 1) Disablement not exceeding 3 days 2) Accident due to influence of drink, drugs or disobeyed orders, disregards of safe guards

Occupational Diseases

Workers employed in certain occupations are exposed to certain diseases which are inherent [its character] in those occupations. - Infections due to contamination. - Infra-red radiations. - Skin diseases [Chemical, Leather Processing Units]. - Hearing impairment caused by noise. - Lung Cancer caused by asbestos dust. - Diseases due to effect of heat/cold in extreme hot/cold climate, etc.

What are the conditions for receiving compensation for Personal Injury caused by the accident?

The three tests for determining whether an accident arose out of employment are : 1) At the time of injury workman must have been engaged in the business of the employer and must not be doing something for his personal benefit; 2) That accident occurred at the place where he was performing his duties; and 3) Injury must have resulted from some risk incidental to the duties of the service,

or inherent in the nature or condition of employment.

EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED

Section 12 of the act covers the employer's liability when contractor is engaged for the purpose of doing any work in respect of employer's trade or business. Such contractor has to execute the work with the help of workman engaged by him. But the employers will liable for the payment of compensation only in the following circumstances:

- a.) The contractor is engaged to do a work which is part of the trade or business of the employer.
- b.) The workmen were engaged in the course of or for the purpose of his trade or business.
- c.) The accident occurred in or about the premises on which the employer has under taken or undertakes to execute the work. This provision, however does not prevent a workman from

recovering compensation from the contractor instead of the employer. Here, the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

Doctrine of Notional Extension

The expression in the course of his employment', connotes not only actual work but also any other engagement natural and necessary thereto, reasonably extended both as regards workhours and work-place.

It refers to the time during which the employment continues.

However, this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and re-passes in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. This is also called as the Doctrine of Notional Extension.

The doctrine of notional extension could not be placed in a strait jacket; it was merely a matter of sound common sense as to when and where and to what extent this doctrine could be applied.

Sec-4 Provides for Compensation for:- - Death, - Permanent Total, - Permanent Partial , - Temporary Partial, - Temporary Total

Section 4:-

Where death of a workman results from the injury:- - An amount equal to 50% of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of, Rs. 1,20,000 whichever is more. □ Where permanent total disablement results from the injury:- - An amount equal to 60% of the monthly wages of the injured workman multiplied by the relevant factor or an amount of Rs. 1,40,000, whichever is more.

Where permanent partial disablement results from the injury (injury listed in part II of schedule I)% of loss of earning capacity that such % of compensation payable Where temporary total/ partial

disablement of a workman results from the injury:- - An amount equal to 25% of the monthly wages payable every half-month

Penalty

Section 4A:- Where an employer is in default in paying the compensation due under this Act, within one month from the date it fell due, the Commissioner shall:-

- a) Direct that the employer in addition to the amount of arrears, pay simple interest there on at the rate of 12% per annum or on such higher rates.
- b) Commissioner has the power under the Act to impose penalty and the interest on the cleared amount as per the provision of the act.

Distribution of compensation

Section 8:-

The compensation payable for death and

The compensation payable to a woman or person of legal disability shall be through the commissioner only.

Employer can make advance payment directly to dependents in case of death equivalent to three months salary of the deceased person.

Employer is exonerated from his liability if he deposits the compensation amount with the commissioner within the stipulated time.

The commissioner shall call all dependents of the deceased and determine the method for distribution of compensation among them.

If no dependents are found then amount shall be refunded to the employer. □ On request by the employer the commissioner shall furnish the details of disbursement.

Contracting Out of the compensation

Section 17

Any contract or agreement whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation

under this Act.

Procedure in the proceedings before the commissioner

Section 19 - Reference to commissioners.

Section 20 - Appointment of commissioner.

Section 21 - Venue of proceedings and transfer.

Section 22 - Form of application.

Section 22A – Power of the Commissioner to require further deposit in case of fatal accident.

Section 23 – Powers and procedure of Commissioners.

Section 24 – Appearance of Parties.

Section 25 - Methods of recording evidence.

Section 26 – Costs.

Section 27 – Power to submit cases.

Section 28 – Registration of Agreements.

Section 29 – Effect of failure to register agreement.

Reference to commissioners

Section 19

19(1):- If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent

of disablement), the question shall, in default of agreement, be settled by a Commissioner.

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

State of Kerala v. khadeeja beevi, 1988 - A govt. servant who is employed as “Mahout” in the forest deptt. is also treated as employee under this act even if he is covered by family pension, GPF, & family benefits scheme under the govt. □ **N.A.CHAUHAN v. N.K. SHAH, 1991** - Expression “arising out and in course of employment”. The words suggest that there should be casual relationship between the employer and accident. □ **New India assurance co. ltd. v. Mohan Kumar sahu, 2004** - Person engaged for one day to drive vehicle of the owner is also the employee in this act. The Owner have definite control over the person. The person was driving the vehicle on the direction of the owner of the vehicle. His engagement for one day only will not throw him out of the definition of Employees u/s 2(n) of the act.

G.S.R.T.C. v/s Ashok Kumar keshavlal Parekh, 1999 Sec. 16 of Apprentices Act, 1961 entitles a apprentice to claim compensation under this act if Personal Injury caused to him by accident arising out of or in course of his training as an apprentice. □ **Radhamony v/s Secretary, Department Of Home Affairs, 1995** A Person employed as driver comes under the category of employees irrespective of the position whether he is a non-govt. employee or govt. employee. □ **Devidayal Ralyaram v/s Secretary of state of AIR, 1937** According to Doctrine Of Added Peril if a workman while performing his duty does something which is not required to do and which involves extra danger, the employer would not be liable to pay compensation if any injury caused to him.

Employees State Insurance Act, 1948

The preamble to the Act makes it clear that this act is passed to provide for certain benefits to employees in case of sickness, maternity and employment injury.

st

It shall come into force from 31 August 1948.

It applies to all factories including the factories belonging to the government.

It does not apply to factories of seasonal character where work is performed intermittently during certain seasons only.

It also does not apply to establishments belonging to or under the control of the govt whose employees are in receipt of benefits substantially similar or superior to the benefits under the act.

3. Establishment of Employees' State insurance Corporation constituted by CG for the administration of the scheme of employees' state insurance in accordance with the provisions of this Act a Corporation to be known as the Employees' State Insurance Corporation.

S 16- Principal Officers-

Director general- who is chief executive officer

Financial Commissioner

4. Constitution of Corporation-

The Corporation shall consist of the following members, namely:-

- (a) a Chairman to be [appointed] by the Central Government;
- (b) a Vice-Chairman to be appointed] by the Central Government;]
- (c) not more than five persons to be appointed] by the Central Government,
- (d) one person each representing each of the States] in which this Act is in force] to be [appointed] by the State Government concerned;
- (e) one person to be [appointed] by the Central Government to represent the Union Territories];
- (f) ten] persons representing employers to be appointed] by the Central Government in consultation with such organizations of employers as may be recognized for the

- purpose by the Central Government;
- (g) ten persons representing employees to be appointed] by the Central Government in consultation with such organizations of employees as may be reorganized for the purpose by the Central Government;
- (h) two persons representing the medical profession to be [appointed] by the Central Government in consultation with such organization of medical practitioners as may be recognized for the purpose by the Central Government
- (i) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States; and
- (j) the Director-General of the Corporation ex-officio.]

Sec 8 Constitution of Standing Committee- A Standing Committee of the Corporation shall be constituted from among its members, consisting of-

- (a) A Chairman, appointed] by the Central Government;
- (b) three members of the Corporation appointed] by the Central Government];
- (bb) three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification Gazette, specify from time to time;
- eight] members elected by the Corporation as follows-
- (ii) three members from among the members of the Corporation representing employers;
- (iii) three] members from among the members of the Corporation representing employees;
- (iv) one member from among the members of the Corporation representing the medical profession; and
- (v) one member from among the members of the Corporation elected by Parliament];
- (
- d) the Director General of the Corporation, ex officio.

Sec 9 term of office of standing committee- shall be two years or until election is declared.

Sec 18. Powers of the Standing Committee- (1) Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.

(2) 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.

(3) The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

S 10 Medical benefit Council-

- (1) The Central Government shall constitute a Medical Benefit Council consisting of-
- (a) the Director General, Health Services, ex officio, as Chairman;
- (b) a Deputy Director General, Health Services, ex officio, as Co- Chairman
- (c) the medical commissioner of the Corporation, ex officio;
- (d) one member each representing each of the States (other than Union Territories) in Which this Act is in force] to be appointed] by the State Government concerned;
- (e) three members representing employers to be appointed] by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;
- (f) three members representing employees to be appointed] by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and
- (g) three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed] by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

22. Duties of Medical Benefit Council- The Medical Benefit Council shall-

- (a) advise the Corporation and the Standing Committee] on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;

- (b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and
- (c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

26. Employees' State Insurance Fund- (1) 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.

- (2) The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.
- (3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit on an account styled the account of the Employees' State Insurance Fund.]
- (4) Such account shall be operated on by such officers as may be authorized by the Standing Committee with the approval of the Corporation.

28. Purposes for which the fund may be expended

- (i) 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
- (ii) 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, leave and joining time allowances, traveling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation

(iv) establishment and maintenance of hospitals, dispensaries and other institutions

(v) payment of contributions to any ⁶²

⁶³

[State Government,] [***] local authority or any private

body or individual, towards the cost of medical treatment and attendance provided to insured persons

(vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;

(vii) defraying the cost (including all expenses) of the Employees' State Insurance Courts set up under this Act

(viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;

(ix) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding

(x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

(xi) defraying expenditure, within the limits prescribed, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured

39. Contributions

- employee's contribution rate is 0.75% of the wages and
- that of employer's is 3.25% of the wages paid/payable in respect of the employees in every wage period
- An employee whose average daily wages during wage period does not exceed 137 is exempted from paying any contribution as per sec 4 of the act

Section 46- Benefits under the Act

- **Sickness benefit46(1) (a)**
- **Maternity benefit46(1) (b)**
- **Disablement benefit46(1)©**
- **Dependants benefitS46(1)(d)**
- **Medical benefit S 46(1)(e)**

Unit IV

Questions

- 1. Explain the various kind of benefits and requirement to claim benefits under ESI Act**
- 2. Discuss the compositions powers and duties of ESI corporations, Standing Committee and Medical Benefit Council**
- 3. Explain the provisions relating to contribution**
- 4. Compositions powers and functions of ESI Courts**
- 5. Explain the liability of employer to pay compensation**
- 6. Conditions to claim the compensation**
- 7. What are the conditions for receiving compensation for Personal Injury caused by the accident?**
- 8. Doctrine of Notional extension and Doctrine of Add peril**
- 9. Kinds of Disabilities and occupational diseases**
- 10. Explain the appointment powers and functions of Workmen Commissioner**

Unit V

Payment of wages Act, 1936

1. It deals with the regular and payment of wages by the employer
2. It specifies the heads under which deduction can be made from wages
3. It provides machinery for enforcing specific claim arising out of delayed payment deduction from wages. Appeals etc.,

3. Responsibility for payment of wages.—

(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,—

(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948);

(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment;

(c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;

(d) in the case of contractor, a person designated by such contractor who is directly under his charge; and

(e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act; the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

4. Fixation of wage-periods.—

(1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-period) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

5. Time of payment of wages.—

(1) The wages of every person employed upon or in—

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

(b) any other railway, factory or [industrial or other establishment], shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable: [Provided that in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion

7. Deductions which may be made from wages.— the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

[Explanation I].—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages. ²⁰ [Explanation II.—Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:—

(i) the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);

(ii) the reduction to a lower post or time scale or to a lower stage in a time scale; or

(iii) suspension; shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:—

(a) fines;

(b) deductions for absence from duty;

(c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is

directly attributable to his neglect or default;

[(d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the

board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;

(e) deductions for such amenities and services supplied by the employer as the [***] State Government [or any officer specified by it in this behalf] may, by general or special order, authorise; Explanation.—The word “services” in [this clause] does not include the supply of tools and raw materials required for the purposes of employment;

[(f) deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages;

(ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;

(fff) deductions for recovery of loans granted for house-building or other purposes approved by the State Government, and the interest due in respect thereof;

(g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or any recognized provident fund as defined [in clause (38) of section 2 of the Income-tax Act, 1961 (43 of 1961)] or any provident fund approved in this behalf by [the appropriate Government], during the continuance of such

approval;

(j) deductions for payments to co-operative societies as approved by [the appropriate Government] [or any officer specified by it in this behalf] or to a scheme of insurance maintained by the Indian Post Office;

(k) deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;

(kk) deductions made, with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 (16 of 1926), for the welfare of the employed persons or the members of their families, or both, and approved by the appropriate Government] or any officer specified by it in this behalf, during the continuance of such approval;

(kkk) deductions made, with the written authorization of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926);]

[(l) deductions, for payment of insurance premia on Fidelity Guarantee Bonds;

(m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

(n) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage, wharfage and crantage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;

(o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;

(p) deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;

[(q) deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

9. Deductions for absence from duty.

10. Deductions for damage or loss

11. Deductions for services rendered

12. Deductions for recovery of advances

12A. Deductions for recovery of loans

13. Deductions for payments to co-operative societies and insurance schemes

14. Inspectors- (1) An Inspector of Factories appointed under [sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948)], shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) [The appropriate Government] may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) [The appropriate Government] may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits

within which and the class of factories and [industrial or other establishments] in respect of which they shall exercise their functions.

15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims

16. Single application in respect of claims from unpaid group

17. Appeal (1) An appeal against a direction made under section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency town before the Court of Small Causes and elsewhere before the District Court

20. Penalty for offences under the Act (1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and sections 7 to 13, both inclusive, shall be punishable with fine which may extend to five hundred rupees.

(2) Whoever contravenes the provisions of section 4, section 6 or section 25 shall be punishable with fine which may extend to two hundred rupees

Factories Act,1948

An Act to consolidate and amend the law regulating labour in factories

Whereas it is expedient to consolidate and amend the law regulating labour in factories

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

- (i) cause material impairment to the health..., or
- (ii) result in pollution

2(k) “Manufacturing process” any process for

- (i) Making, altering, repairing... disposal, **or**
- (ii) Pumping oil, water..., **or**
- (iii) Generating, transforming...power, **or**
- (iv) Composing types of printing..., **or**
- (v) Constructing..., **or**
- (vi) Preserving or storing

r is used when provision applies equally to each alternative.

and is used when provision applies with both conditions satisfied simultaneously.

“Worker” means any person employed, directly, or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

The main sentence is to be recognized

The word **or** is to be correctly read

2(m)Factory” means any premises including the precincts thereof-

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

(ii) whereon twenty or more workers are working ... without the aid of power...

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

2(n)“Occupier” of a factory means the person who has ultimate control over the affairs of the factory

Provided that...

Provided means “In the event of any doubt”

“Prescribed” means prescribed by rules made by the State Government under the Act

Changeable aspects of the law are taken care by Rules made under the Act

Where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such set is called a “group” or “relay” and each of such period is called a “shift”

Section 8- Though the Act is a central legislation the main responsibility for its enforcement rests with the State Government.

- The Act empowers State Government to appoint inspectors and to prescribe their qualifications and conditions of work.
- The State Government may appoint Chief Inspector of factories with power throughout the State. It may also appoint Additional, Joint and Deputy Chief Inspectors. Every District Magistrate is also an Inspector for his district. They will be deemed to be public servants.

Section 9- Powers and duties of Inspectors

(a) Enter a place used as a factory

(b) Make examination of premises etc.

- (c) Inquire into any accident etc.
- (d) Require the production of any register etc
- (e) Seize or take copies of register
- (f) Direct the occupier to leave the place undisturbed
- (g) Take measurement of photographs for purpose of his examination
- (h) Exercise other prescribed powers

Section 10- The State Government may also appoint qualified medical professionals as Certifying surgeons to discharge their duties of examination and certification of young persons, and the persons engaged in dangerous operations or processes, also to exercise medical supervision in a factory

Health

Section 11- Cleanliness

Section 12- Disposal of wastes and effluents

Section 13- Ventilation and temperature

Section 14- Dust and fumes

Section 15- Artificial humidification

- Section 16- Overcrowding- 9.9 cubic metres space should be provided for each worker.
- Section 17- Lighting
- Section 18- Drinking water
- Section 19- Latrines and Urinals
- Section 20- Spittoons

Safety

- Section 21- Fencing of machinery
- Section 22- Work on or near machinery in motion
- Section 23- Employment of young persons on dangerous machines
- Section 24- Striking gear and devices for cutting off power
- Section 25- Self-acting machines
- Section 26- Casing of new machinery

- Section 27- Prohibition of employment of women and children near cotton openers
- Section 28- Hoists and lifts
- Section 29- Lifting machines, chains, ropes and lifting tackles
- Section 30- Revolving machinery
- Section 31- Pressure plant
- Section 32- Floors, stairs and means of access
- Section 33- Pits, sump openings in floors etc.
- Section 34- Excessive weights
- Section 35- Protection of eyes
- Section 36- Precautions against dangerous fumes, gases etc.
- Section 36A- Precautions regarding the use of portable electric light
- Section 37- Explosive or inflammable dust, gas etc.
- Section 38- Precautions in case of fire
- Section 39- Power to require specifications of defective parts or tests of stability
- Section 40- Safety of buildings and machinery
- Section 40A- Maintenance of buildings

Section 40B(1)- Safety Officers- In every factory

(i) wherein one thousand or more workers are ordinarily employed, or

(ii) wherein any manufacturing process or operation is carried on which involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory,

the occupier shall, if required by the State Government, appoint Safety Officers

(2) Their duties, qualifications and conditions of service are to be as prescribed

Section 41A(1)- Constitution of Site Appraisal Committees for advising the State Government in considering application for grant of permission for opening or expansion of factory involving a hazardous process

(2) Site Appraisal Committee to examine and recommend within ninety days

(3) If the factory belongs to Central Government a representative nominated by it is to be co-

opted

Section 41B- (1) Compulsory disclosure of information by the occupier

(2) Occupier is required to lay down policy regarding health and safety

(3) Emergency plans and detailed disaster control measures

Section 41C- Specific responsibility of the occupier in relation to hazardous processes

Section 41D- Power of Central Government to appoint Inquiry Committee

Section 41E- Emergency standards

- Section 41F- Permissible limits of exposure of chemical and toxic substances
- Section 41G- Workers' participation in safety management
- Section 41H- Right of workers to warn about imminent danger

Welfare

- Section 42- Washing facilities
- Section 43- Facilities for storing and drying clothes
- Section 44- Facilities for sitting
- Section 45- First-aid appliances
- Section 46- Canteens
- Section 47- Shelters, rest rooms and lunch rooms
- Section 48- Creches

Section 49- Welfare Officers- In every factory

(i) 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) Their duties, qualifications and conditions of service are to be as prescribed

Section 51- Weekly hours

No adult worker is to be required or allowed to work more than forty-eight hours in a week

Section 52- Weekly holidays

No adult worker is to work on the first day of the week unless he has or will have a holiday for

a whole day on one of the three days immediately before or after that day, and manager has before that day or substituted day whichever is earlier given prior notice to the Inspector of his intention to require him to work on that day, and displayed a notice to this effect in the factory. provided substitution will not result in work for more than ten days consecutively

Section 53- Compensatory holidays

- In the event of exemption from the provisions of Section 52 a worker deprived of weekly holiday is to be allowed compensatory holidays of equal number within that month or within two months immediately following that month

Section 54- Daily hours

Not more than nine hours

Section 55- Intervals for rest

Not more than five hours before interval of rest of half an hour

Not to exceed six hours

Section 56- Spreadover

Not more than ten and half hour

Not to exceed twelve hours

Section 57- Night shifts

Holiday for a whole day means twenty-four hours following end of shift,

following day begins when shift ends, hours after midnight to be counted in previous day

Section 58- Prohibition of overlapping shifts

Section 59- Extra wages for overtime

When a worker works in a factory more than nine hours in any day or more than forty-eight hours in a week he is to be paid overtime at twice his ordinary rate

Ordinary rate means basic and D A and cash equivalent of food etc. concession but not bonus and OT

Time rate not piece rate

Cash equivalent is for total entitlement

State Government has right to make rules

Section 60- Restriction of double employment

Section 61- Notice of period of work or adults

Section 62- Register of adult workers

Section 63-

Section 64- Power to make rules

Section 65- Power to make exempting rules

Section 67- Prohibition of employment of young children

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

“Child” means a person who has not completed his fifteenth year of age

Section 68- Non-adult workers to carry tokens

A child who has completed his fourteenth year or an adolescent is not to be required or allowed to work in a factory unless

- Certificate of fitness granted to him to is in the custody of the manager of the factory, and

- A token giving a reference to the certificate is carried by him while at work

Section 69(1)- Certificate of fitness

Certifying surgeon on application by young person or his parent accompanied by a document by manager or on application by manager is to examine and ascertain his fitness

(2) Certifying surgeon, if satisfied after examination, may grant or renew Certificate of fitness

(a) to work in a factory as a child

(b) to work in a factory as an adult

(3) Certificate is to be valid only for twelve months, may be subject to requiring re-examination before this period

(4) He may revoke Certificate of fitness if holder is no longer fit

(5) If he refuses to grant Certificate, he is to give reasons

(6) If Certificate is given under certain conditions, conditions are to be followed

(7) Fee, if any, is payable

Section 71(1)- Working hours for children

- Not more than four and a half hour in a day

- Not during the night

(2) Period of work to be limited to two shifts, no overlap or spread over more than five hours each, in only one relay not to be changed in thirty days

(3) Weekly holidays with no exemption

(4) Not to work in a factory on a day if he has worked in another factory,

(5) Female child only between 8 A.M. to 7 P.M.

- Section 72- Notice of period of work for children
- Section 73- Register of child workers
- Section 74-
- Section 75- Power to require medical examination
- Section 76- Power to make rules
- Section 77- Certain other provisions of law not barred

Section 79(1)- Annual leave with wages

Every worker who has worked for 240 days or more in a calendar year will be allowed in subsequent calendar year leave with wages calculated at the rate of

(i) if adult, one day for every twenty days of work

(ii) if child, one day for every fifteen days of work

Explanation 1- Lay-off by agreement, contract or permissible by standing orders, Maternity leave, prior earned leave are to be counted for calculation of 240 days but not for earning leave

2- Leave admissible is to be exclusive of all holidays

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Section 85- Power to apply the Act to certain premises

The State Government may declare that all or any of the provisions of this Act to a place wherein a manufacturing process is carried on notwithstanding that number of persons employed is less than ten if working with aid of power and less than twenty if working without the aid of power or not employed but working with permission or under agreement with the owner

Section 86- Power to exempt public institutions

- If attached to a public institution maintained for the purposes of education, training, research or information

except provisions relating to hours of work and holidays

- Section 93- Liability of owner of premises in certain circumstances
- Section 94- Enhanced penalty after previous conviction
- Section 95- Penalty for obstructing Inspector
- Section 96-96A- Other offences
- Section 97- Offences by workers

If any worker contravenes any provision or rule or order he is to be punishable with fine extending to five hundred rupees. Where a worker is convicted of an offence occupier or manager is not to be deemed to be guilty

- Section 101- Exemption of occupier or Manager from liability in certain cases
- Section 102- Power of Court to make orders
- Section 103- Presumption as to employment

If any person is found in a factory except during intervals for meals or rest he is to be deemed to be in employment.

Section 105- Cognizance of offence

- Only on complaint by or with the previous sanction in writing of an Inspector

- Presidency Magistrate or Magistrate of first class

Section 106- Limitation of prosecution

- Within three months

Section 106A- Jurisdiction of a court for entertaining proceedings, etc, for offence

- Section 107- Appeals
- Section 108- Display of notices
- Section 109- Service of notices
- Section 110- Returns
- Section 111- Obligation of workers
- Section 111A- Right of workers
- Section 112- Power to make rules
- Section 113- Power of Centre to give directions
- Section 114- No charge for facilities and conveniences
- Section 115- Publication of orders
- Section 116- Application of Act to Government factories
- Section 117- Protection of persons acting under the Act
- Section 118-118A- Restriction on disclosure of information

Unit V

Questions

1. Explain the provisions relating to payment and deduction of wages under payment of wages act
2. Examine the function of Inspectors
3. Explain the salient features of Payment of Wages Act 1936
4. Occupiers and its responsibility
5. Examine the provisions relating to health, welfare and safety of workmen under factories act
6. Hazardous process
7. Provisions relating to young and adult workers