

regarding contravention of the provisions of the Act. Inspectors are to be appointed for the purpose of investigating whether the provisions of the Act are being complied by the employers. Non-observance of the Act by government contractors has been held to raise questions under Article 14.

Besides the principle of gender equality in the matter specifically embodied in Article 39(d), the Supreme Court has extracted the general principle of equal pay for equal work by reading Articles. 14, 16 and 39(d).

In the case of *Randhir .Singh v. Union of India*, the Supreme Court has held that the principle of “Equal pay for equal work though not a fundamental right” is certainly a constitutional goal and, therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work. However, the doctrine of ‘equal pay for equal work’ cannot be put in a strait jacket. This right, although finds place in Article 39, is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution. Reasonable classification, based on intelligible criteria having -nexus with the object sought to be achieved is permissible. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility.

The principle of “equal pay for equal work” was discussed in *D.S. Nakara vs. Union of India 1983 AIR 130*, the Court held that: “Article 38(1) enjoins the State to strive to promote the welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular, the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Art.39 (d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgement of this court in *Randhir Singh v.Union of India (1982)*.”

In *State of A.P. v. V. G. Sreenivasa Rao (1989) 2 SC 290*, it has been held that giving higher pay to a junior in the same cadre is not illegal and violative of Articles 14, 16 and 39 (d) if there is rational basis for it.

The principle of ‘equal pay for equal work’ may properly be applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer.

In *F.A.I.C. and C.E.S. v. Union of India (AIR 1988 SC 1291)*, the Supreme Court has held that different pay scales can be fixed for government servants holding same post and performing similar work on the basis of difference in degree of responsibility, reliability and confidentiality, and as such it will not be violative of the principle of equal pay for equal work, implicit in Article 14. The Court said, «Equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference.

In pursuance of the doctrine of equal pay for equal work, the Supreme Court has ruled in *State of Haryana v. Rajpal Sharma (AIR 1997 SC 449)*, *inter alia*, that teachers employed in aided schools be paid the same salary and dearness allowance as is paid to teachers employed in government schools. The Court has observed: “The application of doctrine arises where employees are equal in every respect, in educational qualifications, duties, functions and measure of responsibilities and yet they are denied equality in pay. If the classification for prescribing different scales of pay is founded on reasonable nexus the principle will not apply.”

The state cannot deny to casual labourers at least the minimum pay in the pay-scales of regularly employed workmen. Such denial amounts to exploitation of labour which is not permissible.

More recently while holding that the State Government could not differentiate in the matter of pay scales between officers presiding over the Industrial Tribunal and District Judges, the Court said that although the doctrine of “equal pay for equal work” was originally propounded as part of the directive principles of State policy in Article 39(d), having regard to the constitutional mandate of equality and inhibition against discrimination in Articles

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14 and 16, in service jurisprudence, the doctrine of “equal pay for equal work” has assumed the status of a fundamental right. (*State of Kerala v. B. Renjith Kumar*, (2008) 12 SCC 219).

If we read Article 39(e) and (f) together, it is obvious that one of the objectives is that the state should, in particular, direct its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment.

Clause (f) was modified by the Constitution (42nd Amendment) Act, 1976 with a view to emphasize the constructive role of the State with regard to children. In *M. C. Mehta v. State of Tamil Nadu*, (1991) 1 SCC 283 it has been held that in view of Article 39 the employment of children within the match factories directly connected with the manufacturing process of matches” and fireworks cannot be allowed as it is hazardous. Children can, however, be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to accidents. In another landmark judgment in *M. C. Mehta v. State of T. N. known as (Child Labour Abolition case)* a three Judges Bench of the Supreme Court held that children below the age of 14 years cannot be employed in any hazardous industry, or mines or other work. The matter was brought in the notice of the Court by public spirited lawyer Sri M. C. Mehta through a public interest litigation under Article 32. He told the Court about the plight of children engaged in Sivakasi Cracker Factories and how the constitutional right of these children guaranteed by Article 24 was being grossly violated and requested the Court to issue appropriate directions to the Governments to take steps to abolish child labour.

The Court issued the following directions –

- (1) The Court directed for setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employers to pay for each child a compensation of Rs. 20,000 to be deposited in the fund and suggested a number of measures to rehabilitate them in a phased manner.
- (2) The liability of the employer would not cease even if after the child is discharged from work, asked the Government to ensure that an adult member of the child’s family gets a job in a factory or anywhere in lieu of the child.
- (3) In those cases where it would not be possible to provide jobs the appropriate Government would, as its compensation, deposit, Rs. 5000 in the fund for each child employed in a factory or mine or in any other hazardous employment.

The authority concerned has two options: either it should ensure alternative employment for the adult whose name would be suggested by the parent or the guardian of the child concerned or it should deposit a sum of Rs. 25,000 in the fund.

- (4) In case of getting employment for an adult the parent or guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent shall have to see that his child is spared from the requirement of the job as an alternative source of income interest—income from deposit of Rs. 25000—would become available to the child’s family till he continues his study upto the age of 14 years.
- (5) As per Child Labour Policy of the Union Government the Court identified some industries for priority action and the industries so identified are namely. The Match industry in Sivakashi, Tamil Nadu; Diamond Polishing Industry in Surat, Gujarat; the Precious Stone Polishing Industry in Jaipur, Rajasthan; the Glass Industry in Firozabad; the Brass-ware Industry Moradabad; the Handmade carpet Industry in Mirzapur, Bhadohi and the Lock making Industry in Aligarh in Uttar Pradesh; the Slate Industry in Manakpur, Andhra Pradesh and the Slate Industry in Mandsaur, Madhya Pradesh for priority action by the authorities concerned.
- (6) The employment so given could be in the industry where the child is employed a public sector undertaking, and would be manual in nature inasmuch as the child in question must be engaged in doing manual work the undertaking chosen for employment shall be one which is nearest to the place of residence of the family.

- (7) For the purpose of collection of funds, a district could be the unit of collection so that the executive head of the district keeps watchful eye on the work of the inspectors. In view of the magnitude of the task, a separate cell in the labour Department of the appropriate Government would be created. Overall monitoring by the Ministry of Labour of the Union Government would be beneficial and worthwhile.
- (8) The Secretary of the Ministry of Labour of the Union Government is directed to file an affidavit within a month before the Court about the compliance of the directions issued in this regard.
- (9) Penal provisions contained in the 1986 Act will be used where employment of a child labour prohibited by the act, is found.

In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court read Article 21 and 23 with Article 39(e) and (f) and Article 41 and 42 to secure the release of bonded labour and free them from exploitation. The Court has observed in this connection: "This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Articles 41 and 42."

It is not only the question of release of bonded labour but also of their proper rehabilitation after release. The Supreme Court has insisted upon effective rehabilitation of the freed bonded labour families.

Social Security provisions

Article 41 requires the state, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Social security is guaranteed in our Constitution under Articles 39, 41 and 43. The Employees' State Insurance Act, 1948 is a pioneering piece of legislation in the field of social insurance. The Employees' State Insurance Scheme provides for benefits in cash except the medical benefit, which is in kind. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Maternity Benefit Act, 1961 are also social security measures to help fulfill the objectives of directive principles of our Constitution. The Provident Fund Scheme aimed at providing substantial security and timely monetary assistance to industrial employees and their families. The Maternity Benefit Scheme is primarily designed to provide maternity leave with full wages and security of employment. The object of the Payment of Gratuity Act, 1972 is to provide a scheme for the payment of gratuity to employees employed in factories, mines, oil fields, plantations, ports, railways, shops and establishments. Besides social security benefits, efforts have also been made to provide ample opportunities for employment and for workers' education. The Apprentices Act, 1961 was enacted to supplement the programme of institutional training by on-the-job training and to regulate the training arrangements in industry. Employment exchanges play an important role for the job seekers. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969 has made it obligatory on the employers to notify vacancies occurring in their establishments to the prescribed employment exchanges before they are filled. The voluntary workers education scheme was launched in our country in 1958 to educate the workers in trade union philosophy and methods, and to promote physical awareness of problems, privileges and obligations as workers and citizens.

As already stated, by reading Articles 21, 39(a) and 41, the Supreme Court has included the right to livelihood as a part of right to life under Art. 21. This however does not mean that the state may be compelled by affirmative action to provide adequate means of livelihood or work to the citizens. The ground reality is that the number of available jobs is limited, and hence Courts must take a realistic view of the matter and must exercise self-restraint. But, it does certainly mean that the state shall not deprive any person of his livelihood except according to just and fair procedure established by law.

It will thus be seen that from the traditional right to life an important economic right has been derived. Art. 41 directs the state to make effective provision for securing the right to work but within the limits of its economic capacity and development.

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A rule made by a government company authorising it to terminate the employment of a permanent employee by giving him three months' notice and without giving him a hearing has been held to be violative of Arts. 39(a) and 41 and ultra vires Art. 14 in *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath (AIR 1986 SC 1571)*. The Court has observed: "An adequate means of livelihood cannot be secured [Art. 39(a)] to the citizens by taking away without any reason the means of livelihood. The mode of making effective provisions for securing the right to work [Art. 41] cannot be by giving employment to a person and then without any reason throwing him out of employment."

Commenting on Article 41, the Supreme Court has observed in the case of *Delhi Development Horticulture Employees' Union v. Delhi Administration, AIR 1992 SC 789*: "This country has so far not found it feasible to incorporate the right to livelihood as a Fundamental Right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly, therefore, it has been placed in the Chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same "within the limits of its economic capacity and development." Thus even while giving the direction to the State to ensure the right to work, the Constitution-makers thought it prudent not to do so without qualifying it."

Working Conditions

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief.

Article 42 provides the basis of the large body of labour law that obtains in India. Referring to Arts. 42 and 43, the Supreme Court has emphasized that the Constitution expresses a deep concern for the welfare of the workers. By reading Article 21 with several Directive principles including Art 42, the Supreme Court has given broad connotation to Art 21 so as to include therein "the right to live with human dignity".

Substantial steps have been taken to fulfill the object of Article 42 of the Constitution. The Factories Act, 1948 provides for health, safety, welfare, employment of young persons and women, hours of work for adults and children, holidays and leave with wages. Labour welfare funds have been set-up to provide welfare facilities to the workers employed in different mines such as coal, mica, iron ore and limestone. The Contract Labour (Regulation and Abolition) Act of 1970, a piece of social legislation, provides for the abolition of contract labour wherever possible and to regulate the conditions of contract labour in establishments or employments where the abolition of contract labour system is not considered feasible for the time being.

Article 42 is one of the hall marks of the Indian Constitution as it takes into consideration the very specific context of pregnancy related discrimination in the context of employment and therefore it directs the State to make provisions for securing not only just and humane conditions of work but also for Maternity Relief. It is in this context that the Government of India went on to enact the Maternity Benefit Act, 1961 which enables women in the labour force who have been employed for 160 days in a year to provide leave with pay and medical benefit.

Living Wage

Article 43 requires the state to endeavour to secure, by suitable legislation, or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the state is to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work. This provision enunciates the revolutionary doctrine that employees are entitled as of right to certain reliefs.

A 'living wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health,

requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. Fixation of minimum wage is in public interest and does not impose an unreasonable restriction on the right to carry on a trade guaranteed by Article 19(1)(g). (*Edward Mills Co. v. Ajmer*, AIR 1955 SC 25).

A 'fair wage' is a mean between 'living wage' and 'minimum wage'. 'Living' and 'fair' wages have to be fixed keeping in view the capacity of the industry to pay. Commenting on Article 43, the Supreme Court has observed that while our political aim is 'living wage' for workers, in actual practice, this ideal has eluded our efforts so far and that our general wage structure has at best reached the lower level of 'fair wage.' (*All India Reserve Bank Employees v. Reserve Bank*, AIR 1966 SC 305).

To provide social justice to the unorganised labour and to prevent exploitation, the Minimum Wages Act, 1948 was enacted. The Act has been characterised "just the first step" in the direction of fulfilling the mandate given under Article 43. It provides for the fixation of minimum rates of wages by the central or state governments within a specified period for workers employed in certain scheduled employments. The minimum wage in any event must be paid irrespective of the capacity of the industry to pay.

The Supreme Court has rejected the argument that the pattern of wage fixation in case of government companies in public sector should necessarily be different from companies in private sector, arguing that Article 39 and 43 would be disobeyed if distinction is made between the same class of labourers on the ground that some of them are employed in state enterprises and others in private enterprises. (*Hindustan Antibiotics v. Workmen*, AIR 1967 SC 948)

Payment of a statutory minimum bonus even when the management sustains a loss is justifiable under Articles 39 and 43. (*Jalan Trading Co. v. D.M. Aney*, AIR 1979 SC 233).

In *D.S. Nakara v. Union of India* AIR 1983 SC 130) the Constitution Bench of the Supreme Court has held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance it is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to the aging process and, therefore, one is required to fall back upon savings.

The Court emphasized on three features while describing the nature of pension given to a government servant on retirement, thereof: (1) Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and it creates a vested right; (2) pension is not an ex gratia payment but it is a payment for the past service rendered; and (3) it is a social welfare measure rendering socio-economic justice to those who in the pinnacle of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.

The proposition that the pension and gratuity are not regarded as bounty by the state but these are regarded as statutory rights has been reiterated by the Supreme Court in several cases. (*D.V. Kapoor v. Union of India*, AIR 1990 SC 1923).

The primary aim of a socialist state is to eliminate inequality in income, status and standards of life. This envisages economic equality and equitable distribution of income.

Workers Participation in Management

Article 43-A which was introduced by the 42nd Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments.

The workers' participation in management is not a novel and imported idea from outside. It can be dated as far back as 1920 when Mahatma Gandhi suggested participation of workers in management on the ground that

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workers contributed labour and brains while shareholders contributed money to the enterprise and that both should, therefore, share in its property. He said that there should be a perfect relationship of friendship and cooperation among them. For the unions, he said that the aim should be to raise the moral and intellectual height of labour and, thus, by sheer merit, make labour master of the means of production instead of the slave that it is.

After independence, the first major step in the direction of workers' participation in management in India was the enactment of the Industrial Disputes Act, 1947 with the dual purpose of prevention and settlement of industrial disputes. The Industrial Policy Resolution, 1948 advocated Workers Participation in Management by suggesting that labour should be in all matters concerning industrial production.

The First Five-Year Plan and the successive plans emphasised the need for workers' participation in management. For example, the Second Five-Year Plan' stressed the need for Workers Participation in Management in the following words: "It is necessary in this context that the worker should be made to feel that in his own way he is helping build a progressive state. The creation of industrial democracy, therefore, is a prerequisite for the establishment of a socialist society".

Forms of Workers Participation in Management in India

The various forms of workers' participation in management currently prevalent in the country are:

1. Suggestion schemes: Participation of workers can take place through suggestion scheme. Under this method workers are invited and encouraged to offer suggestions for improving the working of the enterprise. A suggestion box is installed and any worker can write his suggestions and drop them in the box. Periodically all the suggestions are scrutinized by the suggestion committee or suggestion screening committee. The committee is constituted by equal representation from the management and the workers. The committee screens various suggestions received from the workers. Good suggestions are accepted for implementation and suitable awards are given to the concerned workers. Suggestion schemes encourage workers' interest in the functioning of an enterprise.
2. Works committee: Under the Industrial Disputes Act, 1947, every establishment employing 100 or more workers is required to constitute a works committee. Such a committee consists of equal number of representatives from the employer and the employees. The main purpose of this committee is to provide measures for securing and preserving amity and good relations between the employer and the employees.

Functions: Works committee deals with matters of day-to-day functioning at the shop floor level. Works committees are concerned with:

- o Conditions of work such as ventilation, lighting and sanitation.
- o Amenities such as drinking water, canteens, dining rooms, medical and health services.
- o Educational and recreational activities.
- o Safety measures, accident prevention mechanisms etc.
- o Works committees function actively in some organizations like Tata Steel, HLL, etc but the progress of Works Committees in many organizations has not been very satisfactory due to the following reasons:
 - o Lack of competence and interest on the part of workers' representatives.
 - o Employees consider it below their dignity and status to sit alongside blue-collar workers.
 - o Lack of feedback on performance of Works Committee.

- o Undue delay and problems in implementation due to advisory nature of recommendations.
3. Joint Management Councils: *Under this system Joint Management Councils are constituted at the plant level. These councils were setup as early as 1958. These councils consist of equal number of representatives of the employers and employees, not exceeding 12 at the plant level. The plant should employ at least 500 workers. The council discusses various matters relating to the working of the industry. This council is entrusted with the responsibility of administering welfare measures, supervision of safety and health schemes, scheduling of working hours, rewards for suggestions etc.*

Wages, bonus, personal problems of the workers are outside the scope of Joint management councils. The council is to take up issues related to accident prevention, management of canteens, water, meals, revision of work rules, absenteeism, indiscipline etc. the performance of Joint Management Councils have not been satisfactory due to the following reasons:

- o Workers' representatives feel dissatisfied as the council's functions are concerned with only the welfare activities.
 - o Trade unions fear that these councils will weaken their strength as workers come under the direct influence of these councils.
4. Work directors: Under this method, one or two representatives of workers are nominated or elected to the Board of Directors. This is the full-fledged and highest form of workers' participation in management. The basic idea behind this method is that the representation of workers at the top-level would usher Industrial Democracy, congenial employee-employer relations and safeguard the workers' interests. The Government of India introduced this scheme in several public sector enterprises such as Hindustan Antibiotics, Hindustan Organic Chemicals Ltd etc. However the scheme of appointment of such a director from among the employees failed miserably and the scheme was subsequently dropped.
5. Co-partnership: Co-partnership involves employees' participation in the share capital of a company in which they are employed. By virtue of their being shareholders, they have the right to participate in the management of the company. Shares of the company can be acquired by workers making cash payment or by way of stock options scheme. The basic objective of stock options is not to pass on control in the hands of employees but providing better financial incentives for industrial productivity. But in developed countries, WPM through co-partnership is limited.
6. Joint Councils: The joint councils are constituted for the whole unit, in every Industrial Unit employing 500 or more workers; there should be a Joint Council for the whole unit. Only such persons who are actually engaged in the unit shall be the members of Joint Council. A joint council shall meet at least once in a quarter. The chief executive of the unit shall be the chairperson of the joint council. The vice-chairman of the joint council will be nominated by the worker members of the council. The decisions of the Joint Council shall be based on the consensus and not on the basis of voting.

In 1977 the above scheme was extended to the PSUs like commercial and service sector organizations employing 100 or more persons. The organizations include hotels, hospitals, railway and road transport, post and telegraph offices, state electricity boards.

7. Shop councils: *Government of India on the 30th of October 1975 announced a new scheme in WPM. In every Industrial establishment employing 500 or more workmen, the employer shall constitute a shop council. Shop council represents each department or a shop in a unit. Each shop council consists of an equal number of representatives from both employer and employees. The employers' representatives will be nominated by the management and must consist of persons within the establishment. The workers' representatives will be from among the workers of the department or shop concerned. The total number of employees may not exceed 12.*

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Functions of Shop Councils:

- I. Assist management in achieving monthly production targets.
- II. Improve production and efficiency, including elimination of wastage of man power.
- III. Study absenteeism in the shop or department and recommend steps to reduce it.
- IV. Suggest health, safety and welfare measures to be adopted for smooth functioning of staff.
- V. Look after physical conditions of working such as lighting, ventilation, noise and dust.
- VI. Ensure proper flow of adequate two way communication between management and workers.

LESSON ROUND UP

- Majority of the constitutions throughout the world have a basic document of Government called “Constitution”. The Constitution of a country is the fundamental law of the land on the basis of which all other laws are made and enforced. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the constitution and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution.
- The Constitution of India has conferred innumerable rights for the protection of labour. Article 14, 16, 19(1)(c), 21, 23, 24, 38, 39, 41, 42, 43 and 43A have significantly influenced the labour legislations in India and form the ‘magna carta’ of industrial jurisprudence in Indian context.
- Under the Constitution of India, Labour is a subject in the Concurrent list and hence both the Parliament and states are competent to enact the laws in respect of same. Labour legislations are socio-economic justice oriented and aim to achieve social and economic equalities.
- Industrial relations affect not merely the interest of labour and management, but also the social and economic goals to which the State is committed to materialise. Therefore, it develops within the province and function of the State to regulate these relations in society desirable channels.
- The concept of social justice is so innate and demonstrated in the industrial laws of our country. As proclaimed in the Preamble of the Constitution and the Directive Principles of State Policy, the industrial jurisprudence of the country is founded on the basic idea of socio-economic quality and its aim is to assist the removal of socio-economic disparities and inequalities. The laws particularly the industrial laws of the country revolve on this basic philosophy of the Constitution.
- Article 43A of the Constitution of India has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments.

SELF-TEST QUESTIONS

1. Discuss constitutional bearing on industrial laws and industrial relations.
2. List out the Labour laws enacted by the Central Government.
3. Industrial laws are socio-economic justice oriented. Comment.
4. Discuss labour laws with reference to directive principles of state policy.
5. Discuss briefly forms of Workers Participation in Management in India.

Lesson 2

International Labour Organisation

LESSON OUTLINE

- Introduction
- Aims and objective
- The working of the ILO
- Main bodies of ILO
- International Labour Conference
- Governing body
- International Labour Office
- Programme and Budget of the ILO
- Result Based Management
- Country Level Programming In The ILO
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- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The only tripartite United Nation Agency, since 1919, the International Labour Organization (ILO) brings together governments, employers and workers of 187 member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men. The International Labour Organization (ILO) is devoted to promoting social justice and internationally recognized human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace.

The main aims of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues. The unique tripartite structure of the ILO gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes.

India and ILO have an enduring and vibrant relationship which is marked by close and dynamic cooperation over the years. Creation of a just and equitable World Order; securing distributive justice concurrently with economic growth and creation of employment opportunities for the purposes; increasing productivity to increase shareable gains; workers' participation; human resource development; human and environmental dimensions of technology; poverty alleviation; and economic reform with a human face are amongst the major thrust areas presented to ILO by India.

INTRODUCTION

International Labour Organisation (ILO) is a nodal agency coming under the ambit of the United Nations (UN). Its primary objective is to deal with issues related to labour, namely, maintaining international labour standards, ensuring social protection and providing work opportunities to all.

Established in 1919, it works towards setting up labour standards, developing policies and chalking out programmes promoting decent work for all men and women. The ILO functions with a unique tripartite structure, that brings together governments', employers' and workers' representatives.

AIMS AND OBJECTIVE

The aims and objectives of the ILO have been succinctly enshrined in the preamble to the ILO constitution, which is as follows-

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization

The ILO currently has a membership of 187 states and is the oldest of UN agencies. It has its headquarters in Geneva, Switzerland, with a network of field offices present in more than 40 countries.

ILO's concept of decent work

Decent work stands for the wishes and hopes of the working populace. It denotes the opportunities to work which is productive and is fairly remunerative, provides security and respectable working environment, allows possibility of development and integration, and enables the workforce to have the decision making power over issues affecting themselves.

The International Labour Organisation (ILO) works towards providing such a decent work and productive employment to the labourforce worldwide. This is done with a view of reducing poverty rates and achieving just globalization throughout. This viewpoint has been strengthened after the economic and financial crisis of 2008.

To achieve this task, ILO looks at methods for job creation, providing rights at work, ensuring social protection, enabling channels for dialogue, all this with a basic objective of maintaining gender equality.

The concept of decent work and the constituents of this concept, namely employment creation, social protection, rights at work, and social dialogue, were included as integral elements of the UN General Assembly's 2030 Agenda for Sustainable Development. Out of the 17 sustainable development goals, important aspects of decent work were adopted in almost all the goals in varying degrees.

Heads of multilateral bodies with international standings such as G20, G7, EU, African Union etc also pay heed to the implications of decent work and sustainable development.

The major objectives of the decent work agenda

- Set and promote standards and fundamental principles and rights at work
- Create greater opportunities for women and men to decent employment and income
- Enhance the coverage and effectiveness of social protection for all
- Strengthen tripartism and social dialogue

The working of the ILO

ILO functions on the basis of an underlying requirement of cooperation between governments', employers' and workers' organizations. Their cooperation is required for smooth functioning of the organization and ameliorating social and economic growth. The ILO sets labour standards, develop policies and devise programmes after taking into consideration the views put forward by all these members. This form of decision making process is being termed as tripartism, as it includes the trinity of employers, workers and member States.

Main bodies of ILO

There are three main bodies of ILO as prescribed in Article 2 of the ILO constitution. The article states-

The permanent organization shall consist of:

- a) A General Conference of representatives of the Members;
- b) A Governing Body composed as described in article 7; and
- c) An International Labour Office controlled by the Governing Body.

The outline of these bodies are given below-

International labour Conference

The meetup of the members of ILO annually in Geneva is called the international labour conference (also known as international parliament of labour). Two government delegates represent each member state. All the delegates have been given equal right of expression. Its working is described under Article 3 of the ILO constitution as-

The meetings of the General Conference of representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members.

The International Labour Conference has following important tasks-

- The crafting and adoption of international labour standards in the form of Conventions and Recommendations.
- The Conference supervises the application of Conventions and Recommendations at the national level.
- The Conference also examines the Global Report prepared by the office as a procedural act required by the declaration.
- The Conference acts as a stage for the discussion of questions relating to social and labour issues. The central theme of discussion each year is the report presented by ILO's director general.
- It passes resolutions for setting up guidelines for ILO's future deliberations and activities.

GOVERNING BODY

It is the executive wing of the ILO. The governing body meets thrice a year (March, June and November) to decide ILO's policy, elect the director-general, adopts the draft programmes and budgetary requirements, which are put in front of the conference.

The functioning of the governing body has been explained under Article 7 of the ILO constitution -

The Governing Body shall consist of fifty-six persons

- Twenty-eight (28) representing governments,
- Fourteen (14) representing the employers, and
- Fourteen (14) representing the workers.

Government Representatives

Of the twenty-eight persons representing governments, ten shall be appointed by the Members of chief industrial importance, and eighteen shall be appointed by the Members selected for that purpose by the Government delegates to the Conference, excluding the delegates of the ten Members mentioned above.

States of Chief Industrial Importance

The Governing Body shall as occasion requires determine which are the Members of the Organization of chief industrial importance and shall make rules to ensure that all questions relating to the selection of the Members of chief industrial importance are considered by an impartial committee before being decided by the Governing Body. Any appeal made by a Member from the declaration of the Governing Body as to which are the Members of chief industrial importance shall be decided by the Conference, but an appeal to the Conference shall not suspend the application of the declaration until such time as the Conference decides the appeal.

Employers' and Workers' Representatives

The persons representing the employers and the persons representing the workers shall be elected respectively by the Employers' delegates and the Workers' delegates to the Conference.

Term of Office

The period of office of the Governing Body shall be three years. If for any reason the Governing Body elections do not take place on the expiry of this period, the Governing Body shall remain in office until such elections are held.

Vacancies, Substitutes, Etc.

The method of filling vacancies and of appointing substitutes and other similar questions may be decided by the Governing Body subject to the approval of the Conference.

Officers

The Governing Body shall, from time to time, elect from its number a chairman and two vice-chairmen, of whom one shall be a person representing a government, one a person representing the employers, and one a person representing the workers.

Procedure

The Governing Body shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least sixteen of the representatives on the Governing Body.

The governing body has 56 titular members. 10 seats are permanently held by states of chief industrial importance, namely Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom and the United States.

INTERNATIONAL LABOUR OFFICE

It is the permanent secretariat of the ILO. The international labour office is the centre of all activities performed by the ILO. It functions under the watchful eye of the governing body and leadership of the Director-General. The functions of international labour office are described under article 10 of the ILO constitution-

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body.

Subject to such directions as the Governing Body may give, the Office shall:

- a) Prepare the documents on the various items of the agenda for the meetings of the Conference;
- b) Accord to governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection;
- c) Carry out the duties required of it by the provisions of this Constitution in connection with the effective observance of Conventions;
- d) Edit and issue, in such languages as the Governing Body may think desirable, publications dealing with problems of industry and employment of international interest.

Generally, it shall have such other powers and duties as may be assigned to it by the Conference or by the Governing Body.

Besides these primary bodies, expert committees come to the aid of these bodies on matters relating to vocational training, industrial relations, problems of women and young workers etc.

Standards supervisory system of the ILO

The ILO keeps a check over the member states whether they are applying the standards being set out by the ILO. And if not, it helps countries in their application by social dialogue and technical assistance. It also indicates ways of how they could be better implemented if it notices any laxity.

ILO as a partner for development

Development has been given a broad meaning under the 2030 sustainable development goals, encompassing the ILO's decent work agenda. The cooperation strategy of International Labour Organisation is aimed at promoting decent work entirely, as required in the 2030 Sustainable Development Growth framework, and enable the International Labour Organisation to reach global, national and local level so that it could be of better service.

Prioritized agendas are as follows :-

- a) Establishing strong relations with all the partners involved in development such as the donor community, social partners, civil society etc.
- b) Giving a push to the development efforts of the multilateral system
- c) Assembling funds for development cooperation, in addition to the budgetary funding allocated. The additional funds are also stored in the Regular Budget Supplementary Account (RBSA).

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- d) Developing public- private partnership
- e) Ensuring transparency about the ILO's programmes and their financial inputs

Programme and Budget of the ILO

It creates a programme according to which work has to be proceeded, and sets out a budget, based on the priorities given in the strategic plan. The ILO's biennial programme is intimated to the member states via the Decent Work Country Programmes (DWCP's). It works as a carrier of ILO's support to the member countries. It gives boost to decent work to help it become an important component of national development strategy.

The Financial and budgetary arrangements are defined as under article 13 of the ILO constitution-

1. The International Labour Organization may make such financial and budgetary arrangements with the United Nations as may appear appropriate.
2. Pending the conclusion of such arrangements or if at any time no such arrangements are in force:
 - a. each of the Members will pay the travelling and subsistence expenses of its delegates and their advisers and of its representatives attending the meetings of the Conference or the Governing Body, as the case may be;
 - b. all other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid by the Director-General of the International Labour Office out of the general funds of the International Labour Organization;
 - c. the arrangements for the approval, allocation and collection of the budget of the International Labour Organization shall be determined by the Conference by a two-thirds majority of the votes cast by the delegates present, and shall provide for the approval of the budget and of the arrangements for the allocation of expenses among the Members of the Organization by a committee of Government representatives.
3. The expenses of the International Labour Organization shall be borne by the Members in accordance with the arrangements in force in virtue of paragraph 1 or paragraph 2 (c) of this article.
4. **ARREARS IN PAYMENT OF CONTRIBUTIONS**

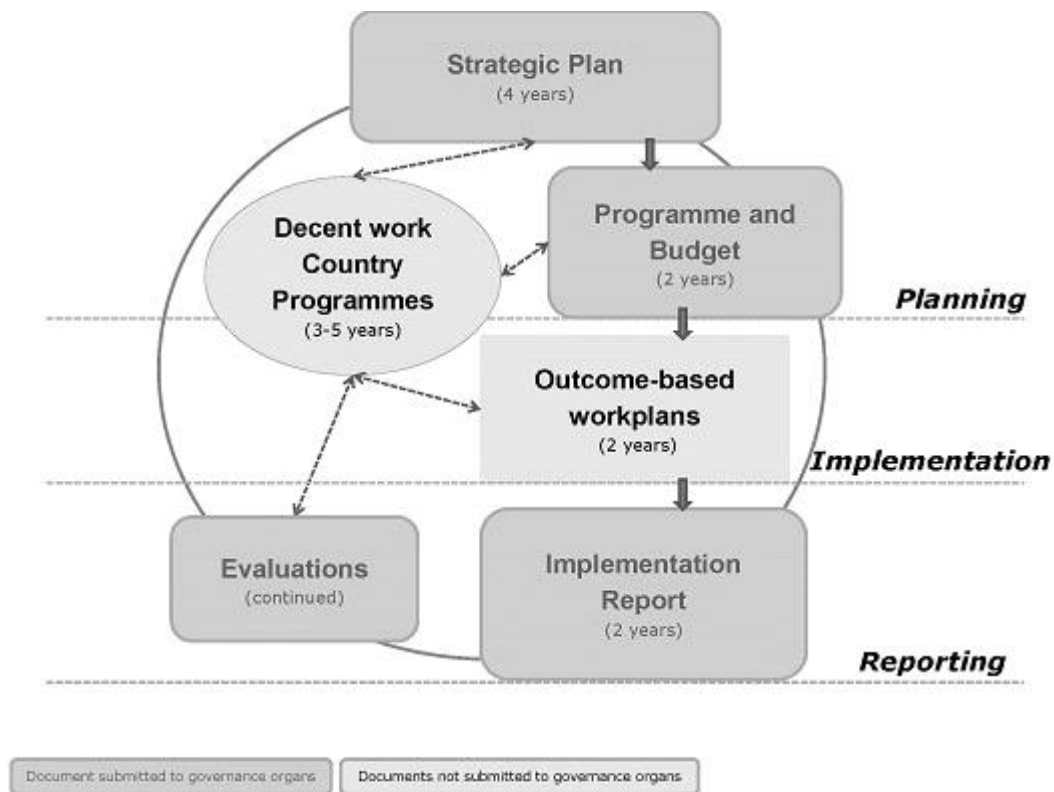
A Member of the Organization which is in arrears in the payment of its financial contribution to the Organization shall have no vote in the Conference, in the Governing Body, in any committee, or in the elections of members of the Governing Body, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years: Provided that the Conference may by a two-thirds majority of the votes cast by the delegates present permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

5. FINANCIAL RESPONSIBILITY OF DIRECTOR-GENERAL

The Director-General of the International Labour Office shall be responsible to the Governing Body for the proper expenditure of the funds of the International Labour Organization.

RESULT BASED MANAGEMENT

Result based management is a cyclic programme through which International Labour Organisation undertakes its missions and objectives. The stages involved in result based management are programme planning,



Implementation, reporting and evaluation, and providing feedback to subsequent programming cycles.

Strategic planning

The strategic plan is the ILO's medium-term document based upon its plans. It is the manifestation of the aims and objectives of the organization. It contains the long term goals which are expected to be achieved at the end of the planning period, and for achieving this, medium-term priorities are set out by the organization through its plan making constituents, i.e. the ILO tripartite members. It also ensures for the provision of a framework within which the work being done can be assessed and the biennial programmes and the documents relating to the budgetary allocation could be defined.

The process of strategic planning also applies result based management to identify the results for a specific period. Assistance to constituents are driven through this framework. It forms the grounds of cooperation with ILO partners, and further helps in designing the development cooperation programmes.

Global Level Programming in the ILO

On basis of the strategic plan, a biennial programme and budget is created. The aim of this is to specify the methods ILO will apply to achieve the desired results and the input, in form of resources, which are required to do so.

This programme and budget is approved every two years by the ILC. The expectations from ILO are set out in this programme and budget, along with the capacities and resources required for the same. This programme and budget is released for a particular biennium at a time.

This biennial programme is delivered to the member states of the ILO via Decent Work Country Programmes (DWCPs), which is a promoter of the decent work ideals of the ILO, along with organising ILO knowledge, cooperation, instruments and advocacy to serve tripartite constituents. It is organized in such a way that it is specific to few country programme priorities and outcomes.

The finances of ILO are looked after by the following sources :-

- The regular budget, these are the funds collected from the contributions made by the member states. The assessment of the funds to be given by the member states are made by the United Nations.
- The Regular Budget Supplementary Account, these are the funds acquired from volunteers, which are key resource partners. The funding from these sources are not designated, unlike the sources obtained from the regular budget.
- Extra-Budgetary Technical Cooperation resources are another instance of funds being obtained from voluntary sources. These are resource partners including public and private organizations which support specific projects.

The plans of ILO are based according to the resources obtained through these methods in such a manner that it the plans are within the results framework and give priority to the requirements of the particular country.

At the beginning of each biennium, workplans are laid out to achieve a certain outcomes, which are set within the results framework over a fix period. The resources are allocated and coordinated across the office. The inputs of the workplan are taken from both the ILO departments and field offices. The duties and ensuing accountabilities are decided, along with the deadlines of work.

ILO ensures that the funds are utilized in such a manner that the issues antecedent to the country are looked after. These workplans are periodically adjudged and altered accordingly.

Country Level Programming In The ILO

The International Labour Organisation uses the Decent Work Country Programmes (DCWPs) to carry out their biennial programmes to the member countries. DCWPs provide the pathway of identifying the specific priorities of the country such that it can help specify the support required of the office. Over a 100 member states have developed indigenous DWCPs, where many states have second and third generation DWCPs. They analyse of whether the work is being done in accordance to the decent work agenda of the ILO and whether the priority issues are being dealt with in the time-bound manner.

DWCPs are built on the proactive participation of national governments', workers' organizations and employers'. The programmes are initiated with the enagement of these members. They are an important part of UN's efforts via ILO to collaborate with member states in furthering their programmes.

ILO programmes strengthen country priorities identified in the DWCPs through results orientation. They form an important aspect of ILO's development strategy through cooperation. The funds are provided in such a manner that operataions are carried out in partnership between the main offices and the state branches of ILO. Through this co-dependency, work is directed towards the desired goal and the outcomes are at a more substantial scale.

Programme Implementation Reports

The programme implementation report of the programmes being undertaken in the biennium are submitted to the governing body of the ILO and the International Labour Conference every two years. The report throws light on the performance and achievements of ILO for that biennium. It acts as a report card of the ILO, and holds it accountable for performance or non- performance. It also gives identification of committed mistakes, and gives suggestions of how to perform better in the upcoming bienniums.

Funding

The funds being collected by the ILO consists of all sort of incomes, whether the organized income from member states or the unorganized contributions from the voluntary donors.

Voluntary non-core contributions are the ones supporting specific problems at global or national levels. They have a fixed amount of funds being allocated to particular, time-bound projects. These projects come under the ambit of ILO results framework.

Voluntary core contributions are the funds which are directed towards the Regular Budget Supplementary Account (RBSAs). They are unspecified, pliable funds which are donated to ILO for their application in strategic areas, which could be either under-funded or are new projects.

Regular budget (assessed contributions) are the funds which all the member states of ILO have to pay by the virtue of them being member of the ILO. The amount to be paid by the member states is chalked out by United Nations allocations assessment.

Evaluation

In an organization as big as ILO, it is of high importance that the work being done should not go out of the desired path. For this, the working needs to be evaluated in a timely manner. This evaluation ensures that the ILO agenda of decent work and social justice is being forwarded. It is critically important also because the decision making process depends upon it, which leads to generation and sharing of knowledge in the ILO. The effectiveness of result delivery of the steps taken by ILO could be gauged efficaciously through a system of evaluation.

- a) The United Nations has set out norms for developing a policy of evaluation. The main pointers of the policy are to-
 - i. Reinforce knowledge-generation sharing of the ILO's substantive work, and the processes, approaches and institutional arrangements for implementing such work;
 - ii. Strengthen the complementarity between evaluation and other oversight and monitoring functions within the Office;
 - iii. Clarify standards for engaging constituents in evaluation; and
 - iv. Clarify the division of responsibilities in the ILO for carrying out an evaluation.
- b) The ILO evaluation Policy (2005) is a document which lays down the reason of evaluation, types of evaluation and methods of evaluation. The objectives of the evaluation policy are given as to -
 - i. Improve Office-wide transparency and accountability for impact of ILO actions to support its constituents;
 - ii. Strengthen the decision-making process by the policy organs and senior management based on sound assessment of effectiveness, efficiency, relevance, impact and sustainability of ILO activities;
 - iii. Contribute feedback for learning and ongoing improvement of the ILO's work.

Furthermore, the ILO carries out evaluation of its works at the primary level of governance and also amongst the decentralised levels. These evaluations are looked after by the evaluation office (EVAL). The types of evaluation mentioned in the document are-

- a. Strategy and policy evaluation - main purpose is to review major institutional policies and assess impact, effectiveness and benefits of ILO core strategies. This evaluation is done atleast once per year.
- b. Country programme evaluation - This kind of evaluation assesses the extent to which significant impacts are being made towards decent growth. Also, being at the country level, it feeds into the tripartite dialogue of the importance of ILO dialogue at the country level. It is done once every year, but with a rider that all regions need to be covered atleast once every four years.

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- c. Thematic evaluation - This is an annual evaluation which is aimed at assessing effectiveness and impact of specific means of actions and interventions. It also creates cross-cutting lessons to innovate and feed organizational learning on operational strategies.
- d. Project evaluation - It assesses projects for relevance, efficiency, effectiveness, sustainability and contribution to broader impact. Planning and implementation of evaluation is the responsibility of the person to whom the project manager reports. There is no earmarked time limit. However they are mid-term or final-term or as they are set out to be in the evaluation plan.
- e. Organizational review (self-evaluation) is an important form of evaluation where relevance of the programme activities in relation to actual performance against planned outcome is measured. This is important because through this we get timely information and management decision in achieving planned outcomes against target and indicators. This self-evaluation is biennial.

ILO provides accessibility to its evaluation data on its websites and maintains transparency.

After completion of the evaluation reports, they are compiled in the form of Independent high-level strategy, policy and country programme evaluations. The Annual Evaluation Report (AER) and the official management response from the office.

These reports have a high importance because they serve as a model for formulating decisions by the governing body. Also, they are the precursor to the follow up by the high-level evaluations held by Evaluation Advisory Committee, set up by the Director-General.

Apart from the centralized evaluation carried out by the governing body, there is decentralized evaluation carried out by the Evaluation Office (EVAL). Eval also collects data regarding to management response and reports to Governing Body every November. The response contains analysis of the participation and contribution of members of the tripartite.

EVAL has also laid down guidelines for ensuring that the recommendations based on the evaluation are in proper order.

Recommendations should -

- a) Be numbered in the report, and limited – ideally not more than 12
- b) Be formulated in a clear and concise manner
- c) Be relevant and useful
- d) Be supported by evidence and follow logically from findings and conclusions
- e) Link to the programme indicators when feasible
- f) Not be too general but specific to the strategy/country programme evaluated
- g) Specify who is called upon to act
- h) Specify action needed to remedy the situation
- i) Distinguish priority or importance (high, medium, low)
- j) Specify the recommended time frame for follow-up
- k) Acknowledge whether there are resource implication

Likewise, It is the duty of the ILO to ensure that the recommendations made in such manner are of the highest quality. They should be of such a form that takes cues from the beneficial practices so that they could be inculcated in future programmes. They should be easily accessible as well. Good practices, which is the term used by ILO for successful practices has been defined by ILO in the following words-

A lesson learned may become an “emerging good practice” when it additionally shows proven marked results or benefits and is determined by the evaluator to be considered for replication or up-scaling to other ILO projects.

An emerging good practice should demonstrate clear potential for substantiating a cause-effect relationship and may also show potential for replicability and broader application. It can derive from comparison and analysis of activities across multiple settings and policy sources or emerge from a simple, technically specific intervention.

The criteria to be followed by the evaluators for creation of the lesson of findings-

- a) A lesson learned can refer to a positive experience, in the case of successful results; or to a negative experience, in the case of malfunctioning processes, weaknesses or undesirable influences.
- b) A lesson learned should specify the context from which it is derived, establish potential relevance beyond that context, and indicate where it might be applied.
- c) A lesson learned explains how or why something did or did not work by establishing clear causal factors and effects. Whether the lesson signals a decision or process to be repeated or avoided – the overall aim is to capture lessons that management can use in future contexts to improve projects and programmes.
- d) A lesson learned should indicate how well it contributes to the broader goals of the project or programme and establish, when possible, if those goals align appropriately with the needs of beneficiaries or targeted groups.
- e) Each of the following criteria should be considered, included and adequately explained, when appropriate: Context; Challenges; Links to Project Goals; Impact on Beneficiaries; Challenges/Successes; and any Causal Factors.

The Evaluation findings are utilized in the following manner.-

The collaboration between PARDEV (Partnering for Development) and EVAL (evaluation office) creates a process of appraisal meant for incorporating institutional knowledge. This knowledge is derived from independent evaluation

Findings data for research and organizational learning: The raw data being collected in this form is very useful as it gives important contribution towards analysing administrative and technical concerns. The ILO officials have access to the i-track database. This database has contains the summaries of the full evaluation reports. They are also available on the EVAL public websites.

Technical cooperation strategies are made in accordance to the data sets of recommendations. These recommendations also help in forming the source of data which is deliberated upon for future high-level thematic evaluation.

The evaluations that are made independently are made to go through a mandatory management response exercise. Upon receiving these independent evaluations, the line management must decide whether the recommendations are to be accepted or not. If they are accepted, the line management must also report the action taken on the basis of the recommendation. The results of these exercise are presented to the EVAL, which reviews it. They are then compiled for the Annual Evaluation Report presented to the Governing Body.

Evaluations are also made at the country/regional level, for which the recommendation response are presented to the Evaluation Advisory Committee (EAC) by the respective line management. All the bodies concerned with respect to the recommendations are addressed in the EAC quarterly meetings.

Performance Management

The result based management and the Human Resource Strategy implemented in the year 2006–09 lead to the

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development of Performance Management Framework (PMF). First applied in the 2010-11 biennium, it is now available through the ILO's e-Talent Management suite, ILO People.

PMF is designed in such a way that it aptly manages the performance of staff at all levels, and keeps a special focus on maintaining high standard of result and competency. The framework is designed with a very progressive and extensive approach. It involves planning, monitoring and assessment of the work being done. As a feedback mechanism, emphasis is given on dialogue exchange.

The PMF has the objective to:-

- a) Promote accountability at all levels.
- b) Provide Member States and Constituents with greater visibility regarding staff performance in achieving the goals of the ILO.
- c) Link results-based principles and objectives at the organizational level with individual results.
- d) Encourage on-going dialogue and feedback between staff members and their managers.
- e) Increase clarity regarding performance expectations through an agreed plan.
- f) Support the growth and development of all staff as well as tackle underperformance.
- g) Provide the basis for rewards and recognition.
- h) The PMF directs the individual achievements with broader goals of their respective units and the organization as a whole, allowing the International Labour Office to make the best use of the human resource.

Efficiency savings

Monetarily, it has been an obligation of the ILO to be considerate of its spendings. Thus, the ILO has a central feature regarding savings and efficiencies in all its programmes and budget documents. These savings are helpful because they allow the redirection of resources without causing any extra burden on the budget.

Along with this, steps are being taken to strengthen staff development, audit and evaluation. The aim of this is to certify security and accountability.

HISTORY OF THE INTERNATIONAL LABOUR ORGANISATION

The ILO was created in 1919 under the treaty of Versailles. After the world war one, the urgent need to placate the labour class was felt, which was increasingly becoming a powerful social strata of the society. ILO was constituted to give a pragmatic approach to the ideal that Universal and long lasting peace could only be achieved when it based on social justice.

The drafting of the constitution took place between the months of January to April in the year 1919. A labour commission, headed by Samuel Gompers (head of the American Federation of Labour (AFL) in the United States) was constituted for the purpose by the peace conference. The meetings of the commission took place in Paris and then in Versailles. The commission had the composition of members of nine countries, namely:- Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United Kingdom and the United States.

The commission ended up establishing a tripartite organisation, first of its kind in the world, which brought together governments, employers and workers in its executive bodies.

The rules that formed the part of the constitution were made on basis of the ideas tested within the confines of the International Association for Labour Legislation, founded in Basel in 1901.

The first time that an advocacy for an organisation of international standing began was by two industrialists, namely Robert Owen (1771-1853) of Wales and Daniel Legrand (1783-1859) of France.

The ILO was created after taking into account many factors, primarily relating to security, humanitarian, political and economic issues. These have been enshrined in the preamble of the ILO constitution.

The socio-political situation at the time of creation of ILO was grossly unjust to an average labourer. There was an ideological understanding amongst all the major industrialized nations that there is a pressing need to create a body which addresses the troubles being faced by the working class. The importance of social justice was felt in securing peace. Along with this, the industrial nations were also toying with the idea of globalisation. The importance of economic interdependence was being propagated and the need for cooperation to maintain an equitable working atmosphere was promulgated in all countries competing for markets.

Reflecting these ideas, the Preamble states:

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

The areas of improvement listed in the Preamble remain relevant today, for example:

- Regulation of the hours of work including the establishment of a maximum working day and week;
- Regulation of labour supply, prevention of unemployment and provision of an adequate living wage;
- Protection of the worker against sickness, disease and injury arising out of his employment;
- Protection of children, young persons and women;
- Provision for old age and injury, protection of the interests of workers when employed in countries other than their own;
- Recognition of the principle of equal remuneration for work of equal value;
- Recognition of the principle of freedom of association;
- Organization of vocational and technical education, and other measures.

Early days

The first international labour conference was held in Washington in 1919. Six international labour conventions were adopted relating to working hours in the industry, unemployment, maternity work protection, night work for women, minimum age and night work for younger populace engaged with the industry.

The ILO office was shifted to Geneva in 1920. France's Albert Thomas was the first director of international labour office. The international labour office is the permanent secretariat of the organisation.

The early years of ILO were not without its share of problems. Many countries began thinking that ILO was an unnecessary burden, with many conventions, additional budgetary load and highly critical in its reports. However, the international court of justice backed the ILO over this and ruled that its jurisdictional domain extends to the agricultural sector. To monitor the working, acting as an advisory body and for a general supervision, a committee of experts was constituted in the year 1926. The committee consists of independent jurists who probe into governmental reports and form their own report on the basis this research. This research is tabled to the conference annually.

Depression and war

A severe worldwide economic depression that took place mostly during the 1930s, called the great depression. There was a dearth of jobs due to economic slowdown causing many labourers to be rendered unemployed. The ILO was being chaired by Harold Butler, who succeeded Albert Thomas in 1932. The United Nations, seeing that the situation requires cooperating with other states, US became the part of ILO in 1934. John Winant took over in 1939, just on the cusp of world war 2. For security reasons, he had transferred ILO office to montreal in Canada.

Edward Phelan, the successor of John Winant, took over the ILO leadership. He had played an important role in drafting the 1919 constitution. Another feather in his cap was during the Philadelphia meeting. It was held in the peak of second world war, the meeting attended by representatives of 41 member nations. The meeting saw the important adoption of the charter of philadelphia. The charter is an annexure to the constitution. It contains aims and objectives of the ILO. Also under Phelan's tenure, the International Labour Conference adopted Convention No. 87 on freedom of association and the right to organize.

DECLARATION OF PHILADELPHIA

Adopted on 10th may, 1944, the declaration of Philadelphia encompasses the aims and objectives of the ILO, and the principles upon which its policies should be made.

The declaration is divided into 5 parts.

PART 1

It talks about the fundamental principles upon which the organisation is based, namely-

- a. labour is not a commodity;
- b. freedom of expression and of association are essential to sustained progress;
- c. poverty anywhere constitutes a danger to prosperity everywhere;
- d. the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

PART 2

This part reaffirms that; lasting peace could only be established if it is based on social justice. The conference confirms that-

- a. all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;
- b. the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- c. all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;
- d. it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;
- e. in discharging the tasks entrusted to it the International Labour Organization, having considered

all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

PART 3

It talks about requirements that need to be addressed by all member nations, believing them to be the solemn obligation of the ILO. They are-

- a. full employment and the raising of standards of living;
- b. the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- c. the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;
- d. policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
- e. the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
- f. the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- g. adequate protection for the life and health of workers in all occupations;
- h. provision for child welfare and maternity protection;
- i. the provision of adequate nutrition, housing and facilities for recreation and culture;
- j. the assurance of equality of educational and vocational opportunity.

PART 4

It talks about how better utilization of resources is primary for achieving the objectives set by the declaration. It presses upon international and national action, such that production and consumption are increased. Prevention of international economic fluctuations, promoting economic and social advancement of poorly developed regions of the world, stability in prices of primary commodities, promote steady rate of international trade, cooperation with international bodies for promotion of health, education and well being of people.

PART 5

This part ensures that principles included in the declaration are to be applicable to all the people. The manner of application of these principles, are to be dependent upon socio- political development of the people.

The Post-War Years

The post war period in ILO saw great strides in development. The number of member states doubled, bringing about a marked change in the countries that affected internal working and policy making. Now more developing nations were part of the ILO as compared to the developed industrial giants. The budgetary allocation went up by five times and there was quadruple increase in the number of officials.

The ILO also established International Institute for Labour Studies in Geneva in the year 1960 and the International Training Centre in Turin in 1965.

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The organisation also won Nobel peace prize in the year 1969, at its 50 year anniversary. The Nobel prize committee paid special emphasis to the 128 conventions it had chalked out up to the year 1969.

Wilfred Jenks of Britain overtook the top spot in 1970, under whose leadership ILO advanced towards creation of standards and along with it creation of methods to supervise their application. Especial focus in this regard being given to freedom of association and right to organise.

Francis Blanchard of France took over in 1973. He worked towards expansion of technical cooperation with advanced countries, and did great work in averting the damage faced by the organisation in view of USA exit as a member. The withdrawal of USA in 1977-80 caused a loss of a quarter of the budget. During this period, the ILO also played a major role in helping Poland out of dictatorship. It supported the Solidarnosc Union, on the basis of Freedom of Association and Protection of the Right to Organise Convention (1948) No 87, ratified by Poland in 1957.

According to Article 3 of the convention, it was agreed that -

- a. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
- b. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Belgian Michel took up the reins of the organisation in 1989. He guided ILO during the period of breaking up of the Soviet Union. He laid emphasis on the key tenet of ILO, i.e. placing social justice at the heart of international economic and social policies. He also worked towards delegating work to lower levels and decentralising of activities.

Juan Somavia of Chile took over as Director-General in 1999. He worked towards furthering the initial ideal of the formation of ILO, which was to further develop upon the ideal of decent work and make it a strategic international goal. He was also a proponent of promoting fair globalisation. He stressed upon the importance of work as a means of poverty alleviation, which could be helpful to ILO in achieving the millenium development goal, which included the goal of cutting world poverty in half by 2015. The current (year 2018) director general is Britain's Guy Ryder, elected in 2012.

List of all ILO Director-General's

Albert Thomas (1919-1932) (France)

Harold Butler (1932-1938) (The United Kingdom)

John G. Winant (1939-1941)(The United States of America)

Edward Phelan (1941-1948)(Ireland)

David A. Morse (1948-1970) (The United States of America)

Clarence Wilfred Jenks (1970-1973) (The United Kingdom)

Francis Blanchard (1974-1989)) (France)

Michel Hansenne (1989-1999)(Belgium)

Juan Somavia (1999-2012)(Chile)

Guy Ryder (2012- present) (The United Kingdom)

The ILO Constitution

Drafted between January and April 1919, led to the creation of the tripartite organisation of governments, employers and workers, collectively called the ILO.

ILO in India

India has been a permanent member of ILO since 1922 and is one of its founding members. The first ILO office in India was established in India in 1928. ILO works on the principle that all the partners need to be strengthened so that the institutional capabilities could be enhanced. The socio-economic development of ILO takes a two pronged approach, that of overall strategies and that of ground level approaches.

For example, India in its 11th plan has aimed at faster growth which is more inclusive, the benefits anticipated are broad based and are of such a form that ensures equal opportunity to everyone. The targets aspired for in the 11th plan are in consonance with the decent work agenda of the ILO.

The decent work concept is translated to country-specific Decent Work Country Programmes (DWCPs). As for India, ILO's portfolio is centered around child labour, preventing family indebtedness employment, skills, integrated approaches for local socio-economic development and livelihoods promotion, green jobs, value-addition into national programmes, micro and small enterprises, social security, HIV/AIDS, migration, industrial relations, dealing with the effects of globalization, productivity and competitiveness, etc. A decent work support team is stationed in New Delhi which provides technical support at policy and operational levels to member States in the sub-region through a team of specialists.

The tripartite members, i.e. the representatives of the government, employers, and workers are :-

Government of India

- Ministry of Labour & Employment
- Ministry of Rural Development

Workers' Organizations -

- Bharatiya Mazdoor Sangh (BMS)
- Indian National Trade Union Congress (INTUC)
- All India Trade Union Congress (AITUC)
- Hind Mazdoor Sabha (HMS)
- Centre of India Trade Unions (CITU)
- All India United Trade Union Centre (AIUTUC) – formerly UTUC (LS)
- Self Employed Women's Association (SEWA)
- All India Central Council of Trade Unions (AICCTU)
- Labour Progressive Federation (LPF)
- United Trade Union Congress (UTUC)
- National Front of Indian Trade Unions – Dhanbad (NFITU-DHN)

Employers' Organizations

- Council of Indian Employers (Constituents - All India Organization of Employers ; Employers' Federation of India ; and Standing Conference of Public Enterprises
- Federation of Indian Chambers of Commerce and Industry

India & ILO

India has specific representation of each major deliberative organ of the ILO, namely the International Labour Conferences, Governing Body and the International Labour Office. The ILO office is located at New Delhi in India.

Indian participation in the ILO's organisation and functioning can be understood in terms of its representation and contribution to the ILO. The organ-wise share of India is listed as below-

1. INTERNATIONAL LABOUR CONFERENCE

The International Labour Conference (ILC) has continued to meet at least once each year since 1919, (except during external interference during world war two). The conference adopts the biennial programme and budget, sets out the International labour standards through conventions and recommendations.

India has participated proactively in these conferences and has also contributed immensely to its membership. Till now the conference has had 4 Indian presidents in the International Labour Conference, namely Sir. Atul Chatterjee (1927), Shri Jagjivan Ram, Minister for Labour (1950), Dr. Nagendra Singh, President, International Court of Justice (1970) and Shri Ravindra Verma, Minister of Labour and Parliamentary Affairs (1979). India also had 8 Vice presidents, 2 from the Government, 3 from the Employers and 3 from the Workers' Group. In addition to this, Indian delegates have also chaired the committees of important conferences.

2. GOVERNING BODY

India has been holding the permanent seat as a country of chief industrial importance since 1922 in this executive wing of the ILO. Indians have also been appointed as the chairmen of the governing body, viz., Sir Atul Chatterjee (1932-33), Shri Shamal Dharee Lall, Secretary, Ministry of Labour (1948-49), Shri S.T. Merani, Joint Secretary, Ministry of Labour (1961-62) and Shri B.G. Deshmukh, Secretary, Ministry of Labour (1984-85).

The Governing Body used to function through its committees, with India being a member of all its 6 committees. These committees were -

- (i) Programme, Planning & Administrative;
- (ii) Freedom of Association;
- (iii) Legal Issues and International Labour Standards;
- (iv) Employment & Social Policy;
- (v) Technical Cooperation and
- (vi) Sectoral and Technical Meetings and Related issues.

The system of functioning is now based on functioning through various sections. India is a participant in all the proceedings of the sections which are Institutional Section (INS); Policy Development Section (POL); Legal Issues and International Labour Standards Section (LILS); Programme, Financial and Administrative Section (PFA); High-level Section (HL); and Working Party on the Functioning of the Governing Body and the International Labour Conference (WP/GBC)

3. THE INTERNATIONAL LABOUR OFFICE-

Indians have held important positions at the international labour office, which is the focal point of implementation of decision making.

4. INTERNATIONAL LABOUR STANDARDS - ILO CONVENTIONS-

The International Labour Standards are the primary means of bringing about action. They are in the form of convention and recommendations. India has always used the ILO conventions and recommendations as a means of its guiding principle for the creation of national policies. Labour interests have been furthered through

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legislative and administrative measures based on ILO instruments. As the conventions are legally binding, India has been selective in ratifying them. They are only ratified when they are in consonance with our local laws. However the recommendations have played an important part for providing a framework. So far, India has ratified 41 conventions.

5. ILO Conventions Ratified by India

The list of conventions ratified by India are-

SL. No.	No. and Title of Convention	Date of Ratification
1.	No.1 Hours of Work (Industry) Convention, 1919	14.07.1921
2.*	No.2 Unemployment Convention, 1919	14.07.1921
3.	No.4 Night Work (Women) Convention, 1919	14.07.1921
4.	No.5 Minimum Age (Industry) Convention, 1919	09.09.1955
5.	No.6 Night Work of Young Persons (Industry) Convention, 1919	14.07.1921
6.	No.11 Right of Association (Agriculture) Convention, 1921	11.05.1923
7.	No.14 Weekly Rest (Industry) Convention, 1921	11.05.1923
8.	No.15 Minimum Age (Trimmers And Stokers) Convention, 1921	20.11.1922
9.	No.16 Medical Examination of Young Persons (Sea) Convention, 1921	20.11.1922
10.	No.18 Workmen's Compensation (Occupational Diseases) Convention, 1925	30.09.1927
11.	No.19 Equality of Treatment (Accident Compensation) Convention, 1925	30.09.1927
12.	No.21 Inspection of Emigrants Convention, 1926	14.01.1928
13.	No.22 Seamen's Articles of Agreement Convention, 1926	31.10.1932
14.	No.26 Minimum Wage-Fixing Machinery, Convention, 1928	10.01.1955
15.	No.27 Marking of Weight (Packages Transported By Vessels) Convention, 1929	07.09.1931
16.	No.29 Forced Labour Convention, 1930	30.11.1954
17.	No.32 Protection Against Accidents (Dockers) Convention (Revised), 1932	10.02.1947
18.@	No.41 Night Work (Women) Convention (Revised), 1934	22.11.1935
19.	No.42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13.01.1964
20	No.45 Underground Work (Women) Convention, 1935	25.03.1938
21.	No.80 Final Articles Revision Convention, 1946	17.11.1947
22. **	No.81 Labour Inspection Convention, 1947	07.04.1949
23.	No.88 Employment Services Convention, 1948	24.06.1959
24.	No.89 Night Work (Women) Convention (Revised), 1948	27.02.1950

25.	No.90 Night Work of Young Persons (Industry) (Revised), 1948	27.02.1950
26.	No.100 Equal Remuneration Convention, 1951	25.09.1958
27.	No.107 Indigenous And Tribal Population Convention, 1957	29.09.1958
28.	No.111 Discrimination (Employment & Occupation) Convention, 1958	03.06.1960
29.	No.116 Final Articles Revision Convention, 1961	21.06.1962
30.#	No.118 Equality of Treatment (Social Security) Convention, 1962	19.08.1964
31.@@	No.123 Minimum Age (Underground Work) Convention, 1965	20.03.1975
32.	No.115 Radiation Protection Convention, 1960	17.11.1975
33.	No.141 Rural Workers' Organisation Convention, 1975	18.08.1977
34.	No.144 Tripartite Consultation (International Labour Standards) Convention, 1976	27.02.1978
35.	No.136 Benzene Convention, 1971	11.06.1991
36.##	No.160 Labour Statistics Convention, 1985	01.04.1992
37.	No.147 Merchant Shipping (Minimum Standards), 1976	26.09.1996
38.	No.122 Employment Policy Convention 1964	17.11.1998
39.	No.105 Abolition of Forced Labour, 1957	18.05.2000
40.	No.108 Seafarers' Identity Documents Convention, 1958	07.01.2005
41.	No.174 Prevention of Major Industrial Accidents	06.06.2008
42.	No. 142 Human Resources Development	25.3.2009
43.	No. 127 Maximum Weight	26.3.2010
44.	No.185 Seafarers' Identity Documents Convention (Revised), 2003	09-10-2015
45.@#	Maritime Labour Convention, 2006 (MLC 2006)	09-10-2015

* Later denounced, The Convention requires, internal furnishing of statistics concerning unemployment every three months which is considered not practicable.

@ Convention denounced as a result of ratification of Convention No.89.

** Excluding Part II.

Branches (c) and (g) and Branches (a) to (c) and (i).

@@ Minimum Age initially specified was 16 years but was raised to 18 years in 1989.

Article 8 of Part – II.

@#In accordance with Standard A4.5 (2) and (10), the Government has specified the following branches of social security: maternity benefit; invalidity benefit and survivors' benefit.

LESSON ROUND UP

- International Labour Organisation (ILO) is a nodal agency coming under the ambit of the United Nations (UN). Its primary objective is to deal with issues related to labour, namely, maintaining international labour standards, ensuring social protection and providing work opportunities to all.
- Established in 1919, it works towards setting up labour standards, developing policies and chalking out programmes promoting decent work for all men and women. The ILO functions with a unique tripartite structure, that brings together governments', employers' and workers' representatives.
- The International Labour Organisation (ILO) works towards providing such a decent work and productive employment to the labourforce worldwide. This is done with a view of reducing poverty rates and achieving just globalization throughout.
- ILO functions on the basis of an underlying requirement of cooperation between governments', employers' and workers' organizations. Their cooperation is required for smooth functioning of the organization and ameliorating social and economic growth. The ILO sets labour standards, develop policies and devise programmes after taking into consideration the views put forward by all these members.
- Governing Body is the executive wing of the ILO. The governing body meets thrice a year to decide ILO's policy, elect the director- general, adopts the draft programmes and budgetary requirements, which are put in front of the conference.
- The international labour office is the centre of all activities performed by the ILO. It functions under the watchful eye of the governing body and leadership of the Director-General. The functions of international labour office are described under article 10 of the ILO constitution.
- The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body.
- India has been a permanent member of ILO since 1922 and is one of its founding members. The first ILO office in india was established in India in 1928. ILO works on the principle that all the partners need to be strengthened so that the institutional capabilities could be enhanced. The socio-economic development of ILO takes a two pronged approach, that of overall strategies and that of ground level approaches.
- India has specific representation of each major deliberative organ of the ILO, namely the International Labour Conferences, Governing Body and the International Labour Office. The ILO office is located at New Delhi in India. Indian participation in the ILO's organisation and functioning can be understood in terms of its representation and contribution to the ILO.

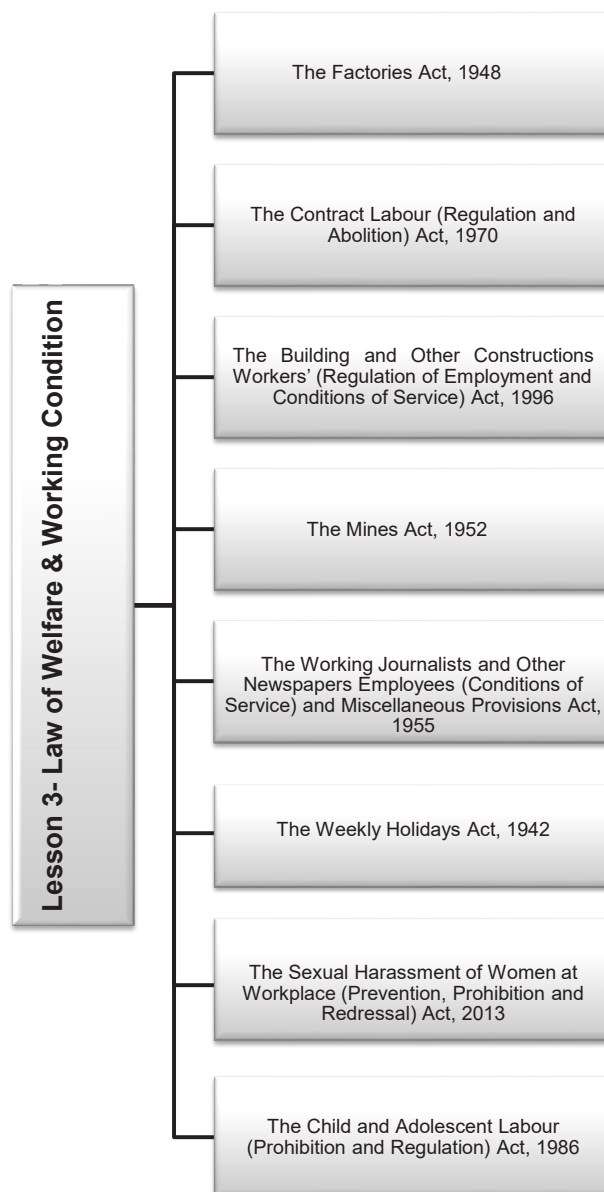
SELF-TEST QUESTIONS

1. State the important tasks of the International Labour Conference
2. Discuss briefly the Governing Body of the International Labour Organisation
3. International Labour Organisation as a partner for development. Comment.
4. Discuss Country Level Programming In International Labour Organisation.
5. Discuss the organ-wise share of India in International Labour Organisation.

Lesson 3

Law of Welfare & Working Condition

The improvement of labour welfare and increasing productivity with reasonable level of social security is one of the prime objectives concerning social and economic policy of the Government. Economic development means not only creation of jobs but also working conditions in which one can work in freedom, safety and dignity. To improving life and dignity of labour force of country by protecting & safeguarding the interest of workers, promotion of welfare and providing social security to the labour force both in Organized and Unorganized Sectors by enactment and implementation of various Labour Laws, which regulate the terms and conditions of service and employment of workers. This Lesson deals with:



Section I

Factories Act, 1948

LESSON OUTLINE

- Learning Objectives
- History of the Legislation
- Object of the Act
- Applicability of the Act
- Scheme of the Act
- Definitions
- Statutory Agencies and their powers for enforcement of the Act
- Duties of Occupier/Manufacturer
- Measures to be taken for health, safety and welfare of workers
 - Health
 - Safety
 - Provisions relating to Hazardous processes
 - Welfare
 - Working hours of adults
 - Employment of young persons
 - Annual leave with wages
 - Special provisions
 - Penalties and procedure
 - Supplemental
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Factories Act, 1948 is an act to consolidate and amend the law regulating labour in factories. The main objective of the Act is to ensure adequate safety measures but also to promote health and welfare of the workers employed in factories as well as to prevent haphazard growth of factories. The Factories Act, 1948 has been enacted on 23.09.1948. This Act is legislated to lay guidelines on working conditions in factories including leaves, working hours, holidays, etc. It also ensures health, safety and welfare measures of workers in factories. This Act made mandatory medical examination for children under the age of 15 while admitting to work as well periodically. Certificates of fitness is also made necessary for young workers working in harbors, constructions, etc. This Act has been amended in the year 1987. There are provisions of the Act which deals with regard to health measures including cleanliness, ventilation, lightning, drinking water, latrines & urinal, etc., safety measure includes fencing, lifting, casing of machinery, employment of young workers with dangerous machines, etc., welfare measures which include washing facilities, facilities for sitting, first aid facilities etc. This Act also focused on hazardous process by industries and the level of chemical substances permissible in work environment. The Act contain provisions regarding hazardous process, constitution of Site Appraisal Committee, compulsory disclosure of Information, appointing competent person in handling hazardous substances, etc. As far as the working hours of adult workers is concerned, e.g. weekly works and holidays, night shifts, overtime wages, etc., it is provided that an adult worker should not work more than 48 hours in a week and should get one full day holiday in a week. A women worker should not be allowed to work beyond 10pm and before 6 a.m. No children under the age of fourteen should be allowed to work in any factory. Beyond several provisions for the welfare of the workers, there are several special provisions which really give special protection with some strict measures for the purpose of the Act. Court will take cognizance only when the complaint is made in three months within the reach of Inspector. There were several other penal provisions for the offences by several authorities and experts.

The objective of the study lesson is to familiarize the students with the legal requirements stipulated under the Factories Act.

Factories Act, 1948 is an Act to consolidate and amend the law regulating labour in factories.

HISTORY OF THE LEGISLATION

There has been a constant struggle going on between labour and capital. Capital has been exploiting the labour to their own maximum benefit for they have better economic footing and power to dictate their terms. The industrial unrest and economic discontent led to a number of strikes and labour troubles. In Pre- Independence era, the workers were generally illiterate, poor and unconscious of their rights. Neither the government nor the Law Court took notice to these labour problems arising in the country as they believed in the policy of non-interference in employer and employees relation. The situation, with lapse of time, became so worse and the society was so much adversely affected that the government was forced to take some measures. In the post-independence period, the national government paid attention to the improvement in conditions of labour health in industry as the prosperity of the country lies upon the development of industrial growth. There were two basic concept on which the labour legislation were framed, first was that the wage earner is a partner in the production hence should be allowed due share of the profits in production. Secondly, individual employer as well as community as a whole is under obligation to protect the well-being of the workers.

The first Factories Act was enacted in 1881 which was replaced by the Act of 1934. The 1934 Act revealed a number of defects and weaknesses which hampered effective administration of the Act, therefore the Factories Act, 1948 was passed. The Act is in tune with the spirit of the Constitution of India i.e. article 24, 39(e), 39(f), 42 and 48A.

The Factories Act, 1948 has been amended from time to time, especially after the Bhopal gas disaster, which could have been prevented. The amendment demanded a shift away from dealing with disaster (or disease) to prevention of its occurrence. The Factories (Amendment) Act came into force on December 1, 1987. A special chapter on occupational health and safety to safeguard workers employed in hazardous industries was added. In this chapter, pre-employment and periodic medical examinations and monitoring of the work environment are mandatory for industries defined as hazardous under the Act. A maximum permissible limit has been laid down for a number of chemicals.

Object of the Act

The Factories Act, 1948 was, therefore, enacted and came into force with the objective to provide adequate compensation to the affected persons. The Act extends to the whole of India and persons employed in factories, mines, plantation, construction, mechanically propelled vehicles and in some hazardous occupations are covered under the provisions of the Act. It is an Act to consolidate and amend the law regulating labour in factories (Preamble of the Act). The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.

In the case of *Ravi Shankar Sharma v. State of Rajasthan*, AIR 1993 Raj. 117, Court held that Factories Act is a social legislation and it provides for the health, safety, welfare and other aspects of the workers in the factories. In short, the Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises.

In *Bhikusa Yamasa Kshatriya (P.) Ltd. v. UOI*, the court observed that the Act has been enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose, it seeks to impose upon the owner or the occupier certain obligations to protect the workers and to secure for them employment in conditions conducive to their health and safety.

Applicability of the Act

- It extends to the whole of India w.e.f. the 1st day of April, 1949.
- It applies to factories as defined under the Act. Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months. But it does not include a mine subject to the operation of the Mines Act, 1952 or a mobile

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unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

- The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term “worker” as defined in the Act. But the definition of worker excludes any member of the armed forces of the Union

Scheme of the Act

The Act consists of 120 Sections and 3 Schedules.

Schedule 1- contains list of industries involving hazardous processes

Schedule 2 -is about permissible level of certain chemical substances in work environment.

Schedule 3 -consists of list of notifiable diseases.

Definitions

Section 2 provides for definition of certain words used in the Act as –“In this Act, unless there is anything repugnant in the subject or context,-

“Adult” {Section 2(a)}

Adult means a person who has completed his eighteenth year of age;

“Adolescent” {Section 2(b)}

Adolescent means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

“Calendar Year” {Section 2(bb)}

Calendar Year means the period of twelve months beginning with the first day of January in any year;

“Child” {Section 2(c)}

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

“Competent Person” {Section 2(ca)}

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

- (i) the qualifications and experience of the person and facilities available at his disposal; or
- (ii) the qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognized as a competent person in relation to a factory;

“Hazardous Process” {Section 2(cb)}

Hazardous process means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, by-products, wastes, or effluents thereof would-(i) cause material impairment to the health of the persons engaged in or connected therewith, or(ii) result in the pollution of the general environment:

It is provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry, specified in the said Schedule;

“Young Person” {Section 2(d)}

Young person means a person who is either a child or an adolescent;

“Day” {Section 2(e)}

Day means a period of twenty-four hours beginning at midnight;

“Week” {Section 2(f)}

Week means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;

“Power” {Section 2(g)}

Power means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

“Prime mover” {Section 2(h)}

Prime mover means any engine, motor or other appliance which generates or otherwise provides power;

“Transmission Machinery” {Section 2(i)}

Transmission Machinery means any shaft, wheel drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;

“Machinery” {Section 2(j)}

Machinery includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;

“Manufacturing Process” {Section 2(k)}

Manufacturing Process means any process for –

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

An important necessity for any premises to be regarded as a ‘factory’ is, that a “manufacturing process” should be conducted within the premises. Therefore, the definition is quite important and it has been the subject of judicial interpretation in large number of cases:

(i) What is manufacturing process

The definition of manufacturing process is exhaustive. Under the present definition even transporting, washing, cleaning, oiling and packing which do not involve any transformation as such which is necessary to constitute manufacturing process in its generic sense, are nonetheless treated as manufacturing process. The definition is artificially projected beyond the scope of natural meaning of what the words might convey thus covering

very wide range of activities. Madras High Court in the case of *In re. Seshadrinatha Sarma*, 1966 (2) LLJ 235, held that to constitute a manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable. Division Bench of A.P. High Court held that to determine where certain premises is factory, it is necessary that it should carry on manufacturing process and it does not require that the process should end in a substance being manufactured (*Alkali Metals (P) Ltd. v. ESI Corpn.*, 1976 Lab.I.C.186). In another case it was observed that manufacturing process merely refers to particular business carried on and does not necessarily refer to the production of some article. The works of laundry and carpet beating were held to involve manufacturing process. A process employed for purpose of pumping water is manufacturing process. Each of the words in the definition has got independent meaning which itself constitutes manufacturing process.

Following processes have been held to be manufacturing processes:

- (1) Sun-cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to company's main factory for their use in manufacturing cigarette (*V.P. Gopala Rao v. Public Prosecutor*, AIR 1970 S.C. 66).
- (2) The operation of peeling, washing etc., of prawns for putting them in cold storage is a process with a view to the sale or use or disposal of the prawns (*R.E. DSouza v. Krishnan Nair*, 1968 F.J.R. 469).
- (3) Stitching old gunny bags and making them fit for use.
- (4) In paper factory, bankas grass packed into bundles manually and despatched to the factory.
- (5) Work of garbling of pepper or curing ginger.
- (6) Process carried out in salt works in converting sea water into salt. In *Ardeshir v Bombay State* [AIR 1962 SC 29] the process carried out in the salt works comes within the definition of 'manufacturing process' in Section 2 (k) in as much as salt can be said to have been manufactured from sea water by the process of treatment and adaptation of sea water into salt.
- (7) Conversion of latex into sheet rubber.
- (8) A process employed for the purpose of pumping water.
- (9) The work done on the bangles of cutting grooves in them which later would be filled with colouring, is clearly a stage in ornamentation of the bangle with view to its subsequent use for sale.
- (10) Preparation of soap in soap works.
- (11) The making of bidies. (*State of Bombay v Ali Saheb Kashim Tamboli*, [(1995) 2 LLJ 182])
- (12) The raw film used in the preparation of movies is an article or a substance and when by the process of tracing or adapting, after the sound are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term treating or adapting any article or substance with a view to its use. (*re K.V.V. Sharma* [(1950) 1 LLJ 29])
- (13) Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impression on the paper to be printed. Everything that is necessary before or after complete process, would be included within the definition of the word 'manufacturing process'.
- (14) Preparation of food with aid of various electrical appliances in kitchen of a hotel is a manufacturing process, as decided in the case of "*Poona Industrial Hotel v. I.C. Sarin*, 1980, Lab IC 100. In *New Taj*

Mahal Cafe Ltd., Mangalore v. Inspector of Factories, Mangalore, 1956 1 LLJ 273 the preparation of foodstuffs and other eatable in the kitchen of a restaurant and use of a refrigerator for treating or adapting any article with a view to its sale were also held to be manufacturing process.

- (16) The work of mere packing cannot be called as a manufacturing process; {ref-AIR 1955 NUC2710}.
- (17) The business of sale of diesel oil, motor spirit, lubricant, servicing of cars and lorries, repairing vehicles and charging batteries with the aid of power, by employing more than 20 workers / labourers amount to manufacturing process, as noted in the case of “*Baranagar Service Station v. E.S.I Corporation (1987) 1 L.L.N 912(Cal)(Divisional Bench) & Labl. C. 302.*”
- (18) Decorticating groundnuts in electric mill is a manufacturing process (AIR 1959 Madras30).
- (19) Construction of railway - use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying down railway line (LAB IC 1999 SC 407; Lal Mohmd. v. Indian Railway Construction Co. Ltd.).
- (20) Hon'ble Supreme Court in *G.L. Hotels Limited and Ors. v. T.C. Sarin and Anr. (1993) 4 SCC 363* where it was held that since the manufacturing process in the form of cooking and preparing food is carried on in the kitchen and the kitchen is a part of the hotel or a part of the precinct of the hotel, the entire hotel falls within the purview of the definition of 'factory'.

The definition takes in all acts which bring in not only some change in the article or substance but also the act done for the protection and maintenance of such article by packing, oiling, washing, cleaning, etc. (*P. Natrajan v. E.S.I. Corporation (1973) 26 FLR 19*), Preparation of food and beverages and its sale to members of a club (*CCI v. ESIC, 1992 LAB IC 2029 Bom.*), receiving products in bulk, in packing and packing as per clients requirements (LLJ I 1998 Mad. 406).

(ii) **What is not a manufacturing process**

No definite or precise test can be prescribed for determining the question whether a particular process is a manufacturing process. Each case must be judged on its own facts regard being had to the nature of the process employed, the eventual result achieved and the prevailing business and commercial notions of the people. In deciding whether a particular business is a manufacturing process or not, regard must be had to the circumstances of each particular case. To constitute a manufacturing process, there must be some transformation i.e. article must become commercially known as something different from which it acquired its existence.

Following processes are not manufacturing processes:

- (1) Exhibition of films process.
- (2) Industrial school or Institute imparting training, producing cloth, not with a view to its sale.
- (3) Receiving of news from various sources on a reel in a teleprinter of a newspaper office, is not a manufacturing process in as much as news is not the article or substance to which Section 2(k)(i) has referred.
- (4) Any preliminary packing of raw material for delivering it to the factory (AIR 1969 Mad. 155).
- (5) Finished goods and packing thereof: *F. Hare v. State AIR 1955, 2710.*
- (6) Transportation of goods on contract basis from one place to another by road with the assistance of transport carriers is not a manufacturing process- as decided in the case of regional *Director E.S.I.C v. Jaihind Roadways, Bangalore(2001), 1 L.L.J 1187 (Karnataka).*
- (7) Breaking up of boulders is a manufacturing process – as decided in case of “*Larsen & Toubro v. state of Orissa, 1992 Lab IC 1513 (Orissa- Divisional Bench).*”

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- (8) Selling of petrol or diesel by a petrol dealer or repairing of motor vehicle will not come within the term “manufacturing process”, as noted in the case of : *National Service Centre and Petrol Pump v. E.S.I. Corporation, 1983 Labl.C. 412 (P&H)*.

Supreme Court has held that the process undertaken in zonal and sub-stations and electricity generating stations, transforming and transmitting electricity generated at the power station does not fall within the definition of manufacturing process and could not be said to be factories... (Workmen of Delhi Electric Supply Undertaking v. Management of D.E.S.U., AIR 1973 S.C. 365).

“Worker” {Section 2(l)}

Worker means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;

A person to be a worker within the meaning of the Factories Act must be a person employed in the premises or the precincts of the factory. As held by the court in the *State of Uttar Pradesh v. M. P. Singh (1960) 2 SCR 605: (AIR 1960 SC 569)* field workers who are employed in guiding, supervising and controlling the growth and supply of sugar cane to be used in the factory are not employed either in the precincts of the factory or in the premises of the factory. Hence the provisions of the Factories Act do not apply to them. *AIR 1978 SUPREME COURT 849, Rohtas Industries Ltd v. Ramlakhan Singh*.

The definition contains following ingredients:

(i) There should be an ‘employed person’

- (a) **Meaning of the word “employed”**: The concept of “employment” involves three ingredients, viz. employer, employee, and contract of employment. The ‘employer’ is one who employs, i.e., one who engages the services of other persons. The ‘employee’ is one who works for another for hire.

The employment is the contract of service between employer and employee whereunder the employee agrees to serve the employer subject to his control and supervision. The prima facie test for determination of the relationship between the employer and employee is the existence of the right of the employer to supervise and control the work done by the employee not only in the matter of directing what work the employee is to do but also the manner in which he shall do his work (*Chintaman Rao v. State of M.P. AIR 1958 S.C. 388*).

Therefore, ‘supervision and control’ is the natural outcome when a person is employed by another person. Moreover, the ‘employment’ referred to in the section is in connection with a manufacturing process that is carried on in the factory which process normally calls for a large measure of coordination between various sections inside a factory and between various individuals even within a section. The persons will have to be guided by those placed in supervisory capacity. A certain amount of control is thus necessarily present in such a case.

In *Shankar Balaji Waje v. State of Maharashtra, AIR 1963 Bom. 236*, the question arose whether bidi roller is a worker or not. The management simply says that the labourer is to produce bides rolled in a certain form. How the labourer carried out the work is his own concern and is not controlled by the management, which is concerned only with getting bides rolled in a particular style with certain contents. The Supreme Court held that the bidi roller is not a worker. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Where the employer did retain direction and control over the workers both in manner of the nature of the work as ‘also its details, they will be held as workers.

In *State of Kerala v. V M Patel*, [1961(1) LLJ 549 (SC)] the Supreme Court held that the work of garbling pepper by winnowing, cleaning, washing and drying in lime and laid out to dry in a warehouse are manufacturing processes and therefore the persons employed in these processes were workers within the meaning of Section 2(l) of the Act.

A day labourer, where there was no evidence to show that he was free to work for such period as he likes, free to come and go whenever he chose and free to absent himself at his own sweet will, was held to be a worker. Similarly, women and girls employed in peeling, washing etc., of consignment of prawns brought on the premises at any time of the day or night, without any specified hours of work and without any control over their attendance or the nature, manner or quantum of their work and who after finishing the work go to other premises in the locality where similar consignment of prawns are received, are not Workers (*State of Kerala v. R.E. DSouza*).

- (b) **Whether relationship of master and servant necessary:** The expression “employed” does not necessarily involve the relationship of master and servant. There are conceivable cases in which where no such relationship exists and yet such persons would be workers. The expression a person employed, according to Justice Vyas, means a person who is actually engaged or occupied in a manufacturing process, a person whose work is actually utilised in that process. The definition of worker is clearly enacted in terms of a person who is employed in and not in terms of person who is employed by. It is immaterial how or by whom he is employed so long as he is actually employed in a manufacturing process.

In *Birdh Chand Sharma v First Civil Judge, Nagpur*, [AIR 1961 SC 644] where the respondents prepared bidis at the factory and they were not at liberty to work at their homes. They worked within certain hours which were the factory hours. They were, however, not bound to work for the entire period and they could go whenever they like. Their attendance was noted in the factory. They could come and go away at any time they liked. However no worker was allowed to work after midday even though the factory was closed at 7 p.m. and no worker was allowed to continue work after 7 p.m. There were standing orders in the factory and, according to these orders a worker who remained absent for eight days presumably without leave could be removed. The payment was made on piece rate according to the quantum of work done, but the management had the right to reject such bidis as did not come up to the proper standard. On these facts the Supreme Court held that respondents were workers under section 2 (1) of the Act.

- (c) **Piece-rate workers – Whether workers: Piece-rate workers can be workers within the definition of ‘worker’ in the Act, but they must be regular workers and not workers who come and work according to their sweet will (Shankar Balaji Wajev. State of Maharashtra, AIR 1967 S.C. 517).** In another case workmen had to work at bidi factory when they liked. The payment was made on piece-rate according to the amount of work done. Within the factory, they were free to work. But the control of the manner in which bidies were ready, by the method of rejecting those which did not come up to the proper standards. In such a case it was exercised which was important (*Birdhi Chand Sharma v. First Civil Judge, Nagpur, AIR 1961 SC 644*). Therefore, whatever method may be adopted for the payment of wages, the important thing to see is whether the workers work under supervision and control of the employer. It makes no difference whether the worker employed in the manufacturing process is paid time rate wages or piece rate wages.
- (d) *The partners of a concern*, even though they work on premises in the factory cannot be considered to be workers within Section 2(1): (1958 (2) LLJ 252 SC).
- (e) *An independent contractor*. He is a person who is charged with work and has to produce a particular result but the manner in which the result is to achieved is left to him and as there is no control or supervision as to the manner in which he has to achieve the work, he is not a worker.

(ii) Employment should be direct or through some agency

The words directly or by or through any agency in the definition indicate that the employment is by the management or by or through some kind of employment agency. In either case there is a contract of employment between the management and the person employed. There should be a privity of contract between them and the management. Only such person can be classified as worker who works either directly or indirectly or through some agency employed for doing his works of any manufacturing process or cleaning, etc., with which the factory is concerned. It does not contemplate the case of a person who comes and that too without his intervention either directly, or indirectly, and does some work on the premises of factory.

(iii) Employment should be in any manufacturing process etc.

The definition of "worker" is fairly wide. It takes within its sweep not only persons employed in manufacturing process but also in cleaning any part of the machinery and premises used for manufacturing process. It goes far beyond the direct connection with the manufacturing process by extending it to other kinds of work which may either be incidental to or connected with not only the manufacturing process itself but also the subject of the manufacturing process (*Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others*), the concept of manufacturing process has already been discussed. The meaning of the expression employed in cleaning any part of machinery, etc." and employed in work incidental to..... process, are discussed below:

- (a) *Employed in cleaning any part of machinery etc.:* If a person is employed in cleaning any part of the machinery premises which is used for manufacturing process, he will be held as worker.
- (b) *Employed in work incidental to process:* This clause is very important because it enlarges the scope of the term, manufacturing process. Following illustrative cases will clarify the meaning of this clause:
 - (1) In *Shinde v. Bombay Telephones, 1968 (11) LLJ 74*, it was held that whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, he is really employed in the factory and in connection with the factory.
 - (2) In *Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others*, it was held that the definition of worker does not exclude those employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of 'worker. Timekeepers employed to maintain attendance of the staff, job cards particularly of the various jobs under operation, and time-sheets of the staff engaged in production of spare parts, repairs, etc.; and head time-keeper who supervise the work of the time-keepers, perform work which is incidental to or connected with the manufacturing process carried on in the factory and would therefore, fall within the definition of the worker in the Act.
 - (3) Munim in a factory is a worker.
 - (4) Workmen in canteen attached to a factory are employees.
 - (5) A person employed by a gas manufacturing works as a coolie for excavating and digging trenches outside the factory for laying pipes for transporting gas to consumers, cannot be held to be a worker (AIR 1961 Bomb. 184).
 - (6) Person employed to supply material to a mason engaged in construction of furnace will be deemed to be employed by the factory to a work incidental to or connected with manufacturing process.
 - (7) In a soap-works, a carpenter preparing the packing cases is a worker because he might legitimately be considered to be engaged in a kind of work incidental to or connected with the subject of the manufacturing process, viz., packaging of soap for being sent out for sale.
 - (8) In the case of *Rohtas Industries Ltd. v. Ramlakhan Singh and others, A.I.R. 1971 SC 849*, a

person was employed in a paper factory. He was engaged in supervising and checking quality and weighing of waste papers and rags which are the basic raw material for the manufacture of paper. He used to deal with receipts and maintain records of stock and pass the bill of the supplier of waste paper and rags. He used to work in the precincts of the factory and in case of necessities had to work inside the factory. The Supreme Court held that he was working in the factory premises or its precincts in connection with the work of the subject of the manufacturing process, namely the raw material.

- (9) It was held by the Madras High Court in *Elangovan M. and Others v. Madras Refineries Ltd.* (2005) II L.L.J. 653 (Mad.), that the employees of a canteen run in compliance to statutory duty are workmen of the establishment running the canteen for the purposes of Factories Act, 1948 only and not for all purposes.
- (10) In *Haldia Refinery Canteen Employees Union and Another v. Indian Oil Corporation Ltd. and Others* (2005) II L.L.J. 684 (SC), the respondent corporation was running a statutory canteen through a contractor. The workmen employed by the contractor in the canteen claimed regularization in service of the corporation. The Supreme Court held their claim as not sustainable because the control that the respondent corporation exercised over the contractor was only to ensure that the canteen was run in efficient manner. Further the corporation was not reimbursing to the contractor the wages of the workmen. Secondly two settlements had been made between the contractor and the canteen workmen and the respondent was not a party to either of them. Therefore, it was held that the workmen in canteen became workers of the respondent corporation only for the purposes of the Factories Act, 1948 and not for any other purpose.

(iv) Employment may be for remuneration or not

A person who receives wages as remuneration for his services, a person who receives remuneration on piecework basis, a person may be working as an apprentice, and a person who is a honorary worker, all come within the definition of a worker. Therefore to be a worker, it is immaterial whether a person is employed for wages or for no wages.

(v) Any member of the armed forces of the Union is excluded from the definition of worker

(vi) Whether all employees are workers?

Since the word employee has not been defined in the Act it follows that all the workers within the ambit of the definition under the Act would be employees, while all employees would not be workers (*Harbanslal v. State of Karnataka*, (1976) 1 Karnt.J. 111). All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act (*Union of India v. G.M. Kokil*, 1984 SCC (L&S) 631).

Once it is established prima facie that premises in question is a factory within the meaning of the Act, the provisions of Section 103 as to the presumption of employment are immediately attracted and onus to prove the contrary shifts to the accused (*Prafulbhai Patadia v. The State*, 1976 (12) E.L.R. 329).

“Factory” ;{Section 2(m)}

Factory means any premises including the precincts thereof-

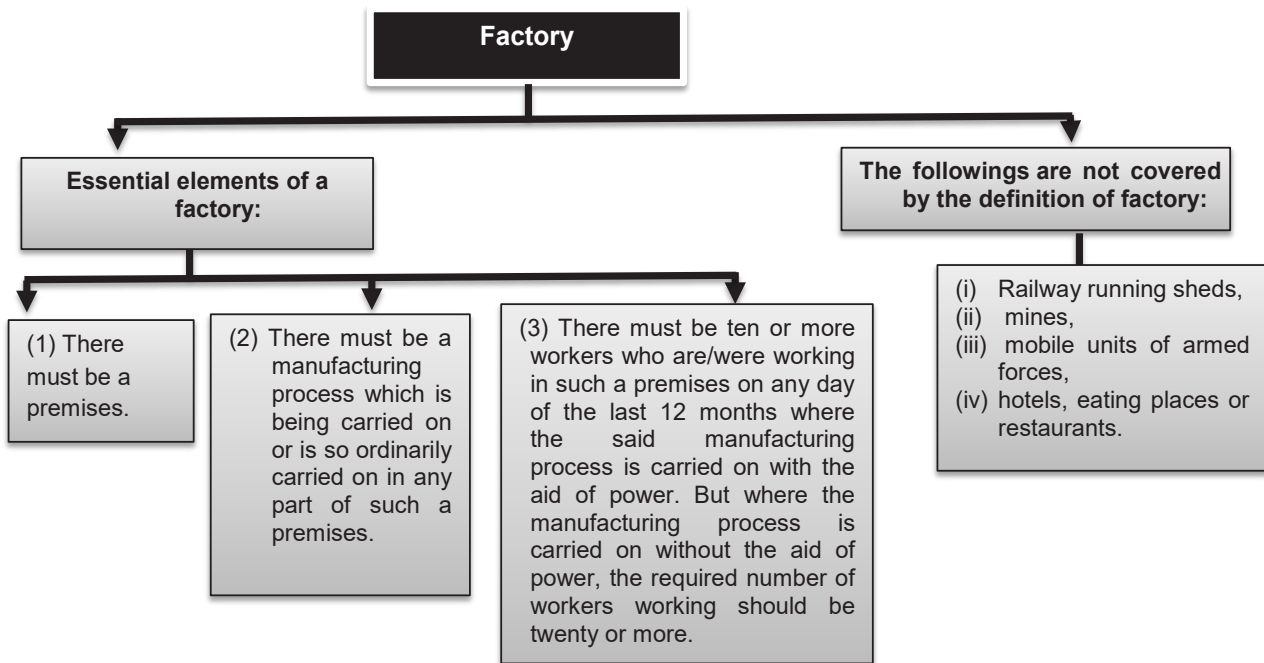
- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Whereon twenty or more workers are working, or were working on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

The definition of factory specifically excludes from its purview a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

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

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

(i)



(ii) Meaning of words “premises and precincts”

The word “premises” is a generic term meaning open land or land with building or building alone. The term ‘precincts’ is usually understood as a space enclosed by walls. Expression ‘premises’ including precincts does not necessarily mean that the premises must always have precincts. It merely shows that there may be some premises with precincts and some premises without precincts. The word ‘including is not a term’ restricting the meaning of the word ‘premises’, but is a term which enlarges its scope. All the length of railway line would be phase wise factories (LAB IC 1999 SC 407). Company engaged in construction of railway line is factory. (LAB IC 1999 SC 407).

The case law of **K.V.V.Sharma AIR , 1953, Mad 269**, stated precincts as; “a space enclosed by walls or fences. A place solely used for some purpose other than the manufacturing process carried on in a factory or a workshop does not constitute a factory.”

The Supreme Court in **Ardeshir H. Bhiwandiwala v. State of Bombay, AIR 1962 S.C. 29**, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word ‘premises’. It was held that the word ‘premises’ is a generic term meaning open land or land with buildings or building alone. The expression, “premises including precincts” does not necessarily mean that the premises must always have precincts. Even

buildings need not have any precincts. The word 'including' is not a term restricting the meaning of the word 'premises' but is a term which enlarges its scope. The use of the word 'including', therefore does not indicate that the word 'premises' must be restricted to main building and not to be taken to cover open land as well.

As decided in the case of **'Workmen, Delhi electricity Supply Undertaking /vs/ Management, AIR 1973 SC 365**; "Factory" is a premise where manufacturing process is carried on.". No manufacturing process was held to take place either in the sub-stations or in the zonal stations of the Delhi Electricity Supply Undertaking, because the workmen employed therein have no part in any manufacturing process".

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

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

(iv) Ten or twenty workers

The third essential content of 'factory' is that ten or more workers are employed in the premises using power and twenty or more workers are employed in the premises not using power.

Where seven workers were employed in a premises where the process of converting paddy into rice by mechanical power was carried on and in the same premises, three persons were temporarily employed for repairs of part of the machinery which had gone out of order but the manufacturing was going on, it was held that since three temporary persons were workers, consequently there were ten workers working in the 'premises' and the premises is a factory (AIR 1959, All. 794).

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

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

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

"Occupier" ;{Section 2(n)}

Occupier of a factory means the person who has ultimate control over the affairs of the factory;

PROVIDED that –

- (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- (ii) in the case of a company, any one of the directors shall be deemed to be the occupier;
- (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

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

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under

- (a) section 6, section 7, section 7A, section 7B, section 11 or section 12;
- (b) section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;
- (c) section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the workers employed on such repair or maintenance;

(2) the owner of the ship or his agent or master or other office-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44, or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to-

- (a) the workers employed directly by him, or by or through any agency; and
- (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person;

J.K. INDUSTRIES LIMITED versus THE CHIEF INSPECTOR OF FACTORIES AND BOILERS & ORS

SLP (C) No. 12498/96, Supreme Court held that :

(i) In the case of a company, which owns a factory, it is only one of the director of the company who can be notified as the occupier of the factory for the purposes of the Act and the company cannot nominate any other employee to be the occupier of the factory:

(2) Where the company fails to nominate one of its directors as the occupier of the factory, the Inspector of Factories shall be at liberty to proceed against any one of the directors of the company, treating him as the deemed occupier of the factory, for prosecution and punishment in case of any breach or contravention of the provisions of the Act or for offences committed under the Act.

Therefore an employee of company or factory cannot be occupier. Proviso (ii) to Section 2(n) does not travel beyond scope of main provision and is not violative of Article 14 of Constitution of India. Proviso (ii) is not ultra vires main provisions of Section 2(n). No conflict exists between main provisions of Section 2(n) and proviso (ii). Further, proviso (ii) to Section 2(n) read with Section 92, does not offend Article 21.

Under Section 2(n)(iii), for the purpose of deciding who is an occupier of the factory, the test to be applied is who has ultimate control over its affairs in a government company, in fact the ultimate control lies with government though the company is separate legal entity by having right to manage its affairs. Persons appointed by central government to manage its affairs of factories (of government companies) were therefore deemed to be appointed as occupiers under the Act (*IOC v. CIF, LLJ II SC 1998 604*)

In **Indian Oil Corporation vs. Chief Inspector of Factories [1998(4) SCALE 116]**, it was observed that it is the Government which looks after the successful implementation of the Factories Act and, therefore, it is not likely to evade its implementation. That appears to be the reason why the legislature thought it fit to make a separate provision for the Government and local authorities, and so on. The legislature has provided that in the case of a factory owned or controlled by any of these authorities the person or persons appointed to manage the affairs of the factory shall be deemed to be the occupier. Therefore, if it is a case of a factory, in fact and in reality, owned or controlled by the Central Government or other authority, the person or persons appointed to manage

the affairs of the factory shall have to be deemed to be the occupier even though for better management of such a factory, a corporate form is adopted by the Government. It was held in the case that the relevant provisions regarding the establishment of the appellant corporation and its working leave no doubt that the “ultimate control” over all the affairs of the corporation, including opening and running of the factories, is with the Central Government. Acting through the corporation is only a method employed by the Central Government for running its petroleum industry. In the context of Sec. 2(n), it will have to be held that all the activities of the corporation are really carried on by the Central Government with a corporate mask.

Exemption of occupier or manager from liability in certain cases

Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with an offence punishable under the Act to bring into the Court any other person whom he charges actual offender and also proves to the satisfaction of the Court that: (a) he has used due diligence to enforce the execution of this Act; and (b) that the offence in question was committed without his knowledge, consent or connivance, by the said other person. The other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory. In such a case occupier or manager of the factory is discharged from liability. The Section is an exception to principles of strict liability, but benefit of this would be available only when the requirements of this section are fully complied with and the court is fully satisfied about the proof of facts contemplated in (a) and (b) above.

Group/Relay/Shift {Section 2(r)} :

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 sets is called a “group” or “relay” and each of such periods is called a “shift”.

Statutory Agencies and their powers for enforcement of the act

The State Governments assume the main responsibility for administration of the Act and its various provisions by utilising the powers vested in them.

(i) Reference to time of day (Section 3): This section empowers the State Government to make rules for references to time of day where Indian Standard Time, being 5-1/2 hours ahead of Greenwich Mean-Time is not ordinarily observed. These rules may specify the area, define the local mean time ordinarily observed therein, and permit such time to be observed in all or any of the factories situated in the area.

(ii) Power to declare different departments to be separate factories or two or more factories to be a single factory (Section 4) :The State Government may on its own or on an application made in this behalf by an occupier, direct, by an order in writing and subject to such conditions as it may deem fit, that for all or any of the purposes of this act different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory.

It is mandatory for the State Government to provide an opportunity of being heard to the occupier before passing any such order.

(iii) Power to exempt during public emergency (Section 5): In any case of public emergency the State Government may, by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act except section 67 for such period and subject to such conditions as it may think fit. It is provided that no such notification shall be made for a period exceeding three months at a time.

Explanation: For the purposes of this section “public emergency” means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.

(iv) Power of the State Government to make rules w.r.t. approval, licensing and registration of factories:

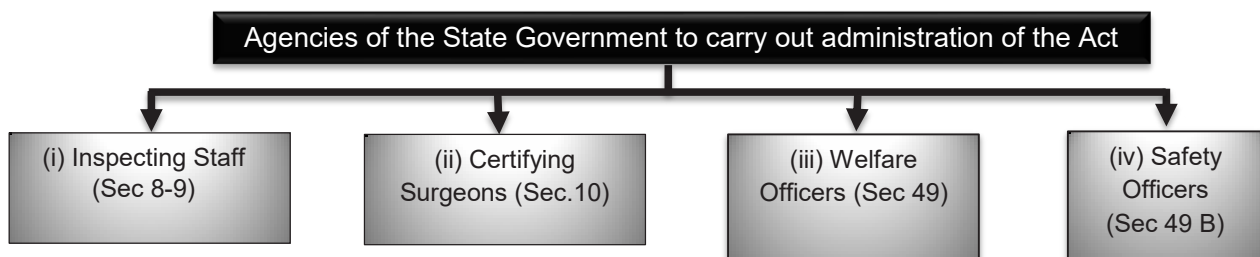
Section 6 (1) of the Act authorize the State Government to make rules-

- (a) requiring, for the purposes of the Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;
- (aa) requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;
- (b) requiring for the purpose of considering applications for such permission the submission of plans and specifications;
- (c) prescribing the nature of such plans and specifications and by whom they shall be certified;
- (d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licenses;
- (e) requiring that no license shall be granted or renewed unless the notice specified in section 7 has been given.

Deemed Approval: If on an application for permission referred to in clause (aa) of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, sent to the State Government or Chief Inspectors by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted. (Sub-section 2)

Appeal to the Central Government : Where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to the State Government in any other case.

Explanation clarifies that a factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed, of the addition of any plant or machinery if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health.



(i) Inspectors

Appointment: Section 8 empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who possess prescribed qualifications. Section 8(2) empowers the State Government to appoint any person to be a Chief Inspector. To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit.

Every District Magistrate shall be an Inspector for his district. The State Government may appoint certain public officers, to be the Additional Inspectors for certain areas assigned to them. The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the Official Gazette.