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(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition.

(3) Medical facilities. –

Section 10 of the Act states the provisions for medical facilities for workers and their families.

In every plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers and their families as may be prescribed by the State Government. If employer fails to provide and maintain medical facilities as prescribed, the State Government, upon a request by the chief inspector, may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer. For the purposes of such recovery the chief inspector may certify the costs to be recovered to the collector, who may recover the amount as an arrear of land-revenue.

Welfare

(1) Canteens. –

According to section 11 of the Act, the State Government may make rules requiring that in every plantation wherein one hundred and fifty workers are ordinarily employed, one or more canteens shall be provided and maintained by the employer for the use of the workers.

Without prejudice to the generality of the foregoing power, such rules may provide for –

- (a) the date by which the canteen shall be provided;
- (b) the number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteens;
- (c) the foodstuffs which may be served therein and the charges which may be made therefor;
- (d) the constitution of a managing committee for the canteen and the representation of the workers in the management of the canteen;
- (e) the delegation to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

(2) Creches. –Section 12, provides for facilities similar to other Labour Welfare Acts for nursing mothers. Sub-section (1) states that every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers. *Explanation.* –For the purposes of this sub-section and sub-section (1A), “children” means persons who are below the age of six years.

Sub-section (1A) states that notwithstanding anything contained in sub-section (1), if, in respect of any plantation wherein the requisite number of women workers or children is less than prescribed above, the State Government, having regard to the number of children of such women workers deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may, by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such direction. The rooms referred to in sub-section (1) or sub-section (1A)] shall –

- (a) provide adequate accommodation;
- (b) be adequately lighted and ventilated;

- (c) be maintained in a clean and sanitary condition; and
- (d) be under the charge of a woman trained in the care of children and infants.

The State Government may make rules prescribing the location and the standards of the rooms referred to in sub-section (1) or sub-section (1A)] in respect of their construction and accommodation and the equipment and amenities to be provided therein.

(3) Provision of Recreational facilities – Section 13 states that the State Government may make rules requiring every employer to make provision in his plantation for such recreational facilities for the workers and children employed therein as may be prescribed.

(4) Provision of Educational facilities- According to section 1, where the children between the ages of six and twelve of workers employed in any plantation exceed twenty-five in number, the State Government may make rules requiring every employer to provide educational facilities for the children in such manner and of such standard as may be prescribed.

(5) Housing facilities – According to section 15, it shall be the duty of every employer to provide and maintain necessary housing accommodation –

- (a) for every worker (including his family) residing in the plantation;
- (b) for every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed a desire in writing to reside in the plantation:

It is provided that the requirement of continuous service of six months under this clause shall not apply to a worker who is a member of the family of a deceased worker who, immediately before his death, was residing in the plantation.

(6) Power to make rules relating to housing –

According to section 16, the State Government may make rules for the purpose of giving effect to the provisions of section 15 and, in particular providing for –

- (a) the standard and specification of the accommodation to be provided;
- (b) the selection and preparation of sites for the construction of houses and the size of such plot;
- (c) the constitution of advisory boards consisting of representatives of the State Government, the employer and the workers for consultation in regard to matters connected with housing and the exercise by them of such powers, functions and duties in relation thereto as may be specified;
- (d) the fixing of rent, if any, for the housing accommodation provided for workers;
- (e) the allotment to workers and their families of housing accommodation and of suitable strips of vacant land adjoining such accommodation for the purpose of maintaining kitchen gardens, and for the eviction of workers and their families from such accommodation;
- (f) access to the public to those parts of the plantation wherein the workers are housed.

Liability of employer in respect of accidents resulting from collapse of houses provided by him

Section 16 A provides that if death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided under section 15, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation. The provisions of section 4 of, and Schedule IV to, the Workmen's Compensation Act, 1923, as in force for the time being, regarding the amount of compensation payable to a workman under that Act shall,

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so far as may be, apply for the determination of the amount of compensation payable under sub-section (1).

Appointment of Commissioners

Pursuant to section 16B, the State Government may, by notification in the Official Gazette, appoint as many persons, possessing the prescribed qualifications as it thinks fit, to be Commissioners to determine the amount of compensation payable under section 16A and may define the limits within which each such Commissioner shall exercise the powers and discharge the functions conferred or imposed on him by or under this Act.

Application for compensation –

Section 16C provides for that an application for payment of compensation under section 16A may be made to the Commissioner –

- (a) by the person who has sustained the injury; or
- (b) by any agent duly authorised by the person who has sustained the injury; or
- (c) where the person who has sustained the injury is a minor, by his guardian; or
- (d) where death has resulted out of the collapse of the house, by any dependant of the deceased or by any agent duly authorised by such dependant or, if such dependant is a minor, by his guardian.

Application shall be made in such form and shall contain such particulars as may be prescribed. Application for compensation shall be made within six months of the collapse of the house. But the Commissioner may, if he is satisfied that the applicant was prevented by sufficient cause from making the application within the aforesaid period of six months, entertain such application within a further period of six months. *Explanation.* –In this section, the expression “dependant” has the meaning assigned to it in clause (d) of section 2 of the Workmen’s Compensation Act, 1923.

Procedure and powers of Commissioner

The procedure of enquiry and power to the Commissioner thereto has been specified in section 16D as follows:

- (i) *Conducting Enquiry:* On receipt of an application under section 16C, the Commissioner may make an inquiry into the matter covered by the application.
- (ii) *Summary Procedure:* In determining the amount of compensation payable under section 16A, the Commissioner may, subject to any rules that may be made in this behalf, follow such summary procedure as he thinks fit.
- (iii) *Powers of the Commissioner:* The Commissioner shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely: –
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) any other matter which may be prescribed.

Sub-section (4) states that subject to any rules that may be made in this behalf, the commissioner may, for the purpose of determining any claim or compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist him in holding the inquiry.

Liability to pay compensation, etc., to be decided by Commissioner

According to section 16E, Compensation is to be determined as follows:

- (i) *Determination of compensation u/s 16A:* Any question as to the liability of an employer to pay compensation under section 16A, or as to the amount thereof, or as to the person to whom such compensation is payable, shall be decided by the Commissioner.
- (ii) *Appeal to High Court:* Any person aggrieved by a decision of the Commissioner refusing to grant compensation, or as to the amount of compensation granted to him, or to the apportionment thereof, may prefer an appeal to the High Court having jurisdiction over the place where the collapse of the house has occurred, within ninety days of the communication of the order of the Commissioner to such person. It is provided that the High Court may entertain any such appeal after the expiry of the period aforesaid if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within such period. It is provided further that nothing in this sub-section shall be deemed to authorise the High Court to grant compensation in excess of the amount of compensation payable under section 16A.
- (iii) *Decision of the Commissioner to be final:* Subject to the decision of the High Court in cases in which an appeal is preferred under sub-section (2), the decision of the Commissioner under sub-section (1) shall be final and shall not be called in question in any court.

Saving as to certain rights

According to section 16F, the right of any person to claim compensation under section 16A shall be without prejudice to the right of such person to recover compensation payable under any other law for the time being in force; but no person shall be entitled to claim compensation more than once in respect of the same collapse of the house.

Power to make rules

Section 16 G empowers the State Government that it may, by notification in the Official Gazette, make rules for giving effect to the provisions of sections 16A to 16F (both inclusive). In particular, and without prejudice to the generality of the foregoing power, such rules may provide for –

- (i) the qualifications and conditions of service of Commissioners;
- (ii) the manner in which claims for compensation may be inquired into and determined by the Commissioner;
- (iii) the matters in respect of which any person may be chosen to assist the Commissioner under section 16D and the functions that may be performed by such person;
- (iv) generally for the effective exercise of any powers conferred on the Commissioner.

Other facilities

According to section 17, the State Government may make rules requiring that in every plantation the employer shall provide the workers with such number and type of umbrellas, blankets, rain coats or other like amenities for the protection of workers from rain or cold as may be prescribed.

Welfare officers

According to section 18, in every plantation wherein three hundred or more workers are ordinarily employed the employer shall employ such number of welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications and conditions of service of the welfare officers so employed.

Provisions as to Safety

According to section 18A, in every plantation, effective arrangements shall be made by the employer to provide for the safety of workers in connection with the use, handling, storage and transport of insecticides, chemicals and toxic substances.

The State Government may make rules for prohibiting or, restricting employment of women or adolescents in using or handling hazardous chemicals.

The employer shall appoint persons possessing the prescribed qualifications to supervise the use, handling, storage and transportation of insecticides, chemicals and toxic substances in his plantation. Every employer shall ensure that every worker in plantation employed for handling, mixing, blending and applying insecticides, chemicals and toxic substances, is trained about the hazards involved in different operations in which he is engaged, the various safety measures and safe work practices to be adopted in emergencies arising from spillage of such insecticides chemicals and toxic substances and such other matters as may be prescribed by the State Government.

Every worker who is exposed to insecticides, chemicals and toxic substances shall be medically examined periodically, in such manner as may be prescribed, by the State Government. Every employer shall maintain health record of every worker who is exposed to insecticides, chemicals and toxic substances which are used, handled, stored or transported in a plantation, and every such worker shall have access to such record.

Every employer shall provide –

- (a) washing, bathing and clock room facilities; and
- (b) protective clothing and equipment,

to every worker engaged in handling insecticides, chemicals or toxic substances in such manner as may be prescribed by the State Government.

Every employer shall display in the plantation a list of permissible concentrations of insecticides, chemicals and toxic substances in the breathing zone of the workers engaged in the handling and application of such insecticides, chemicals and toxic substances. Every employer shall exhibit such precautionary notices as may be prescribed by the State Government indicating the hazards of insecticides, chemicals and toxic substances.

Power of State Government to make rules (Section 18B) –

According to section 18B, the State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

- (a) the restriction on employment of women and adolescents for handling hazardous chemicals under sub-section (2) of section 18A;
- (b) the qualifications of supervisor appointed under sub-section (3) of section 18A;
- (c) the matters for training of workers under sub-section (4) of section 18A;
- (d) the medical examination of workers under sub-section (5) of section 18A;
- (e) the facilities and equipment to be provided to the workers engaged in handling insecticides, chemicals and toxic substances under sub-section (7) of section 18A;
- (f) the precautionary notices to be exhibited under sub-section (9) of section 18A.]

Hours and Limitation of Employment

(1) **Weekly hours:-** Section 19 states that except as otherwise expressly provided in this Act, no adult worker

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shall be required or allowed to work on any plantation in excess of forty-eight hours a week and no adolescent for more than twenty-seven hours a week. Where an adult worker works in any plantation on any day in excess of the number of hours constituting a normal working day or for more than forty-eight hours in any week, he shall, in respect of such overtime work, be entitled to twice the rates of ordinary wages.

It is provided that no such worker shall be allowed to work for more than nine hours on any day and more than fifty-four hours in any week. For any work done on any closed holiday in the plantation or on any day of rest, a worker shall be entitled to twice the rates of ordinary wages as in the case of overtime work.

(2) Weekly holidays: According to section 20, The State Government may by rules made in this behalf-(a) provide for a day of rest in every period of seven days which shall be allowed to all workers;(b)provide for the conditions subject to which, and the circumstances in which, an adult worker may be required or allowed to work overtime.

However, if a worker is willing to work on any day of rest which is not a closed holiday in the plantation, nothing contained in this section shall prevent him from doing so. It is provided that in so doing a worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

Explanation 1. –Where on any day a worker has been prevented from working in any plantation by reason of tempest, fire, rain or other natural causes, that day, may, if he so desires, be treated as his day of rest for the relevant period of seven days within the meaning of sub-section (1).*Explanation 2.* –Nothing contained in this section shall apply to any worker whose total period of employment including any day spent on leave is less than six days.

(3) Daily intervals for rest – According to section 21, the period of work on each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest for at least half an hour.

(4) Spreadover – According to section 22, the period of work of an adult worker in a plantation shall be so arranged that inclusive of his interval for rest under section 21 it shall not spreadover more than twelve hours including the time spent in waiting for work on any day.

(5) Notice of period of work – According to section 23, there shall be displayed and correctly maintained in every plantation a notice of periods of work in such form and manner as may be prescribed showing clearly for every day the periods during which the workers may be required to work.

No worker shall be required or allowed to work in any plantation otherwise than in accordance with the notice of periods of work displayed in the plantation. However, it is subject to the other provisions contained in this Act.

An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the day's work.

(6) Prohibition of employment of children (Section 24) – Section 24 prohibits a child from being employed to work in any plantation.

(7) Night work for women (Section 25) – Section 25 makes mandatory provision for employment of woman worker. It states that a woman worker shall be employed in any plantation only between the hours of 6 A.M. and 7 P.M. except otherwise with the permission of the State Government. It is provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any plantation.

(8) Non-adult workers to carry tokens – Section 26 provides for that an adolescent shall be required or allowed to work in any plantation only after a certificate of fitness granted with reference to him under section 27 is in the custody of the employer; and such adolescent carries with him while he is at work a token giving a references to such certificate.

(9) Certificate of fitness (Section 27) – According to section 27, a certifying surgeon shall, on the application

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of any young person or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed in the plantation if certified to be fit for work, or on the application of the employer or any other person on his behalf with reference to any young person intending to work, examine such person and ascertain his fitness for work as an adolescent. A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof, but may be renewed.

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

(10) Power to require medical examination: According to section 28, an inspector may, if he thinks necessary so to do, cause any young person employed in a plantation to be examined by a certifying surgeon.

LEAVE WITH WAGES

(1) Application of Chapter: According to section 29, the provisions of this Chapter shall not operate to the prejudice of any rights to which a worker may be entitled under any other law or under the terms of any award, agreement, or contract of service. It is provided that where such award, agreement or contract of service provides for a longer leave with wages than provided in this Chapter the worker shall be entitled only to such longer leave.

Explanation. –For the purpose of this Chapter leave shall not, except as provided in section 30, include weekly holidays or holidays for festivals or other similar occasions.

(2) Annual leave with wages:- According to section 30, every worker shall be allowed leave with wages for a number of days calculated at the rate of –

- (a) if an adult, one day for every twenty days of work performed by him, and
- (b) if a young person, one day for every fifteen days of work performed by him.

Explanation 1 –For the purposes of calculating leave under this sub-section, –

- (a) any day on which no work or less than half a day's work is performed shall not be counted; and
- (b) any day on which half or more than half a day's work is performed shall be counted as one day.

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

If a worker does not in any one period of twelve months take the whole of the leave allowed to him under this Act, any leave not taken by him shall be added to the leave to be allowed to him under that sub-section in the succeeding period of twelve months. A worker shall cease to earn any leave under this section when the earned leave due to him amounts to thirty days.

If the employment of a worker who is entitled to leave under this section is terminated by the employer before he has taken the entire leave to which he is entitled, the employer shall pay him the amount payable under section 31 in respect of the leave not taken, and such payment shall be made before the expiry of the second working day after such termination.

(3) Wages during leave period : According to section 31, For the leave allowed to a worker under section 30, he shall be paid, –

- (a) if employed wholly on a time-rate basis, at a rate equal to the daily wage payable to him immediately before the commencement of such leave under any law or under the terms of any award, agreement or contract of service, and
- (b) in other cases, including cases where he is, during the preceding twelve calendar months, paid partly

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on a time-rate basis and partly on a piece-rate basis, at the rate of the average daily wage calculated over the preceding twelve calendar months.

Explanation. –For the purposes of clause (b), the average daily wage shall be computed on the basis of his total full-time earnings during the preceding twelve calendar months, exclusive of any overtime earnings or bonus, if any, but inclusive of dearness allowance.

Sub-section (1A) states that in addition to the wages for the leave period at the rates specified in sub-section (1), a worker shall also be paid the cash value of food and other concessions, if any, allowed to him by the employer in addition to his daily wages unless these concessions are continued during the leave period.

Sub-section (2) provides that a worker who has been allowed leave for any period not less than] four days in the case of an adult and five days in the case of a young person under section 30 shall, before his leave begins, be paid his wages for the period of the leave allowed.

(4) Sickness and maternity benefits- According to section 32, subject to any rules that may be made in this behalf, every worker shall be entitled to obtain from his employer –

- (a) in the case of sickness certified by a qualified medical practitioner, sickness allowance, and
- (b) if a woman, in the case of confinement or expected confinement, maternity allowance, at such rate, for such period and at such intervals as may be prescribed.

The State Government may make rules regulating the payment of sickness or maternity allowance and any such rules may specify the circumstances in which such allowance shall not be payable or shall cease to be payable, and in framing any rules under this section the State Government shall have due regard to the medical facilities that may be provided by the employer in any plantation.

Accidents

(1) Notice of accident: According to section 32A, where in any plantation, an accident occurs which causes death or which causes any bodily injury to a worker by reason of which the worker injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed in this behalf, the employer thereof shall send notice thereof to such authorities, in such form, and within such time, as may be prescribed.

(2) Register of accidents –According to section 32B, the employer shall maintain a register of all accidents which occur in the plantation in such form and in such manner as may be prescribed.

(3) Compensation -According to section 32C, the employer shall give compensation to a worker in plantation in case of accident and the memorandum relating to such compensation shall be got registered by the employer with the Commissioner in accordance with the provisions of the Workmen’s Compensation Act, 1923.

PENALTIES AND PROCEDURE

A table of penalties is given below:

S. No.	Section	Contravention	Penalty (Mandatory punishment)
1.	33	Obstruction (i) whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination or inquiry authorised by or under this Act in relation to any plantation	Imprisonment- a term which may extend to six months or Fine- which may extend to ten thousand rupees or with both

	33	(ii) Whoever wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act	Imprisonment for a term which may extend to six months, or Fine-which may extend to ten thousand rupees, or with both.
2.	34	Use of false certificate of fitness Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 27 a certificate granted to another person under that section, or having been granted a certificate of fitness to himself knowingly allows it to be used, or allows an attempt to use it to be made by another person,	Imprisonment for a term which may extend to two months, or Fine which may extend to one thousand rupees, or With both.
3.	35	Contravention of provisions regarding employment of labour Whoever, except as otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made thereunder, prohibiting, restricting or regulating the employment of persons in a plantation	Imprisonment for a term which may extend to six months, or Fine which may extend to ten thousand rupees, or With both.
4.	36	Other offences Whoever contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided by or under this Act	Imprisonment for a term which may extend to six months, or Fine which may extend to ten thousand rupees, or With both.
5.	37	Enhanced penalty after previous conviction If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction..... It is provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.	Imprisonment which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both

Power of court to make orders (Section 37A) –

(1) Where an employer is convicted of an offence punishable under section 36, the court may, in addition to

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awarding any punishment, by order in writing, require him within such period as may be specified in the order (which the court may, if it thinks fit and on an application made in this behalf by the employer, from time to time, extend) to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, as the case may be, specified by the court, but if, on the expiry of such period or extended period, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and he shall, on conviction, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to three hundred rupees for every day after such expiry.

Exemption of employer from liability in certain cases (Section 38) –

Where an employer charged with an offence under this Act alleges that another person is the actual offender, he shall be entitled upon complaint made by him in this behalf to have, on giving to the prosecutor in this behalf three clear days, notice in writing of his intention so to do, that other person brought before the Court on the day appointed for the hearing of the case and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court that –

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

the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be acquitted:

Provided that –

- (a) the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges to be the actual offender and by the prosecutor, and
- (b) if, in spite of due diligence, the person alleged as the actual offender cannot be brought before the Court on the day appointed for the hearing of the case, the Court shall adjourn the hearing thereof from time to time so, however, that the total period of such adjournment does not exceed three months, and if, by the end of the said period, the person alleged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the case against the employer.

Cognizance of offences (Section 39)

No Court shall take cognizance of any offence under this Act except on a complaint made by any worker or an office bearer of a trade union of which such worker is a member or an inspector and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Protection of action taken in good faith (Section 39A)

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Limitation of prosecutions (Section 40)

No Court shall take cognizance of an offence punishable under this Act unless the complaint thereof has been made or is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

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Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

MISCELLANEOUS

Power to give directions

According to section 41, the Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

Power to exempt

According to section 42, the State Government may, by order in writing, exempt, subject to such conditions and restrictions as it may think fit to impose, any employer or class of employers from all or any of the provisions of this Act. It is provided that no such exemption other than an exemption from section 19 shall be granted except with the previous approval of the Central Government.

General power to make rule

According to section 43, the State Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act. It is provided that the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897, shall not be less than six weeks from the date on which the draft of the proposed rules was published (i.e. a minimum six week time shall be given after which draft of the proposed rule will be considered).

LESSON ROUND UP

- The Plantations Labour Act (PLA) seeks to provide for the welfare of labour and to regulate the conditions of workers in plantations.
- This Act empowers the State Governments to make rules and appoint various authorities for implementing the provisions of the Act.
- The Act defines an employer as, the person who has the ultimate control over the affairs of the plantation and where the affairs of the plantation are entrusted to any other person, such other person shall be the employer in relation to that plantation.
- The definition of worker includes a person employed on contract for more than sixty days in a year but does not include a medical officer employed in the plantation or any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed rupees ten thousand;
- The definition of plantation defines it to mean every plantation to which Act applies wholly or partly and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948 apply.
- The Act makes it mandatory for every employer to get their plantation registered within 60 days of its coming into existence.
- The Act makes it obligatory for every employer to provide in their plantation drinking water, conservancy, medical facilities, canteen, creches, medical facilities and even educational facilities in accordance with the provisions of the Act and rules made by the State Government.

Section III

The Industrial Employment (Standing Orders) Act, 1946

LESSON OUTLINE

- Learning Objectives
- Object and Scope of the Act
- Appropriate Government
- Certifying Officer
- Industrial Establishment
- Wages and Workmen
- Certification of Draft Standing Orders
- Appeals
- Date of Operation of Standing Orders
- Posting of Standing Orders
- Duration and Modification of Standing Orders
- Payment of Subsistence Allowance
- Interpretation of Standing Orders
- Temporary Application of Model Standing Orders
- Compliances under the Act
- The Schedule to the Act

LEARNING OBJECTIVES

'Standing Orders' defines the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimising friction between the management and workers in industrial undertakings. The Industrial Employment (Standing Orders) Act requires employers in industrial establishments to clearly define the conditions of employment by issuing standing orders duly certified. It applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months.

Model standing orders issued under the Act deal with classification of workmen, holidays, shifts, payment of wages, leaves, termination etc. The text of the Standing Orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

Students must be conversant with the terms and conditions of the industrial employment standing orders which the employees must know before they accept the employment.

The Industrial Employment (Standing Orders) Act, 1946 requires employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

OBJECT AND SCOPE OF THE ACT

The objects of the Act are: Firstly, to enforce uniformity in the conditions of services under different employers in different industrial establishments. Secondly, the employer, once having made the conditions of employment known to his employed workmen cannot change them to their detriment or to the prejudice of their rights and interests. Thirdly, with the express or written conditions of employment, it is open for the prospective worker to accept them and join the industrial establishment. Fourthly, for maintaining industrial peace and continued productivity, the significance of the express written conditions of employment cannot be minimised or exaggerated.

The object of the Act is to have uniform standing orders in respect of matters enumerated in the Schedule to the Act, applicable to all workers irrespective of their time of appointment (*Barauni Refinery Pragati Sheel Parishad v. Indian Oil Corporation Ltd.* (1991) 1 SCC 4).

The Act extends to the whole of India and applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months. Further, the appropriate Government may, after giving not less than 2 months notice of its intention to do so, by notification in the Official Gazette, extend the provisions of this Act to any industrial establishment employing such number of persons less than 100 as may be specified in the notification.

However, the Act does not apply to (1) any industry to which provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, apply; or (2) any industrial establishment to which provisions of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply. Notwithstanding anything contained in the said Act, the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.

Certified standing orders become part of the statutory and not contractual terms and conditions of service and are binding on both the employer and the employees (*Derby Textiles Ltd. v. Karamchari and Shramik Union* (1991) 2 LLN 774).

Apart from the above stated provisions of Section 1 of the Act limiting the scope, extent and application of the Act, the following Sections further limit its application:

Section 13-B of the Act specifically exempt certain industrial establishments from the purview of the Act, viz., the industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Service (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette apply.

Further, Section 14 provides that the appropriate Government may by notification in the Official Gazette exempt conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

IMPORTANT DEFINITIONS

Appellate Authority

It means an authority appointed by the appropriate Government by notification in the Official Gazette, to exercise in such area, as may be specified in the notification the functions of an appellate authority under this Act. [Section 2(a)]

Appropriate Government

“Appropriate Government” means in respect of industrial establishments under the control of the Central

Lesson 4 – Section III ■ The Industrial Employment (Standing Orders) Act, 1946 **333**

Government or a Railway administration or in a major port, mine or oilfield, the Central Government, and in all other cases the State Government:

Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties. [Section 2(b)]

Certifying Officer

“Certifying Officer” means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act. [Section 2(c)]

Employer

“Employer” means the owner of an industrial establishment to which this Act applies and also includes the following persons:

- (i) A manager so named under Section 7(1)(f) of the Factories Act, 1948.
- (ii) The head of the department or any authority appointed by the Government in any industrial establishment under its control.
- (iii) Any person responsible to the owner for the supervision and control of any other industrial establishment which is not under the control of Government. [Section 2(d)]

Industrial Establishment

It means

- (i) an industrial establishment defined by Section 2(ii) of the Payment of Wages Act, 1936, or
- (ii) a factory as defined by Section 2(m) of the Factories Act, 1948, or
- (iii) a railway as defined by Section 2(4) of the Indian Railways Act, 1890, or
- (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen. [Section 2(e)]

Standing Orders

“Standing Orders” means rules relating to matters set out in the Schedule to the Act. [Section 2(g)]

Wages and Workmen

The terms “Wages” and “Workmen” have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947. [Section 2(i)]

CERTIFICATION OF DRAFT STANDING ORDERS

Submission of draft Standing Orders by employers to the certifying officer

Section 3 provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.

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Such draft Standing Orders shall be in conformity with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.

The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

If the industrial establishment are of similar nature, a group of employers owning those industrial establishment may submit a joint draft of Standing Orders subject to such conditions as may be prescribed.

Conditions for certification of Standing Orders

According to Section 4 of the Act, Standing Orders shall be certifiable if

- (a) provision is made therein for every matter stated in the Schedule to the Act which is applicable to industrial establishment; and
- (b) the Standing Orders are otherwise in conformity with the provisions of the Act.

Fairness or reasonableness of Standing Orders

It is further provided in Section 4 that it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders.

The Act, has imposed a duty on the Certifying Officer, to consider the reasonableness and fairness of the Standing Orders before certifying the same. The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same. Certification of any such Standing Order would be without jurisdiction. The Certifying Officer has a mandatory duty to discharge and he acts in a quasi-judicial manner. Where a matter is not included in the Schedule and the concerned appropriate Government has not added any such item to the Schedule, neither the employer has a right to frame a Standing Order enabling him to transfer his employees nor the Certifying Officer has jurisdiction to certify the same. The consent of the employees to such standing orders would not make any difference (*Air Gases Mazdoor Sangh, Varanasi v. Indian Air Gases Ltd.*, 1977 Lab. I.C. 575).

Certification of Standing Orders

Procedure to be followed by the Certifying Officer : Section 5 of the Act lays down the procedure to be followed by Certifying Officer. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in such manner as may be prescribed, together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders. These objections are required to be submitted to him within 15 days from the receipt of the notice. On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same. A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.

Effect of certification: The Act is a special law in regard to matters enumerated in the Schedule and the regulations made by the employer with respect to any of those matters. These are of no effect unless such regulations are notified by the Government under Section 13B or certified by the Certifying Officer under Section 5 of the Act.

Register of Standing Orders: Section 8 empowers the Certifying Officer to file a copy of all the Standing

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Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefor on payment of the prescribed fee.

PPEALS

According to Section 6 of the Act, the order of the Certifying Officer can be challenged by any employer, workman, trade union or any other prescribed representatives of the workmen, who can file an appeal before the appellate authority within 30 days from the date on which copies are sent to employer and the workers representatives. The appellate authority, whose decision shall be final, has the power to confirm the Standing Orders as certified by the Certifying Officer or to amend them. The appellate authority is required to send copies of the Standing Orders as confirmed or modified by it, to the employer or workers representatives within 7 days of its order.

The appellate authority has no power to set aside the order of Certifying Officer. It can confirm or amend the Standing Orders (*Khadi Gram Udyog Sangh v. Jit Ram*, 1975-2 L.L. J. 413). The appellate authority can not remand the matter for fresh consideration. [*Kerala Agro Machinery Corporation*, (1998) 1 LLN 229 (Ker)]

DATE OF OPERATION OF STANDING ORDERS

Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives. (Section 7)

POSTING OF STANDING ORDERS

The text of the Standing Orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed. (Section 9)

DURATION AND MODIFICATION OF STANDING ORDERS

Section 10 prohibits an employer to modify the Standing Orders once they are certified under this Act except on agreement between the employer and the workmen or a trade union or other representative body of the workmen. Such modification will not be affected until the expiry of 6 months from the date on which the Standing Orders were last modified or certified as the case may be. This Section further empowers an employer or the workmen or a trade union or other representative body of the workmen to apply to the Certifying Officer to have the Standing Orders modified by making an application to the Certifying Officer. Such application should be accompanied by 5 copies of the proposed modifications and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of such agreement should be filed along with the application.

Workmen are entitled to apply for modification of the Standing Orders. (1977-II Labour Law Journal 503). Section 10(2) does not contain any time limit for making modification application. It can be made at any time. [*Indian Express Employees Union v. Indian Express (Madurai) Ltd.* (1998) 1 Cur LR 1161 (Ker)]

PAYMENT OF SUBSISTENCE ALLOWANCE

Statutory provision for payment of subsistence allowance has been made under Section 10A of the Act which was inserted by the amending Act (No. 18) of 1982. Section 10A provides as follows:

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Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance

- (a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension: and
- (b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

Any dispute regarding subsistence allowance may be referred by the workman or the employer, to the Labour Court constituted under the Industrial Disputes Act, 1947.

However, if the provisions relating to payment of subsistence allowance under any other law for the time being in force are more beneficial, then the provisions of such other law shall be applicable.

INTERPRETATION OF STANDING ORDERS

Section 13-A of the Act provides that the question relating to application or interpretation of a Standing Order certified under this Act, can be referred to any Labour Court constituted under the Industrial Disputes Act, 1947 by any employer or workman or a trade union or other representative body of the workmen. The Labour Court to which the question is so referred, shall decide it after giving the parties an opportunity of being heard. Such decision shall be final and binding on the parties.

TEMPORARY APPLICATION OF MODEL STANDING ORDERS

Section 12-A provides that for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the Standing Orders as finally certified under this Act come into operation in that establishment, the prescribed model Standing Orders shall be deemed to be adopted in that establishment and the provisions of Sections 9, 13(2) and 13-A shall apply.

Where there are two categories of workers, daily rated and monthly rated but the certified Standing Orders are in respect of daily rated workmen only, then Model Standing Orders can be applied to monthly rated workmen (*Indian Iron and Steel Co. Ltd. v. Ninth Industrial Tribunal*, 1977 Lab. I.C. 607).

In case where there are no certified Standing Orders applicable to an industrial establishment, the prescribed Model Standing Orders shall be deemed to be adopted and applicable (1981-II Labour Law Journal 25).

THE SCHEDULE

[See Sections 2(g) and 3(2)]

Matters to be provided in Standing Orders under this Act

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.

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8. Termination of employment, and the notice thereof to be given by employer and workmen.
 9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
 10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
- 10A. Additional matters to be provided in Standing Orders in coal mines.
1. Medical aid in case of accident.
 2. Railway travel facilities.
 3. Method of filling vacancies.
 4. Transfers.
 5. Liability of manager of the establishment or mine.
 6. Service Certificate.
 7. Exhibition and supply of Standing Orders.
- 10B. Additional matters to be provided in Standing Orders relating to all industrial establishments.
1. Service record-matters relating to service card, token tickets, certification of services, change of residential address of workers and record of age.
 2. Confirmation.
 3. Age of retirement.
 4. Transfer.
 5. Medical aid in case of accidents.
 6. Medical examination.
 7. Secrecy.
 8. Exclusive services.
 9. Any other matter which may be prescribed.

In a significant judgement on gender justice, the Supreme Court has ordered that employers should include strict prohibitions on sexual harassment of employees and appropriate penalties against the offending employees in Standing Orders.

LESSON ROUND UP

- The Act requires the employers in industrial establishment to define with sufficient precision the conditions of employment under them and make the said conditions known to workmen employed by them.
- It applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months.
- The appropriate Government may, after giving not less than 2 months notice of its intention to do so, by notification in the Official Gazette, extend the provisions of this Act to any industrial establishment employing such number of persons less than 100 as may be specified in the notification.

- Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.
- Such draft Standing Orders shall be in conformity with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.
- On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in the prescribed manner together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders.
- These objections are required to be submitted to him within 15 days from the receipt of the notice.
- On receipt of such objections, he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same.
- A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.
- The Certifying Officer has been empowered to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefor on payment of the prescribed fee.
- Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives.

SELF TEST QUESTIONS

1. Define the term Standing Orders and explain their importance in the light of decided cases.
2. Explain the Object and Scope of the Industrial Employment (Standing Orders) Act, 1946.
3. Explain the procedure for certification of Standing Orders.
4. Whether the certified Standing Orders could be modified? Explain.
5. List out the matters to be provided in Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.

Section IV

The Trade Union Act, 1926

LESSON OUTLINE

- Learning Objectives
- Introduction
- Trade Union
- Executive
- Office bearer
- Registered Office of Trade Union
- Trade Dispute
- Registration of Trade Union
- Mode of Registration
- Rules of Trade Union
- Certificate of Registration
- Cancellation of Registration
- Return of Trade Union
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Trade Union means “any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions”.

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

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

In this lesson, students will be acclimatized with the legal frame work stipulated under the Trade Unions Act, 1926.

The legislation regulating the trade unions is the Trade Unions Act, 1926.

INTRODUCTION

Trade Unions Act, 1926 deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilised properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class. The Act is applicable not only to the union of workers but also to the association of employers. It extends to whole of India.

Definition

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under:

Executive means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted.[Section 2 (a)]

Office-bearer in the case of a trade union, includes any member of the executive thereof, but does not include an auditor.[Section 2 (b)]

Registered office means that office of a trade union which is registered under this Act as the head office thereof. [Section 2 (d)]

Registered trade union means a trade union registered under this Act.[Section 2 (e)]

Trade dispute means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labor, of any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.[Section 2 (g)]

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

Mode of registration

Section 4 provides that any seven or more members of a Trade Union may by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union .

However, no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.

Application for registration

Section 5 stipulates that every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:

- the names, occupations and address of the members making application;
- in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
- the name of the Trade Union and the address of its head office; and
- the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

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Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed

Provisions contained in the rules of a Trade Union

A Trade Union shall not be entitled to registration under the Act, unless the executive thereof is constituted in accordance with the provisions of the Act, and the rules thereof provide for the following matters, namely:—

- the name of the Trade Union;
- the whole of the objects for which the Trade Union has been established;
- the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
- the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of Trade Union;
- the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers required under section 22 to form the executive of the Trade Union;
- the payment of a minimum subscription by members of the Trade Union
- the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
- the manner in which the rules shall be amended, varied or rescinded;
- the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected and removed;
- the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;
- the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and
- the manner in which the Trade Union may be dissolved

Certificate of Registration

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of the Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under the Act.

Incorporation of registered Trade Union

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

Cancellation of registration

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar on the following grounds –

- on the application of the Trade Union to be verified in such manner as may be prescribed;
- if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing for any matter provision for which is required by section 6;
- if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members:

Returns

Section 28 of the Act provides that there shall be sent annually to the Registrar, on or before such date as may be prescribed, **a general statement**, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

Together with the general statement there shall be sent to the Registrar a statement showing changes of office-bearers made by the Trade Union during the year to which the general statement refers together also with a copy of the rules of the Trade Union corrected upto the date of the despatch thereof to the Registrar. **A copy of every alteration** made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

For the purpose of examining the abovementioned documents the Registrar, or any officer authorised by him by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers, and other documents, relating to a Trade Union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than ten miles from the registered office of a Trade Union.

LESSON ROUND UP

- Trade union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.
- Any seven or more members of a Trade Union may by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of the Act with respect to registration, apply for registration of the Trade Union .
- Every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the specified particulars.
- The Registrar, on being satisfied that the Trade Union has complied with all the requirements of the Act in regard to registration, shall register the Trade Union and issue a certificate of registration .
- Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

Lesson 5

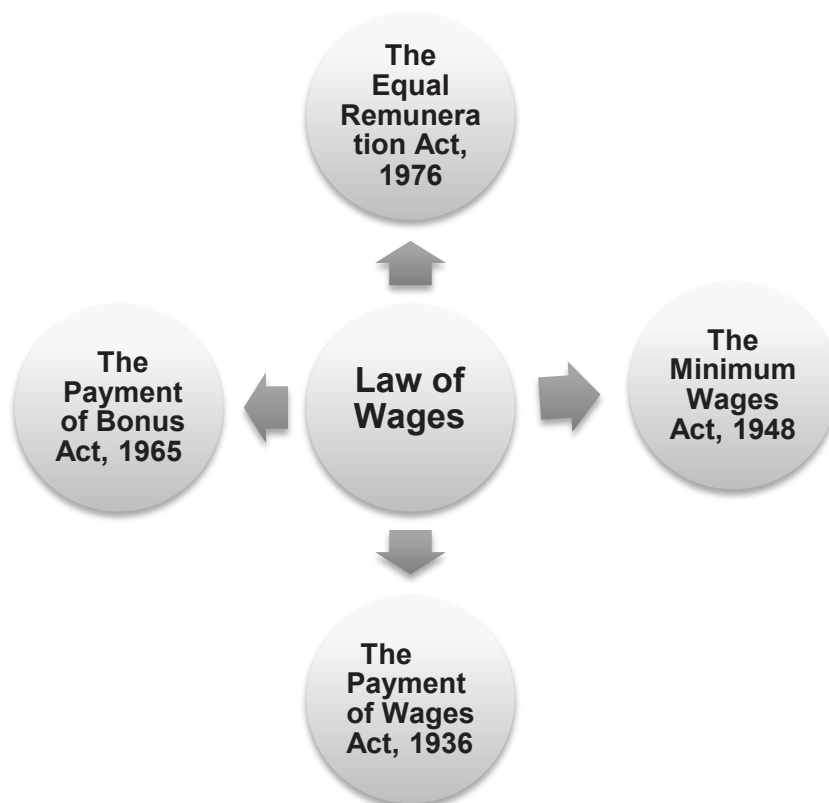
Law of Wages

Wages are among the most important conditions of work and a major subject of collective bargaining. Wages in the organized sector is generally determined through negotiations and settlements between the employer and the employees. The minimum rates of wages are fixed both by Central and State Governments in the scheduled employments falling within their respective jurisdictions under the provisions of the Minimum Wages Act, 1948. The Act binds the employers to pay the workers the minimum wages so fixed from time to time.

The Payment of Wages Act, 1936 was enacted to regulate payment of wages to workers employed in industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them.

The Payment of Bonus Act, 1965 provides for the payment of bonus to persons employed in certain establishments, employing 20 or more persons, on the basis of profits or on the basis of production or productivity and for matters connected therewith.

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination and also prevent discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer. The provisions of the Act have been extended to all categories of employment.



Section I

Payment of Wages Act, 1936

LESSON OUTLINE

- Learning objectives
- Object of the Act
- Employed Person
- Employer
- Factory
- Industrial or other establishment
- Responsibility for payment of wages
- Fixation of wage period
- Time of payment of wages
- Wages to be paid in current coin or currency notes
- Deduction from wages
- Maintenance of registers and records
- Claims
- Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against unauthorized deductions and/or unjustified delay caused in paying wages to them. It applies to the persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly, through a sub-contractor.

In order to bring the law in uniformity with other labour laws and to make it more effective and practicable, the payment of wages Act was last amended in 2005. The amendment enhancing the wage ceiling per Month with a view to covering more employed persons and substitute the expressions “the Central Government” or “a State Government” by the expression “appropriate Government”. Amendment also strengthening compensation and penal provisions made more stringent by enhancing the quantum of penalties by amending of the Act.

The Central Government is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the State Governments are responsible for it in factories and other industrial establishments.

Therefore, students should be well versed in the Payment of Wages Act, 1936.

The Payment of Wages Act, 1936 regulates the payment of wages of certain classes of employed persons.

OBJECT AND SCOPE

The main object of the Act is to eliminate all malpractices by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorised deductions. In order to enlarge its scope and provide for more effective enforcement the Act empowering the Government to enhance the ceiling by notification in future. The Act extends to the whole of India.

Definitions

“**Employed person**” includes the legal representative of a deceased employed person. {Section 2(ia)}

“**Employer**” includes the legal representative of a deceased employer. {Section 2(ib)}

“**Factory**” means a factory as defined in clause (m) of section 2 of the Factories Act 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof. {Section 2(ic)}

“**Industrial or other establishment**” means any –

- (a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- (aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- (b) dock wharf or jetty;
- (c) inland vessel mechanically propelled;
- (d) mine quarry or oil-field;
- (e) plantation;
- (f) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;
- (g) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;
- (h) any other establishment or class of establishments which the Appropriate Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette. {Section 2(ii)}

“**Wages**” means all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled by payable to a person employed in respect of his employment or of work done in such employment and includes –

- (a) any remuneration payable under any award or settlement between the parties or order of a court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under

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any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;

- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

but does not include –

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- (2) the value of any house-accommodation or of the supply of light water medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of Appropriate Government;
- (3) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d). {Section 2(vi)}

Responsibility for payment of wages

Section 3 provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act. However, in the case of persons employed in factories if a person has been named as the manager of the factory; in the case of persons employed in industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments; in the case of persons employed upon railways if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned; in the case of persons employed in the work of contractor, a person designated by such contractor who is directly under his charge; and in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

It may be noted that as per section 2(ia) “employer” includes the legal representative of a deceased employer.

Fixation of wage period

As per section 4 of the Act every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

Time of payment of wages

Section 5 specifies the time payment of wages. The wages of every person employed upon or in any railway factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

The wages of every person employed upon or in any other railway factory or industrial or other establishment shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable. However, in the case of persons employed on a dock wharf or jetty or in a mine the balance

of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded as the case may be shall be paid before the expiry of the seventh day from the day of such completion.

Where the employment of any person is terminated by or on behalf of the employer the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated. However, the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.

The Appropriate Government may by general or special order exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to persons employed upon any railway or to persons employed as daily-rated workers in the Public Works Department of the Appropriate Government from the operation of this section in respect of wages of any such persons or class of such persons.

All payments of wages shall be made on a working day.

Wages to be paid in current coin or currency notes or by cheque or crediting in bank account

As per section 6 of the Act, all wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee:

Provided that the appropriate Government may, by notification in the Official Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.

Deductions from the wages of an employee

Section 7 of the Act allows deductions from the wages of an employee on the account of the following:- (i) fines; (ii) absence from duty; (iii) damage to or loss of goods expressly entrusted to the employee; (iv) housing accommodation and amenities provided by the employer; (v) recovery of advances or adjustment of over-payments of wages; (vi) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof; (vii) subscriptions to and for repayment of advances from any provident fund; (viii) income-tax; (ix) payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office; (x) deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.

Fines

Section 8 deals with fines. It provides that :

- (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of the State Government or of the prescribed authority may have specified by notice under sub-section (2).
- (2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places.
- (3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- (4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.

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- (5) No fine shall be imposed on any employed person who is under the age of fifteen years.
- (6) No fine imposed on any employed person shall be recovered from him by installments or after the expiry of ninety days from the day on which it was imposed.
- (7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- (8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

It may be noted that when the persons employed upon or in any railway, factory or industrial or other establishment are part only of a staff employed under the same management all such realisations may be credited to a common fund maintained for the staff as a whole provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Maintenance of registers and records

Section 13A provides that every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in prescribed form. Every register and record required to be maintained shall be preserved for a period of three years after the date of the last entry made therein.

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

Section 15 deals with claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. It provides that the appropriate Government may, by notification in the Official Gazette, appoint-

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as,-
 - (i) Regional Labour Commissioner; or
 - (ii) Assistant Labour Commissioner with at least two years' experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
- (d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

Sub-section (2) of section 15 provides that where contrary to the provisions of the Act any deduction has been

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made from the wages of an employed person or any payment of wages has been delayed such person himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person acting with the permission of the authority appointed under sub-section (1) may apply to such authority for a direction under sub-section (3) :

However, every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be. Any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

As per sub-section (3) when any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees.

A claim under the Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority. It may be noted that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner.

No direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or
- (c) the failure of the employed person to apply for or accept payment.

As per sub-section (4) if the authority hearing an application under this section is satisfied that the application was either malicious or vexatious the authority may direct that a penalty not exceeding three hundred seventy five Rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section the authority may direct that a penalty not exceeding three hundred seventy five Rupees be paid to the State Government by the employer or other person responsible for the payment of wages.

LESSON ROUND UP

- The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them. It applies to the persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly, through a sub-contractor.
- Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act and every person responsible for the payment of wages shall fix

Section II

Minimum Wages Act, 1948

LESSON OUTLINE

- Learning Objectives
- Object and Scope
- Important Definitions
- Fixation of minimum rates of wages
- Revision of minimum wages
- Manner of fixation/revision of minimum wages
- Minimum rate of wages
- Procedure for fixing and revising minimum wages
- Advisory Board
- Central Advisory Board
- Minimum Wages – Whether to be paid in cash or kind
- Payment of minimum wages is obligatory on employer
- Fixing hours for a normal working day
- Payment of overtime
- Wages of worker who works less than normal working
- Minimum time – Rate Wages for piece work
- Maintenance of Registers and records
- Authority & claims
- Offences Penalties
- Compliances under the Act
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The Minimum Wages Act was enacted primarily to safeguard the interests of the workers engaged in the unorganized sector. The Act provides for fixation and revision of minimum wages of the workers engaged in the scheduled employments. Under the Act, both central and State Governments are responsible, in respect of scheduled employments within their jurisdictions to fix and revise the minimum wages and enforce payment of minimum wages.

In case of Central sphere, any Scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oil-field or major port, or any corporation established by a Central Act, the Central Government is the appropriate Government while in relation to any other Scheduled employment, the State Government is the appropriate Government. The Act is applicable only for those employments, which are notified and included in the schedule of the Act by the appropriate Governments. According to the Act, the appropriate Governments review/revise the minimum wages in the scheduled employments under their respective jurisdictions at an interval not exceeding five years.

However, there is large scale variation of minimum wages both within the country and internationally owing to differences in prices of essential commodities, paying capacity, productivity, local conditions, items of the commodity basket, differences in exchange rates etc.

The objective of this study lesson is to thoroughly acclimatize the students with the law relating to minimum wages.

The Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as 'Scheduled Employments'.

OBJECT AND SCOPE OF THE LEGISLATION

The Minimum Wages Act was passed in 1948 and it came into force on 15th March, 1948. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi v. State of Kerala* (A.I.R. 1962 SC 12), as follows:

“What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”.

According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as ‘Scheduled Employments’. The Act extends to whole of India.

IMPORTANT DEFINITIONS

Appropriate Government [Section 2(b)]

“Appropriate Government” means –

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

Employee [Section 2(i)]

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

Employer [Section 2(e)]

“Employer” means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except, in sub-section (3) of Section 26 –

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

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rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person of authority is so appointed, the Head of the Department;

- (iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority;
- (iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner of the supervision and control of the employees or for the payment of wages.

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

Scheduled employment [Section 2(g)]

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

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

Wages [Section 2(h)]

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

- (i) the value of:
 - (a) any house accommodation, supply of light, water medical;
 - (b) any other amenity or any service excluded by general or social order of the appropriate Government;
- (ii) contribution by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- (iii) any traveling allowance or the value of any traveling concession;
- (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment;
- (v) any gratuity payable on discharge.

FIXATION OF MINIMUM RATES OF WAGES [SECTION 3(1)(A)]

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

The constitutional validity of Section 3 was challenged in *Bijoy Cotton Mills v. State of Ajmer, 1955 S.C.* 3. The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view to carrying out one of the Directive Principles of the State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9.

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

REVISION OF MINIMUM WAGES

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

MANNER OF FIXATION/REVISION OF MINIMUM WAGES

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

- (a) time work, known as a Minimum Time Rate;
- (b) piece work, known as a Minimum Piece Rate;
- (c) a "Guaranteed Time Rate" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and
- (d) a "Over Time Rate" i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

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

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

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

- (i) by the hour,

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

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

However, where wage period has been fixed in accordance with the Payment of Wages Act, 1936 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

MINIMUM RATE OF WAGES (SECTION 4)

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

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or
- (ii) a basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates where so authorized; or
- (iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

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

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (SECTION 5)

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

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

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advise of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Note: It was held in *Edward Mills Co. v. State of Ajmer* (1955) A.I.R. SC, that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations.

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

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

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

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LLJ 267 Kar.].

ADVISORY BOARD

The advisory board is constituted under Section 7 of the Act by the appropriate Government for the purpose of co-ordinating the work of committees and sub-committees appointed under Section 5 of the Act and advising the appropriate Government generally in the matter of fixing and revising of minimum rates of wages. According to Section 9 of the Act, the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman by the appropriate Government.

It is not necessary that the Board shall consist of representatives of any particular industry or of each and every scheduled employment; *B.Y. Kashatriya v. S.A.T. Bidi Kamgar Union* A.I.R. (1963) S.C. 806. An independent person in the context of Section 9 means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. In the case of *State of Rajasthan v. Hari Ram Nathwani*, (1975) SCC 356, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.

CENTRAL ADVISORY BOARD

Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

MINIMUM WAGE – WHETHER TO BE PAID IN CASH OR KIND

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments. Such Government can also authorize for supply of essential commodities at concessional rates. Where payment is to be made in kind, the cash value of the wages in kind or in the shape of essential commodities on concessions shall be estimated in the prescribed manner.

PAYMENT OF MINIMUM WAGES IS OBLIGATORY ON EMPLOYER (SECTION 12)

Payment of less than the minimum rates of wages notified by the appropriate Government is an offence. Section 12 clearly lays down that the employer shall pay to every employee engaged in a scheduled employment under him such wages at a rate not less than the minimum rate of wages fixed by the appropriate Government under

Section 5 for that class of employment without deduction except as may be authorized, within such time and subject to such conditions, as may be prescribed.

FIXING HOURS FOR A NORMAL WORKING DAY (SECTION 13)

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may –

- (a) fix the number of work which shall constitute a normal working day, inclusive of one or more specified intervals;
- (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such day of rest;
- (c) provide for payment of work on a day of rest at a rate not less than the overtime rate.

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

- (a) Employees engaged on urgent work, or in any emergency, which could not have been foreseen or prevented;
- (b) Employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- (c) Employees whose employment is essentially intermittent;
- (d) Employees engaged in any work which for technical reasons, has to be completed before the duty is over;
- (e) Employees engaged in any work which could not be carried on except at times dependent on the irregular action of natural forces.

For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of the employee, or if these be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week; *Benode Bihari Shah v. State of W.B.* 1976 Lab I.C. 523 (Cal).

PAYMENT OF OVERTIME (SECTION 14)

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages. (1998 LLJ I SC 815).

WAGES OF A WORKER WHO WORKS LESS THAN NORMAL WORKING DAY (SECTION 15)

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.

Provided that he shall not receive wages for full normal working day –

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- (i) if his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, and
- (ii) such other cases and circumstances as may be prescribed.

MINIMUM TIME – RATE WAGES FOR PIECE WORK (SECTION 17)

Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate.

MAINTENANCE OF REGISTERS AND RECORDS (SECTION 18)

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form containing particulars in the place of work. He is also required to maintain wage books or wage-slips as may be prescribed by the appropriate Government and the entries made therein will have to be authenticated by the employer or his agent in the manner prescribed by the appropriate Government.

AUTHORITY AND CLAIMS (SECTION 20-21)

Under Section 20(1) of the Act, the appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or of wages at the rate of overtime work:

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as Labour Commissioner for any region; or
- (c) any officer of the State Government not below the rank of Labour Commissioner; or
- (d) any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

The authority so appointed shall have jurisdiction to hear and decide claim arising out of payment of less than the minimum rates of wages or in respect of the payment remuneration for days of rest or for work done on such days or for payment of overtime.

The provisions of Section 20(1) are attracted only if there exists a disputed between the employer and the employee as to the rates of wages. Where no such dispute exists between the employer and employees and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to an employee or not, the appropriate remedy is provided by the Payment of Wages Act, 1936.

OFFENCES AND PENALTIES

Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

While imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

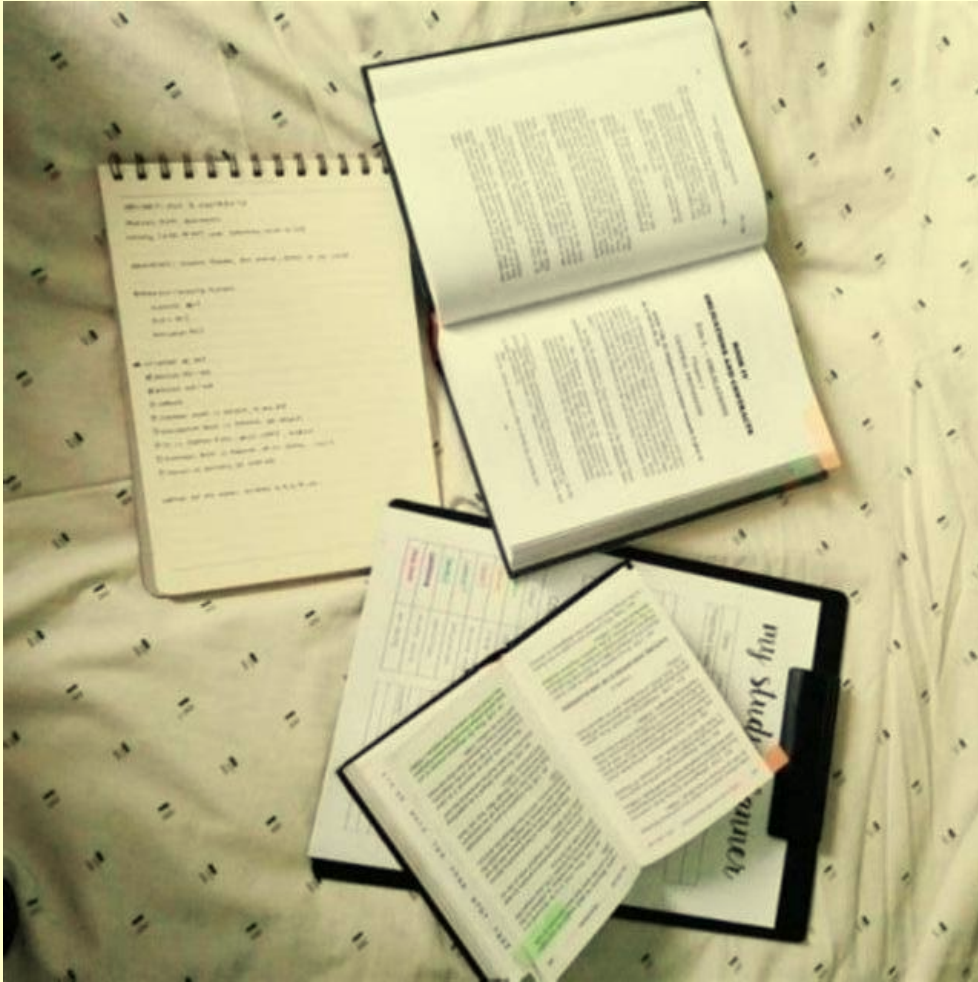
1. The Establishment is covered by the definition “Scheduled Employment” with effect from.....
2. The Government revised the minimum wages once/twice/ thrice during the financial year under reference and the Establishment has paid to all its employees minimum wages in accordance with the rates at respective point of time and at the respective rates specified in notification under Section 5 of the MWA.
3. The Establishment has issued wage slips to all its employees in respect of each of the wage period.....
4. Where the services of any employee were terminated for any reason whatsoever, the wages were paid within two working days from the date of such termination.
5. The Establishment did not make any unauthorized deduction from the wages of any of its employees. Further, the deductions if any, made were within the limits of fifty percent (or seventy five percent in case of cooperatives) of wages earned by such employees during the period under reference.
6. Where the Establishment was constrained to impose any fine or deduct wages on account of damages caused by any employee, the latter was given an opportunity of being heard in the presence of a neutral person and was also communicated the amount of fine imposed or deduction made from the wages.
7. The Establishment has eight working hours per day, inclusive of half an hour of interval.
8. All claims under Section 20 of the MWA were paid within the time limit specified in the Order.

LESSON ROUND UP

- The Minimum Wages Act empowers the Government to fix minimum wages for employees working in specified employments. It provides for review and revision of minimum wages already fixed after suitable intervals not exceeding five years.
- It extends to the whole of India and applies to scheduled employments in respect of which minimum rates of wages have been fixed under this Act.
- The appropriate government shall fix the minimum rates of wages payable to employees employed in a scheduled employment.
- It may review at such intervals not exceeding five years the minimum rates of wages so fixed, and revise the minimum rates if necessary.
- The employer shall pay to every employee in a scheduled employment under him wages at the rate not less than the minimum rates of wages fixed under the Act.
- The Act also provides for regulation of working hours, overtime, weekly holidays and overtime wages. Period and payment of wages, and deductions from wages are also regulated.
- The Act provides for appointment of the authorities to hear and decide all claims arising out of payment less than the minimum rates of wages or any other monetary payments due under the Act. The presiding officers of the Labour court and Deputy Labour Commissioners are the authorities appointed.

SELF TEST QUESTIONS

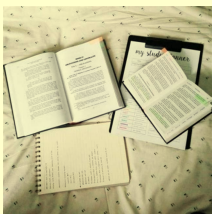
1. Discuss the object and scope of the Minimum Wages Act.
2. Who is authorized to fix minimum wages and in what manner?



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Section III

Payment of Bonus Act, 1965

LESSON OUTLINE

- Learning Objectives
- Object and Scope
- Application of the Act
- Act not to apply to certain classes of employees
- Allocable Surplus
- Available Surplus
- Establishment in Private Sectors
- Establishment in Public Sectors
- Calculation of Amount Payable as Bonus
- Computation of Gross Profits
- Deductions from Gross Profits
- Calculation of Direct Tax Payable by the Employer
- Computation of Available Surplus
- Eligibility for Bonus and its Payment
- Bonus linked with Production or Productivity
- Power of exemption
- Penalties
- Offences by companies
- Compliances under the Act
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The term “bonus” is not defined in the Payment of Bonus Act, 1965. Webster International Dictionary defines bonus as “something given in addition to what is ordinarily received by or strictly due to the recipient”. The Oxford Concise Dictionary defines it as “something to the good into the bargain (and as an example) gratuity to workmen beyond their wages”. The purpose of payment of bonus is to bridge the gap between wages paid and ideal of a living wage.

The Payment of Bonus Act, 1965 applies to every factory as defined under the Factories Act, 1948; and every other establishment in which twenty or more persons are employed on any day during an accounting year. However, the Government may, after giving two months’ notification in the Official Gazette, make the Act applicable to any factory or establishment employing less than twenty but not less than ten persons. An employee is entitled to be paid by his employer a bonus in an accounting year subjected to the condition that he/she has worked for not less than 30 working days of that year. An employer shall pay minimum bonus at the rate of 8.33% of the salary or wages earned by an employee in an year or one hundred rupees, whichever is higher.

The students must be familiar with the basic legal framework envisaged under the Act to understand the main principles involved in the grant of bonus to workers.

Payment of Bonus Act, 1965 provides for the payment of bonus to persons employed in certain establishments and for matters connected therewith.

OBJECT AND SCOPE OF THE ACT

The object of the Act is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. Shah J. observed in *Jalan Trading Co. (Pvt.) Ltd. v. Mill Mazdor Sabha*, AIR 1967 S.C. 691, that the “object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the scheme of “set-off” and “set on” not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity”.

On the question whether the Act deals only with profit bonus, it was observed by the Supreme Court in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, (1976) II LLJ 186, that “bonus” is a word of many generous connotations and, in the Lord’s mansion, there are many houses. There is profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materialising in a right. There is attendance bonus and what not. The Bonus Act speak and speaks as a whole Code on the sole subject of profit based bonus but is silent and cannot, therefore, annihilate by implication, other distinct and different kinds of bonuses, such as the one oriented on custom. The Bonus Act, 1965 as it then stood does not bar claims to customary bonus or those based on conditions of service. Held, a discerning and concrete analysis of the scheme of the Bonus Act and reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.

The provision of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other (*Hukamchand Jute Mills Limited v. Second Industrial Tribunal, West Bengal*; 1979-I Labour Law Journal 461).

APPLICATION OF THE ACT

According to Section 1(2), the Act extends to the whole of India, and as per Section 1(3) the Act shall apply to

- (a) every factory; and
- (b) every other establishment in which twenty or more persons are employed on any day during an accounting year.

Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette apply the provisions of this Act with effect from such accounting year as may be specified in the notification to any establishment including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of Section 2 of the Factories Act, 1948 employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year:

Provided that in relation to the State of Jammu and Kashmir, the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year shall be construed as reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year.

Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year, or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference

to the accounting year specified in such notification and every subsequent accounting year [Section 1(4)].

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty, or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3).

ACT NOT TO APPLY TO CERTAIN CLASSES OF EMPLOYEES

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

- (i) employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
- (ii) seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
- (iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
- (iv) employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;
- (v) employees employed by
 - (a) the Indian Red Cross Society or any other institution of a like nature including its branches;
 - (b) universities and other educational institutions;
 - (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;
- (vi) & (vii)(omitted).
- (viii) employees employed by the Reserve Bank of India;
- (ix) employees employed by
 - (a) the Industrial Finance Corporation of India;
 - (b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;
 - (c) the Deposit Insurance Corporation;
 - (d) the National Bank for Agriculture and Rural Development;
 - (e) the Unit Trust of India;
 - (f) the Industrial Development Bank of India;
 - (fa) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
 - (fb) the National Housing Bank;
 - (g) any other financial Institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor;
- (x)(omitted).
- (xi) employees employed by inland water transport establishments operating on routes passing through any other country.

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Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

IMPORTANT DEFINITIONS

Accounting Year

“Accounting Year” means

- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;
- (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- (iii) in any other case
 - (a) the year commencing on the 1st day of April; or
 - (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced;

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit. [Section 2(1)]

Allocable Surplus

It means –

- (a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;
- (b) in any other case sixty per cent of such available surplus. [Section 2(4)]

Available Surplus

It means the available surplus under Section 5. [Section 2(6)]

Award

“Award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal Constituted under the Industrial Disputes Act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under Section 10A of that Act or under that law. [Section 2(7)]

Corporation

“Corporation” means any body corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society. [Section 2(11)]