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Unit 2: Labour Laws, Industrial Relations and Human Resource Management

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Objectives

After studying this unit, you will be able to:

- Explain the conceptual basis of labour
- Discuss the HRM and its implications for industrial relations management
- Get an overview of the theory of the conflict between industrial relations and human resource management
- Describe the labour laws orientation

Introduction

The basis of changing the practice of industrial relations management from a reactive to a strategic mode could revolve around the following concepts and propositions which are based on the concept of alienation is the key to the analysis of condition of wage labour given the reality of contradiction-ridden organisational and societal totalities. The concept of alienation is also the key to a better understanding of the interface between human resources development and industrial relations. Any consideration of change from reactivity to strategic proactivity, in the process of considering the effect of the concept of human resources development on industrial relations should, therefore, be founded on the evolution of strategies oriented to the disalienation of direct producers. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand the concept of Labour Laws, Industrial Relations and Human Resource Management.

2.1 Conceptual Basis of Labour

The notion of totality refers to the axiom that any issue, any problem, any practice, any subsystem should be seen in perspective. A blinkered approach could not only distort but could even distract the attention from the core of the problem. The concept of totality has two dimensions

a static dimension and a dynamic dimension. For instance, the static dimension of any given society would be the definition of that society at a particular moment of history. The dynamic dimension would be the stages of the evolution of that society upto the moment of the present analysis. The totality of the static dimension of society would include the techno-economic, politico-legal, socio-cultural structures and processes. The dynamic aspect of any society would focus on the mode of production, relations of production and relations in production. Hence, an analysis of any aspect of society should be sensitive not only to its present mode but should also be sensitive to how the present mode has evolved. Any discussion of strategic industrial relations management should take into account the mode of production and the relations of production as well as the techno-economic, politico-legal and socio-cultural structures and processes given the dominant mode of production.

The “totality” referred to above is not by any means a harmonious configuration of parts. There are inherent contradictions in the totality given the relations of production of a given mode of production. Sensitivity to the structural contradictions of the totality is essential to any analysis of human resources management. The structural contradictions flow from the struggle between those who own and/or control production and those who sell their labour for wages. The forms of these struggles will vary depending on the mode of production and the relations of production; labour management relations and human resources development are conceptualised and operationalised within the framework of a contradiction-ridden totality both at the societal level as well as at the organisational level.

The worker experiences the work organisation as alienating. The politico-economic structure of the work organisation, the drive towards profit generation, the hierarchy of control, division of labour, the dehumanising structure of work processes, exploitative management practices and procedures, the manipulation of worker behaviour in organisations and other factors combine to form the basis of the worker experience of alienation.

The alienation of the worker consists in a complex of factors:

1. That work is external to the worker. It does not flow from his own creativity, from his own volition, from his own aspirations. The politico-economic structure of the work environment divests the worker of his power to control the modalities of his working life.
2. Working is forced on the worker because of the urgent need for satisfying his various survival needs. Work itself is not the satisfaction of a need but merely a means.
3. As a worker, he surrenders his freedom to the organisation and to impersonal market forces in return for wages. His condition amounts to wage slavery.
4. The alienated worker, therefore, has no control over what work he has to do, what his work is going to produce and also over the structure and process enveloping his working life. He, on the contrary, through his work, creates power structures and processes which in turn contribute relentlessly to his own oppression and exploitation.



Caselet

Anant Spinning Mills

The Union of the workers gave a demand notice under section 2K of ID Act 1947 to the management of Anant Spinning Mills, Mandideep. Negotiations on the said demand notice are going on before Dy. Labour Commissioner, Bhopal and subsisting settlement dated 07.10.2001 is still in operation.

In order to pressurize the management, the workers in consent resorted to illegal and unjustified strike at 8am on 01.06.2002. On the said date, at about 8am, Mr. Mahendra Kumar Sharma, Code No. 26203, Department winding along with M/s Mohan Singh

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Solanki, Siaram Garg, Mukesh Kumar gathered at the main gate of the factory and stopped the willing workers to attend their duties and obstructed the movement of the goods from and to the factory. Mr. Mahendra Kumar Sharma along with above named workers took a leading part in the strike, stopped the willing workers at the main gate, instigated and threatened them. When some workers entered the mill, Mr. Mahendra Kumar Sharma and above said workers started shouting, "Management, hai-hai. Hamari maangein poori karo, jo humse takraega, choor-choor ho jayega." He along with the above said workers started throwing stones at the main gate resulting in loss of company property and damage to the chief security officer's office.

On 02.06.2002, at about 8am Mr. Mahendra Kumar Sharma along with Mr. Mohan Singh Solanki, Siaram Garg, Mukesh Kumar and other striking workers instigated and threatened M/s Ram Kumar, Prakash Chand and Sham Lal who were coming on duty by saying, "Tum hathtal mein shamil ho jao, nahin to tumhara jeena haram kar denge. Mandideep mein jaoge to tumhari tangen tod denge."

On 02.06.2002 at about 4pm, Mr. Mahendra Kumar Sharma led a mob of striking workers and gathered at the main gate of the factory and raised the slogans, "hum apni mangen manvaa kar rahenge, jo saala afsar hume kaam par aane ko kahega, usko joote marenge, chamchon ki tangen tod denge."

Mr. Mahendra Kumar Sharma along with M/s Mohan Singh Solanki and Siaram Garg is taking a leading part in the strike, and on 03.06.2002 at 3pm, he threatened M/s Ram Kumar, Madan Lal and Ram Avtar by saying "Agar kam per gae to tangen tod denge." And also abused them in unparliament language.

On 03.06.2002 at about 7:45 am, Mr. Mahendra Kumar Sharma along with above said striking workers stopped the bus no. MP03A-757 carrying female workers near Jiletan factory. He along with other striking workers was having lathis and red flags and he threatened the female workers by saying, "Agar tum humara sath nahi dogi, to tumhe utha kar le jayenge." The female workers got frightened and started crying for help. Security guards who were following the bus reported the matter in the police post mandideep.

The above conduct on the part of Mr. Mahendra Kumar Sharma and above named striking workers constitutes a major misconduct under the certified Standing Orders No. 12.1(K), (L), (N), (V) & (Z).

Source: <http://www.hrindex.com/hr-forum/employee-relations/12297-industrial-relations-ir-case-studies>

Self Assessment

State whether the following statements are true or false:

1. A blinkered approach could only distort but could even distract the attention from the core of the problem.
2. Sensitivity to the structural contradictions of the totality is not essential to any analysis of human resources management.
3. Work itself is not the satisfaction of a need but merely a means.
4. That work is external to the worker.

2.2 HRM: Implications for Industrial Relations Management

Human resource management is about managing people so that businesses are competitive and successful. To do this in a fast-changing global economy, HRM & IR professionals keep up with issues and trends that affect employment relationships - the labour market and economics, the

product or service market, the political environment, environmental concerns, technological change, employment regulations, organisational psychology and social trends.

The Human Resource Management (HRM) function of an organisation manages the individual aspects of the employment relationship - from employee recruitment and selection to international employment relations, salaries and wages. HRM is a complex blend of science and art, creativity and common sense. At one level, HR practice draws on economics, psychology, sociology, anthropology, political studies, and strategic and systems thinking. At an operational level, success depends on interpersonal relationships. HR professionals are often the "go to" people in an organisation for advice and information. When things go wrong employees rely on the integrity and ability of HRM staff to manage and advice on issues without taking sides. They may also train and develop staff to ensure the business performs well, that it meets its goals and continually improves within legislative frameworks. HRM practitioners also keep up-to-date with legislation and analyse contemporary employment issues.

Industrial relations are also a multidisciplinary field that studies the collective aspects of the employment relationship. It is increasingly being called employment relations (ER) because of the importance of non-industrial employment relationships. IR has a core concern with social justice through fair employment practices and decent work. People often think industrial relations is about labour relations and unionised employment situations, but it is more than that. Industrial relations covers issues of concern to managers and employees at the workplace, including workplace bargaining, management strategy, employee representation and participation, union-management co-operation, workplace reform, job design, new technology and skill development. An IR expert will more usually work for a trade union in order to represent employees' interests. However, they may work for an employer in an HRM department, or for an employers' association or consultancy, serving the employers' interests. Major tasks of HRM and IR are: hiring staff, negotiation of employment contracts and conditions, performance management and reward systems, dispute resolution, disciplinary processes, ensuring health and safety of staff, employee motivation, design of work, team and organisation restructuring, and training and development.

HRM practitioners are responsible not only for the smooth running of processes but also at a senior level for the bigger picture planning, strategising and policy-making as they affect staff and employment relationships. Senior HRM practitioners can take a lead in advising on the where and the how of an organisation's direction - on the staffing, skills and training requirements to get there and on the communication or influencing processes needed to pave the way. For example, an organisation establishing online services will require a certain skill set to deliver this. The HR function will assess current staff capability, their training needs, and the options if some staff is unable to meet requirements. Managers in a company may also fulfill many HRM functions. Smaller businesses may not employ HRM professionals. Instead they may use HRM consultants as needed, or do it themselves with variable success.

Self Assessment

State whether the following statements are true or false:

5. Human resource management is about managing people so that businesses are competitive and successful.
6. IR has a core concern with social justice through fair employment practices and decent work.
7. HRM practitioners are responsible only for the smooth running of processes.
8. The Human Resource Management (HRM) function of an organisation manages the individual aspects of the employment relationship.

2.3 The Theory of the Conflict between Industrial Relations and Human Resource Management

In considering the relationship between HRM and IR, two central concerns are: in what way does HRM pose a challenge to IR and how can conflicts between the two, if any, be reconciled so that they can complement each other? This section concerns itself with the first of these two issues. In considering the issue, it is necessary to identify the broad goals of each discipline. The goals of HRM have already been identified in the previous section. It remains to consider some of the basic objectives of IR, which could be said to include the following:

1. The efficient production of goods and services and, at the same time, determination of adequate terms and conditions of employment, in the interests of the employer, employees and society as a whole, through a consensus achieved through negotiation.
2. The establishment of mechanisms for communication, consultation and cooperation in order to resolve workplace issues at enterprise and industry level, and to achieve through a tripartite process, consensus on labour policy at national level.
3. Avoidance and settlement of disputes and differences between employers, employees and their representatives, where possible through negotiation and dispute settlement mechanisms.
4. To provide social protection where needed e.g. in the areas of social security, safety and health, child labour, etc.
5. Establishment of stable and harmonious relations between employers and employees and their organizations, and between them and the State.

IR is essentially pluralistic in outlook, in that it covers not only the relations between employer and employee (the individual relations) but also the relations between employers and unions and between them and the State (collective relations). IR theory, practice and institutions traditionally focus more on the collective aspect of relations. This is evident from the central place occupied by labour law, freedom of association, collective bargaining, the right to strike, employee involvement practices which involve unions, trade unionism and so on. HRM deals with the management of human resources, rather than with the management of collective relations. There is of course a certain measure of overlap. Individual grievance handling falls within the ambit of both disciplines, but dispute settlement of collective issues more properly falls within the scope of IR. Policies and practices relating to recruitment, selection, appraisal, training and motivation form a part of HRM. Team-building, communication and cooperation, though primarily HRM initiatives, have a collectivist aspect. Thus joint consultative mechanisms are as much IR initiatives, which may (as in Japan) supplement collective bargaining. But IR has not, in regard to team-building for instance, developed any techniques or theories about how to achieve it; in fact, it is not a focus of attention because it implies a potential loyalty to the enterprise through the team and is seen as conflicting with loyalty to the union. IR has a large component of rules which govern the employment relationship. These rules may be prescribed by the State through laws, by courts or tribunals, or through a bipartite process such as collective bargaining. HRM differs in this respect from industrial relations in the sense that it does not deal with such procedures and rules, but with the best way to use the human resource through, for example, proper selection and recruitment, induction, appraisal, training and development, motivation, leadership and intrinsic and extrinsic rewards. Thus "at its most basic HRM represents a set of managerial initiatives." Four processes central to a HRM system - selection, appraisal, rewards and development - leave only limited room for IR as a central element in the human resource system. "Based on theoretical work in the field of organizational behaviour it is proposed that HRM comprises a set of policies designed to maximise organizational integration, employee commitment, flexibility and quality of work. Within this model, collective industrial relations have, at best, only a minor role.

A discernible trend in management is a greater individualisation of the employer-employee relationship, implying less emphasis on collective, and more emphasis on individual relations. This is reflected, for instance, in monetary and non-monetary reward systems.



Example: In IR the central monetary reward is wages and salaries, one of its central themes (given effect to by collective bargaining) being internal equity and distributive justice and, often, standardisation across industry. HRM increasingly places emphasis on monetary rewards linked to performance and skills through the development of performance and skills-based pay systems, some of which seek to individualise monetary rewards (e.g. individual bonuses, stock options, etc.).

HRM strategies to secure individual commitment through communication, consultation and participatory schemes underline the individualisation thrust, or at least effect, of HRM strategies. On the other hand, it is also legitimate to argue that HRM does not focus exclusively on the individual and, as such, does not promote only individual employment relations.



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The potential conflict between emphasizing the importance of the individual on the one hand, and the desirability of cooperative team work and employee commitment to the organization, on the other, is glossed over through the general assumption of unitarist values ..: HRM stresses the development of a strong corporate culture -not only does it give direction to an organization, but it mediates the tension between individualism and collectivism, as individuals socialised into a strong culture are subject to unobtrusive collective controls on attitudes and behaviour.

Some of the tensions between IR and HRM arise from the unitarist outlook of HRM (which sees a commonality of interests between managements and employees) and the pluralist outlook of IR (which assumes the potential for conflict in the employment relationship flowing from different interests). "It is often said that HRM is the visual embodiment of the unitarist frame of reference both in the sense of the legitimation of managerial authority and in the imagery of the firm as a team with committed employees working with managers for the benefit of the firm." How to balance these conflicting interests and to avoid or to minimize conflicts (e.g. through promotion of negotiation systems such as collective bargaining, joint consultation, dispute settlement mechanisms within the enterprise and at national level in the form of conciliation, arbitration and labour courts) in order to achieve a harmonious IR system is one central task of IR. The individualization of HRM, reflected in its techniques which focus on direct employer-employee links rather than with employee representatives, constitutes one important difference between IR and HRM.



Did u know? The empirical evidence also indicates that the driving force behind the introduction of HRM appears to have little to do with industrial relations; rather it is the pursuit of competitive advantage in the market place through provision of high-quality goods and services, through competitive pricing linked to high productivity and through the capacity swiftly to innovate and manage change in response to changes in the market place or to breakthroughs in research and development ... Its underlying values, reflected in HRM policies and practices, would appear to be essentially unitarist and individualistic in contrast to the more pluralist and collective values of traditional industrial relation.



Task

As a HR Manager, how will you eliminate the tensions between IR and HRM occur from the unitarist viewpoint of HRM.

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Self Assessment

Fill in the blanks:

9. theory, practice and institutions traditionally focus more on the collective aspect of relations.
10. Team-building, communication and cooperation, though primarily HRM initiatives, have a aspect.
11. A discernible trend in management is a greater of the employer-employee relationship, implying less emphasis on collective, and more emphasis on individual relations.
12. IR is essentially in outlook

2.4 Labour Laws Orientation

Indian Labour Laws have both the sides - the positive ones and the negative ones. The positive side provides basic rights-and facilities for human existence and human dignity - the right to combine, the right to expression, the right to live and minimum standard and safety etc. which HRM also aims at macro-level. But the negative side of labour-Laws is more prominent and every society revises and reviews, invents and reinvents better systems and governance it does hamper the integration of HRM and Industrial Relations.



Caution Labour Laws should provide the necessary direction and leave details on HR/IR management, so that they develop healthier and sounder systems and practices.

Our Labour Laws have following negative orientations:

1. Over protective
2. Over negative
3. Over reactive
4. Fragmented and ad hoc
5. Outdated and irrelevant

The above are stated below:

1. It is almost impossible for an employer to remove any workman for his inefficiency. This has led to lethargic and restrictive work-culture which is against the postulates of HRM.
2. Our Labour Laws generally negate change and progress than facilitate and enable them to happen. They say no to proposition than encourage them to happen. Positivity is the main postulate of HRM which does not find favour with most of our labour laws.
3. Our labour laws are mostly to fight the fire when it has broken out. They are reactive than proactive in orientation. The ID Act 1947 comes into operation after a dispute has erupted or is apprehended It does not say anything about the genesis and background of disputes. HRM talks of proaction, pre-emption and prevention than only cure.
4. Our Labour Laws are mostly fragmented, ad hoc and piecemeal. Sometimes, they contradict each other. They create more confusion, at times, than giving clear solutions. HRM approach is integrated and pointed approach, quite clear and visible.
5. Our Labour Laws have mostly become outdated, obsolete and irrelevant. They were framed at one point of time with specific problems in view. Times have changed and so have changed the problems. They should change accordingly to cater to the needs of time.

They should be dynamic ones. But they have remained static and rigid, which is against the spirit of HRM.

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Law is a dynamic concept. It comes into existence to cater to the growing needs of society, which may be caused by technological, economic, political and social changes. Life and laws have moved together in history and it must do so in future also. Every society revises and reviews, invents and reinvents better systems and governance. Labour laws came into being to take care of certain aberrations created by Industrial Revolution. Now, we have entered post Industrial Revolution era. Hence our laws should come out of Industrial Revolution mode and be progressive in their outlook.

The desirable orientations of labour laws can be that they have to be enabler and facilitators than controllers of industrial relations. They have to be proactive, positive and progressive and encourage individual development, group-cohesiveness and organisational well-being than combating and fighting, building the culture of trust and good-will than creating mistrust and hatred in industry. There should be a few labour legislations -setting the guidelines and providing the road-maps for working together than a number of them encouraging litigations.

Self Assessment

Fill in the blanks:

13. should provide the necessary direction and leave details on HR/IR management, so that they develop healthier and sounder systems and practices.
14. Labour laws came into being to take care of certain aberrations created by
15. The desirable orientations of labour laws can be that they have to be enabler and facilitators than of industrial relations.
16. approach is integrated and pointed approach.



Case Study Hindustan Textile Mills

Hindustan Textile Mills is a spinning unit of 50,000 spindles. The main product is cotton yarn of 40 count. The mill is situated in central India. Mr. T Patel who is the General Manager of the plant manages the unit. He is a B. tech of 1960 batch and is associated with the organization for the last 15 years. The plant started its production in the year 1989. The total strength the worker is 1750. All the workers are on the regular rolls of Hindustan Textile Mills and majority of them belong to Bihar. The workers are not unionized but strong groups from particular regions have influence on the workforce from a particular area. Mr. Pramod Mishra joined the mill on 01.12.1995 as Trainee and he was promoted as Tenter from 8.8.2000 in the ring department. He belongs to Chhapra district of Bihar. On 25.9.2001, Pramod Mishra was taking charge of the night shift and there was some argument that took place with the evening shift, Mr. Babloo, Mr. Mahesh, shift officer intervened in the matter and the issue was resolved. Babloo is a resident of Balia in U.P. On 10.10.2001, in the night shift at around 1:30 am, Rakesh Kumar working as Tenter in blow room met with an accident. His right arm came in contact with the machine and he shouted for help. Pramod Mishra rushed to the spot and meanwhile 3 other workers of Speed frame and draw frame also reached the spot and started their effort to pull Rakesh from the machine, Mr. Mahesh, shift officer with the timekeeper Mr. Kanhaiya Lal also joined them. There was blood all around. Mr. Mahesh intervened in between and took charge of the machine along with Mr. Gyan Singh, maintenance

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foreman. They were able to pull Rakesh Kumar out of the machine and in the meanwhile there were group of 50 workers gathered on the spot. Kanhaiya took Rakesh to the hospital. Meanwhile there was an argument that started between Mr. Pramod Mishra and shift officer Mr. Mahesh that the machines are not safe and the management is not keen about the safety of workers. Mr. Radhey, Mr. Deendayal, Mr. Prabhu Prakash also joined Mr. Pramod Mishra. Pramod Mishra took an iron rod from the blow room and started shouting to all the workers to stop the plant. He along with Mr. Radhey, Mr. Deendayal and Mr. Prabhu forced all workers to come out of the plant and damaged window glasses of the main hall. The whole issue took an ugly turn.

Questions:

1. You are the Personnel Manager. How will you handle the situation and describe the legal as well as other actions to resolve the issue.
2. Critically analyse the above case.

Source: <http://www.hrindex.com/hr-forum/employee-relations/12297-industrial-relations-ir-case-studies>

2.5 Summary

- The dynamic aspect of any society would focus on the mode of production, relations of production and relations in production.
- The worker experiences the work organisation as alienating.
- Human resource management is about managing people so that businesses are competitive and successful.
- The Human Resource Management (HRM) function of an organisation manages the individual aspects of the employment relationship - from employee recruitment and selection to international employment relations, salaries and wages.
- Industrial relations are also a multidisciplinary field that studies the collective aspects of the employment relationship.
- HRM practitioners are responsible not only for the smooth running of processes but also at a senior level for the bigger picture planning, strategising and policy-making as they affect staff and employment relationships.
- IR is essentially pluralistic in outlook, in that it covers not only the relations between employer and employee (the individual relations) but also the relations between employers and unions and between them and the State (collective relations).
- A discernible trend in management is a greater individualisation of the employer-employee relationship, implying less emphasis on collective, and more emphasis on individual relations.
- Indian Labour Laws have both the sides - the positive ones and the negative ones.
- Law is a dynamic concept.

2.6 Keywords

Employee: A person who is hired to provide services to a company on a regular basis in exchange for compensation and who does not provide these services as part of an independent business.

Employer: A legal entity that controls and directs a servant or worker under an express or implied contract of employment and pays (or is obligated to pay) him or her salary or wages in compensation.

Human Resource Management: The process of hiring and developing employees so that they become more valuable to the organization.

Industrial Relations: Industrial relations (or employment relations) is about the dynamics of the employment relationship between employees and their employers.

Labour Relations: A labor relation is the study and practice of managing unionized employment situations.

Negotiation: It is a process by which compromise or agreement is reached while avoiding argument.

Organisation: Organisation is a systematic arrangement of people to accomplish some specific purpose.

Practitioners: A practitioner is someone who engages in an occupation, profession, religion, or way of life.

Psychology: The scientific study of the human mind and its functions, especially those affecting behaviour in a given context.

Strategy: A method or plan chosen to bring about a desired future, such as achievement of a goal or solution to a problem.

Worker: A person who is employed and work hard.

2.7 Review Questions

1. Discuss the notion of totality.
2. Highlight the factors of the alienation of the worker.
3. Define HRM.
4. "Industrial relations are also a multidisciplinary field that studies the collective aspects of the employment relationship." Elucidate.
5. Describe the responsibility of HRM practitioners.
6. Explain the relationship between HRM and IR.
7. What are the basic objectives of IR?
8. Discuss the pluralistic outlook of IR.
9. Throw some light on the negative orientation of labour laws.
10. "Law is a dynamic concept." Explain.

Answers: Self Assessment

- | | |
|-------------------------|--------------------------|
| 1. False | 2. False |
| 3. True | 4. True |
| 5. True | 6. True |
| 7. False | 8. True |
| 9. Industrial Relations | 10. Collectivist |
| 11. Individualisation | 12. Pluralistic |
| 13. Labour Laws | 14. Industrial Relations |
| 15. Controllers | 16. HRM |

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2.8 Further Readings



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Online links

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Unit 3: Labour Laws: Concept, Origin, Objectives and Classification

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3.5 Summary

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3.7 Review Questions

3.8 Further Readings

Objectives

After studying this unit, you will be able to:

- Explain the concept of labour legislations
- Discuss the origin of labour legislations
- Get an overview of objectives of the labour legislations
- Describe the classification of labour legislations

Introduction

In the previous unit, we dealt with the relation of Labour Laws, IR and HRM. Labour law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour

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costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the concept, origin, objectives and classification of Labour Legislation.

3.1 The Concept of Labour Legislations

Society evolves institutions to abhor vacuum created by changes. Industrial Revolution is an epoch-making event, which completely changes the lifestyles of society from agricultural and pastoral to industrial and materialistic one. The industrial society brought about, in its wake, excessive exploitation of the working classes by the employer who took advantage of the individual dispensability of the worker and wanted maximum profit on his investment. The golden rule of capitalism that "Risk and Right" go together provided them with prerogatives to "hire and fire". The other legal concepts which were then available were those of Master and Servant and carrot and stick etc. The principle of common law was in operation. The law of contract used to govern the relation between worker and the employer in which individual contact was struck, the terms of contract were usually verbal and mostly used in cases of breaches, leading to prosecution and imprisonment of workers. Labour and Migration Act was another legislation which gave rise to the "Indentured labour system". Anti-Combination legislations were in vague treating 'combination' of workers as act of criminal conspiracy. Longer hours of work, abysmally low wages, no safety and welfare provisions, and no insurance - the exploitation at large. State was adopting the policy of Laissez-faire (let not interfere) and employers abused workers, taking advantage of the situation.

Every society on its onwards march revises, reviews, refurbishes and reinvents its legal concept and civilised ways of living. The changes brought about by the industrial revolution created some gaps and it became the responsibility of the society to fill-up those gaps. Society went for certain social devices to take care of the gaps, which are known as labour legislation.

The labour legislations are the products of Industrial Revolution and they have come into being to take care of the aberrations created by it. They are different from common legislations, because they come to alleviate special disorders created by specific circumstances. Therefore, they are specific and not general in orientation, philosophy and concept.

3.1.1 The Main Ingredients of Labour Legislations

Labour legislation regards individuals as workers, whereas the general legislation regards him a citizen. The principles governing labour legislations are more influenced by the postulates of social justice than general justice. Workers are the weaker class of industrial society and have suffered long at the hands of employers. Therefore, these sets of legislations go out of way in protecting workers and securing justice to them. The influences of 'discriminative justice and distributive justice' can be clearly seen over them. All the labour legislations are heavily skewed towards labour and they are specifically designed like that.

Labour legislation seeks to deal with problems arising out of occupational status of the individual. Consequently, such problems as hours of work, wages, working conditions, trade unions, industrial disputes etc. come to be the main, subject matter of labour legislations. Thus, the behaviour of the individual or his groups is the function of labour legislation as of any other legislation. But under labour legislation, the individual is affected in the capacity of a worker or an employer. Therefore, the persons who are neither the employers nor the workers are least affected directly by labour legislation. To make the point clear, a few examples are necessary.

A legislation regarding working conditions such as the factory legislation or laws regarding payment of wages or compensation for work injury or employment of women or children impinge upon the individuals as workers and the employers. On the contrary, a law regarding ownership of property or a law relating to the marriage or sales tax affects him as a citizen.

Individuals have different roles to perform and different laws are designed for regulating the different roles. It is the role-relation that determines whether a particular legislation falls under the category of labour legislation, social legislation or general legislation. All these legislations try to meet the specific objectives of their respective target groups- that is:

- (a) to provide subsistence,
- (b) to aim at abundance,
- (c) to encourage equality, and
- (d) to maintain security.

As labour legislations are to regulate the conditions of labour, in the industrial milieu, it is required to be adjusted as per the changing requirements of industry. This has to be done more frequently than the general legislation where changes are not that swift. Unless 'labour legislations are subjected to frequent revision and not left to continue as they are, they become obsolete and irrelevant. The Indian Labour Legislations are the best example. Most of them have become outdated as the required revisions have not been affected and gaps have been created between the expectations of industrial so the institution of labour legislation.



Example: Labour is a concurrent subject in the Constitution of India implying that both the Union and the state governments are competent to legislate on labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament.

3.1.2 Principles of Social Justice, Social Equality, Social Security, National Economy and Labour Legislations

Labour Legislations contain the principles of social justice, social equity, social security and national economy in their concept. Social justice implies two things:

- First, equitable distribution of profits and other benefits of industry between owner and workers.
- Second, providing protection to workers against harmful effect to their health, safety and morality.

Social equality provides the flexibility in labour legislations to adjust to the need of the industrial society. Social security envisages collective action against social risks which constitute the crux of the labour legislation. National Economy provides the standards to be set for the labour legislations. Human Rights principles and human dignity postulates provide the broader base for the concept of labour legislations. Thus, these principles are the fundamentals for understanding the concept of Labour jurisprudence.



Caselet

Labor Unrest at Toyota India

On January 08, 2006, Toyota Kirloskar Motor Private Limited (TKM) announced an indefinite lockout of its vehicle manufacturing plant at Bidadi located near Bangalore, Karnataka. The decision was taken following a strike, which had entered its third day, by the Toyota Kirloskar Motor Employees Union (Employee Union),

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the only company recognized union. The lockout notice stated that the strike was illegal as the Employee Union did not give the mandatory 14 day notice period as per Industrial Disputes Act, 1947. It also stated that the workers were indulging in violence and destruction. TKM was a joint venture, established in 1997, between Toyota Motor Corporation (Toyota), Japan's largest car company and the second-largest car manufacturer in the world, and the Kirloskar Group of India.

Toyota holds an 89% equity stake and while the Kirloskar Group holds the remaining 11%. Toyota has invested nearly US\$ 336 million (INR 15 billion) in the plant with capacity of producing 60,000 units per year. Toyota manufactures its world famous cars like Corolla, Camry and Innova at the plant. The plant had a total workforce of 2,378 out of which around 1,550 employees belonged to the Employee Union.

On January 06, 2006, the Employee Union went on strike with the demand to reinstate three dismissed employees, ten suspended employees, and improve the work conditions at the plant. These employees had been dismissed and suspended by the company, on disciplinary rounds, for attacking a supervisor and misconduct. TKM declared that it would not rehire nor reinstate those employees culminating in the strike and lockout. TKM made several serious allegations against the Employee Union.

The company said that the striking workers were threatening to blowup LPG gas cylinders in the company premises, obstructing the outward movement of manufactured vehicles, illegally stopping production, and manhandling other workers, who were not part of the Employee Union, to strike. In response, the Employee Union said that three employees were dismissed because they were actively participating in trade union activities and the company wanted to suppress the trade union. They further said that working conditions at the plant were inhuman and 'slave like.

They were often made to stretch their working hours without sufficient relaxation and compensation. The issue took a new turn when representatives from the management at TKM refused to attend a meeting before the Labor Commissioner on January 09, 2006 for resolving the dispute with the union. The company said that the atmosphere was not conducive for talks as the Employee Union was in a violent and agitated mood. Though, the company appealed for two weeks time to appear before the Labor Commissioner so that situation could become stable, they were given time only till January 12, 2006. The Employee Union got support from various trade unions and demanded the intervention of the state government to help resolve the dispute in their favor. TKM continued with partial production of vehicles with the help of non-unionized workers and the management staff, who were specially trained for these kinds of emergencies.

However, the company's output had fallen from 92 vehicles per day to 30 vehicles with an estimated production loss of around INR 700 million. The Company lifted the lockout on January 21, 2006 stating that it was responding to the request from workers who eager to return to work. The workers were required to sign a good conduct undertaking to maintain discipline and ensure full production. The Employee Union relented and withdrew their strike following a Government Order on January 21, 2006, which was against the strike and referred the issue to the third Additional Labor Court. However, the union said that they would not sign the good conduct declaration specified by TKM.

The unrest had other ramifications as the Toyota spokesperson said that the company would rethink its recent decision to build a second car manufacturing plant in the state. It was also felt that this incident would seriously affect the Karnataka Government's efforts in trying to attract Volkswagen to establish a vehicle manufacturing plant in the state. This was the second dispute involving a Japanese vehicle manufacturer and trade unions in India.

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Earlier in July 2005, workers of Honda Motor & Scooters India Limited had a violent clash with the police at Gurgaon, near New Delhi, resulting in a revenue loss of around INR 1.25 billion for the company.

This recent rise in trade union activism resulting in violence and business loss has attracted the attention of the national and international media. With around US\$ 2 billion equity investment since 1991, Japan was the fourth largest investor in India. During the Honda incident, the Japanese ambassador in India had stated that these kinds of incidents would show India in poor light.

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Source: <http://www.citehr.com/25642-labour-unrest.html>

Self Assessment

State whether the following statements are true or false:

1. Labour legislation regards individuals as citizen, whereas the general legislation regards him a worker.
2. Labour and Migration Act was another legislation which gave rise to the "Indentured labour system".
3. Labour legislation seeks to deal with problems arising out of occupational status of the individual.
4. National equality provides the flexibility in labour legislations to adjust to the need of the industrial society.

3.2 Origin of Labour Legislations

The origin of labour legislation is the history of continuous and relentless struggle for emancipation of working class from clutches of aggressive capitalism. The struggle was between two unequal. The contract between capital and labour could never be struck on equitable terms. The social scientists interpreted this struggle in different ways. The point, however, was to change it. The change contemplated was one of transforming a slave into partner and thereby bridle the power of capital to impose its own terms on the workmen.

Various factors helped this process to take place. The struggle was not easy. Numerous forces, directly and indirectly, hastened the pace facilitating the passing of labour friendly legislation.



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The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour is a concurrent subject in the Constitution of India implying that both the Union and the state governments are competent to legislate on labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament.

3.2.1 Factors Influencing Labour Legislations

Following are the factors affecting labour legislations:

Early Exploitative Industrial Society

The origin of labour legislation lies in the excesses of the early industrialism that followed Industrial Revolution. The early phase of industrialisation in the capitalist countries of the

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world was an era of unbridled individualism, freedom of contract and the laissez-faire, and was characterised by excessive hours of work, employment of young children under very unhygienic and unhealthy conditions, payment of low-wages and other excesses. Naturally, such excesses could not have continued for long without protest and without demand for reforms. The early Factories Acts flowed from these excesses and manifested the desire of the community in general to protect its weaker section against exploitation. The workers had very little legal protection available. Therefore, it can be safely said that the labour legislations are the natural children of industrial revolution.

Impact of Contemporary Events

The impacts of contemporary events are as follows:

- Along with Industrial Revolution, Revolutionary thinking of Rousseau, J.S. Mill, the French Revolution, Hegel, Marx & Engels and Russian Revolution greatly influenced the thought processes and hastened the pace of labour jurisprudence.
- The world wars made it possible for the labourers to realise their importance that unless they produce, it will be difficult for warring nations to win. Therefore, they must stake their claims for better quality of work life.
- The revolution in science, technology, the communication and telecommunication also helped in bringing the world, closer. It became easier for the working classes of the underdeveloped world to know the better conditions of service of their counterparts in the developed world.

The Growth of Trade Unionism

The Trade Union movement, which itself springs from industrial revolution has been another factor which has quickened the growth of labour legislations. On the one hand, their demands for protection of the interests of the working class led to legislations in the field of wages, hours of work, women's compensation, social security and other areas; on the other hand, their growth necessitated legislations for the regulation of industrial disputes, their prevention and settlement and trade union rights and privileges. Trade unions have been as much conditioned by labour legislations as they have conditioned them.

Growth of Political Freedom and Extension of Franchise

Gradual extension and adoption of universal adult suffrage placed in the hands of the working class, a powerful instrument to influence the cause of state policy. Their representatives started espousing the cause of labour and getting progressive legislations passed. The workers used their political powers for betterment and amelioration of their lots.

Rise of Socialist and other Revolutionary Ideas

In his analysis of capitalism, Marx showed that the exploitation of labour was inherent in the capitalist economic system. Therefore, he advocated the overthrow of capitalist system. The echo of the slogan, "the workers of the world unite, you have nothing to lose but your chains", reverberating throughout the capitalist world, sent a shudder among the conservative and capitalist circles to which ameliorative and protective labour legislations came as safe alternatives. They readily grasped labour legislations as antidote to the spread' of revolutionary ideas. The Fabian Society of England, the establishment of socialist and communist parties in many countries and first and second internationals strengthened the trend for progressive labour legislations.

The Growth of Humanitarian Ideas and the Concept of Social Welfare and Social Justice

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The humanitarian ideas and role of humanitarians, the philanthropic and social reformers influenced the shape of labour legislation. Early Factories Acts were made possible because of the efforts of the humanitarians like Hume, Place, Shaftesbury and others. Researches in Social Sciences like Sociology, Psychology and Anthropology exploded the myth of the natural elite and gave a powerful push to the movement of social reforms, social change, social justice and labour legislations.

Establishment of I.L.O.

The establishment of the I.L.O. in 1919 has been a very potent factor in conditioning the course of labour legislation all over the world. The acceptance of the principle that "labour is not a commodity" and the slogan that "Poverty anywhere constitutes a danger to prosperity everywhere", have influenced the course of labour legislations in all the countries. The ILO, through persistent investigation of workers' living conditions has continuously established the need for ameliorative labour legislation. It has initiated proposals for labour legislations, subjected them to elaborate discussions and reviews and has adopted Conventions and Recommendations. The ILO by trying to establish uniform labour standards in so far as the diverse conditions and uneven economic developments of the world permit, has done a singular service in the field of labour legislation.



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ILO, through Conventions and Recommendations, have undertaken the task of creating - international minimum standards of labour which constitute the International Labour Code. They cover a wide range of subjects including wages, hours of work, annual holidays with pay, minimum age of employment, medical examination, maternity protection, industrial health, safety and welfare, social security, freedom of association, right to organise and bargain collectively, employment conditions of seamen and unemployment.

The ILO standards have influenced Indian Labour Legislations to a great extent. ILO standards have formed the sheet-anchor of Indian Labour Legislations, especially after 1946 when Indian National Government assured office. The Directive Principles of State Policy in Articles 39, 41, 42, 43 and 43A of the Constitution, lay down policy objectives in the field of labour having close resemblance and influence to the ILO Constitution and the Philadelphia Charter of 1944. Thus, the ILO both directly and indirectly has had a great influence on the Indian Labour Scene and Labour Legislation.



Did u know? International Labour Organisation (ILO) was one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I. In Great Britain, the Whitley Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that "industrial councils" be established throughout the world. The British Labour Party had issued its own reconstruction programme in the document titled Labour and the New Social Order. In February 1918, the third Inter-Allied Labour and Socialist Conference (representing delegates from Great Britain, France, Belgium and Italy) issued its report, advocating an international labour rights body, an end to secret diplomacy, and other

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goals. And in December 1918, the American Federation of Labor (AFL) issued its own distinctively apolitical report, which called for the achievement of numerous incremental improvements via the collective bargaining process.



Task

Do you think that the establishment of ILO brings out changes in the labour legislation? If yes, give reason.

3.2.2 Factors Specific to India

The factors discussed above are the general factors influencing the shape of labour legislation. There are specific factors, peculiar to India which has influenced labour legislations.

Influence of colonial rule

Most of the early labour legislation came into being because of the pressure from the manufacturers of Lancashire and Birmingham; because labour employed in factories and mills in India were proving very cheap in comparison to their British counterpart. No doubt, these legislations were beneficial to Indian labour but this benefit was incidental to the main purpose, i.e. the protection of the interests of British Capitalists.

The British Civil Servants carried with them the British tradition of democracy and pragmatism. The Workman Compensation Act, 1923, the Indian Trade Unions Act, 1926, the Payment of Wages Act, 1936 etc. followed British pattern

The struggle for national emancipation and adoption of Indian Constitution

The Industrial Workers got support from the freedom struggle and nationalist leaders who made tireless efforts to get protective labour legislations enacted. The Indian Trade Unions Act, the appointment of Royal Commission on Labour etc. was because of pressure from freedom struggle.

The leaders of the national movement had promised the establishment of a better and just social order after independence; which was ultimately embodied in the Preamble, Fundamental Rights and Directive Principles of State Policy of the Indian Constitution.

We have plethora of labour legislations immediately after independence -

- The Factories Act, 1948
- The E.S.I. Act, 1948
- The Minimum Wages Act, 1948
- Mines Act, 1952
- Employees P.F.& Miscellaneous Provisions Act, 1952
- Plantation Labour Act, 1951
- Payment of Bonus Act, 1965



Did u know? The legislations can be categorized as follows:

1. Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.

- | | |
|---|--------------|
| <ol style="list-style-type: none">2. Labour laws enacted by Central Government and enforced both by Central and State Governments.3. Labour laws enacted by Central Government and enforced by the State Governments.4. Labour laws enacted and enforced by the various State Governments which apply to respective States. | Notes |
|---|--------------|

Self Assessment

State whether the following statements are true or false:

5. The contract between capital and labour could be struck on equitable terms.
6. The origin of labour legislation lies in the excesses of the early industrialism that followed Industrial Revolution.
7. The establishment of the ILO in 1920 has been a very potent factor in conditioning the course of labour legislation all over the world.
8. The British Civil Servants carried with them the British tradition of democracy and pragmatism.

3.3 Objectives of the Labour Legislations

Labour legislation in India has sought to achieve the following objectives:

1. Establishment of justice- Social, Political and Economic.
2. Provision of opportunities to all workers, irrespective of caste, creed, religion, beliefs, for the development of their personality.
3. Protection of weaker section in the community.
4. Maintenance of Industrial Peace.
5. Creation of conditions for economic growth.
6. Protection and improvement of labour standards.
7. Protect workers from exploitation:
8. Guarantee right of workmen to combine and form association or unions.
9. Ensure right of workmen to bargain collectively for the betterment of their service conditions.
10. Make state interfere as protector of social well being than to remain an onlooker.
11. Ensure human rights and human dignity.

Proper regulation of employee-employer relationship is a condition precedent for planned, progressive and purposeful development of any society. The objectives of labour legislation are a developing concept and require ceaseless efforts to achieve them on continuous basis.



Example: In its landmark judgement in *Hindustan Antibiotics v. The Workmen* (A.I.R. 1967, S.C. 948; (1967) 1, Lab.L.J.114) the Supreme Court of India made a significant observation. The object of the Industrial law, said the Court, was to bring in improvements in the service conditions of industrial labour by providing them the normal amenities of life which would lead to industrial peace. This would accelerate the productive activities of the nation, bringing prosperity to all and further improving the conditions of labour.

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Caution The most efficient way of ensuring that these conditions and needs are taken fully into account is if those concerned are closely involved in the formulation of the legislation through processes of social dialogue. The involvement of stakeholders in this way is of great importance in developing a broad basis of support for labour legislation and in facilitating its application within and beyond the formal structured sectors of the economy.

Self Assessment

Fill in the blanks:

9. Proper regulation of relationship is a condition precedent for planned, progressive and purposeful development of any society.
10. The objectives of labour legislation are a developing concept and require ceaseless efforts to achieve them on basis.
11. Labour legislation in India has sought to of weaker section in the community.
12. Labour legislation in India has sought to maintain of Peace.

3.4 The Classification of Labour Legislations

On the basis of specific objectives which it has sought to achieve, the labour legislations can be classified into following categories:

1. Regulative
2. Protective
3. Wage-Related
4. Social Security
5. Welfare both inside and outside the workplace

3.4.1 The Regulative Labour Legislations

The main objective of the regulative legislations is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes. Such laws also regulate the relationship between the workers and their trade unions, the rights and obligations of the organisations of employers and workers as well as their mutual relationships.

- The Trade Unions Act, 1926
- The Industrial Disputes Act, 1947
- Industrial Relations Legislations enacted by states of Maharashtra, MP, Gujarat, UP etc.
- Industrial Employment (Standing Orders) Act, 1946.

3.4.2 The Protective Labour Legislations

Under this category come those legislations whose primary purpose is to protect labour standards and improve the working conditions. Laws laying down the minimum labour standards in the areas of hours of work, supply, employment of children and women etc. in the factories, mines, plantations, transport, shops and other establishments are included in this category. Some of these are the following:

- Factories Act,1948
- The Mines Act,1952
- The Plantations Labour Act,1951
- The Motor Transport Workers Act,1961
- The Shops and Establishments Acts
- Beedi and Cigar Workers Act 1966

3.4.3 Wage-Related Labour Legislations

Legislations laying down the methods and manner of wage payment as well as the minimum wages come under this category:

- The Payment of Wages Act,1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

3.4.4 Social Security Labour Legislations

They cover those legislations which intend to provide to the workmen social security benefits under certain contingencies of life and work.

- The Workmen's Compensation Act, 1923
- The Employees' State Insurance Act, 1948
- The Coal Mines PF Act, 1948.
- The Employees PF and Miscellaneous Provisions Act, 1952
- The Maternity Benefit Act, 1961
- Payment of Gratuity Act, 1972

Chapter V A of the Industrial Disputes Act 1947 is also, in a manner of speaking, of the character of social security in so far as it provides for payment or lay-off, retrenchment and closure compensation.

3.4.5 Welfare Labour Legislations

Legislations coming under this category aim at promoting the general welfare of the workers and improve their living conditions. Though, in a sense all labour laws can be said to be promoting the welfare of the workers and improving their living_ conditions and though many of the protective labour laws also contain chapters on labour welfare, the laws coming under this category have the specific aim of providing for the improvements in living conditions of workers. They also carry the term "Welfare" in their titles.

- Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
- The Mica Mines Welfare Fund Act, 1946
- The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
- The Cine Workers Welfare Fund Act, 1981.

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- In addition, some state governments have also enacted legislations for welfare funds.
- Beedi Workers Welfare Fund Act, 1976

3.4.6 Miscellaneous

Besides the above there are other kinds of labour laws which are very important. Some of these are:

- The Contract Labour (Regulation & Abolition) Act, 1970
- Child Labour (Prohibition and Regulation) Act 1986
- Building and other construction workers (Regulation of Employment and Conditions of Service) Act 1996
- Apprentices Act 1961
- Emigration Act, 1983
- Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
- Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979
- Sales Promotion Employees (Condition of Service) Act 1976
- Working Journalists and other Newspapers Employees (Condition of Service and Miscellaneous Provision) Act, 1955.



Notes An important feature of almost all labour laws is the existence of employer-employee nexus. Besides, each labour law has its provisions in terms of coverage, based mainly on the number of employees, salary levels and so on. The definition of expressions used in different labour laws is not necessarily uniform. All these have resulted in considerable amount of litigation leading to a vast amount of industrial jurisprudence.

Another important point to note is that while all the labour laws, excepting Shops and Establishment Acts, are enacted by Parliament, quite a few of them are implemented both by the Central Government and the State Governments (including Union Territories) the jurisdiction being determined by the definition of the term 'appropriate government' in the relevant statute. It is also relevant to point out that some of the Parliamentary laws are implemented exclusively by the State Governments, as for example Trade Unions Act 1926, Workmen's Compensation Act 1923, Plantation Labour Act 1951, Working Journalists Act 1955, Factories Act 1948 and so on.

Self Assessment

Fill in the blanks:

13. The main objective of the legislations is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes.
14. Under category come those legislations whose primary purpose is to protect labour standards and improve the working conditions.

15. Legislations laying down the methods and manner of wage payment as well as the wages come under this category the Payment of Wages Act, 1936.
16. Legislations coming under category aim at promoting the general welfare of the workers and improve their living conditions.

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Case Study

Labor Unrest at Honda Motorcycle & Scooter India (Private) Limited

On July 25, 2005, the management of the Honda Motorcycle & Scooter India (Private) Limited, (HMSI), a wholly-owned subsidiary of Honda Motor Company Limited (HMCL), encountered violent protests from workers that disrupted production at their plant in Gurgaon. HMSI was established on August 20, 1999, and a plant was set up at Manesar to manufacture two-wheelers for the Indian market. HMCL made an initial investment of ₹ 3 billion to establish the plant which had an annual production capacity of 200,000.

HMSI workers were severely beaten up by the police, and newspapers and TV channels gave wide coverage to the violence of the action. The protest followed six months of simmering labor unrest at the HMSI factory in which the workers also resorted to job slowdown (since December 2004 when the workers' demand for an increase in wages was rejected by the HMSI management). With their demands being rejected by the management, the workers tried to form a trade union and this resulted in a confrontation with the management. Fifty workers of the production team were suspended and four others dismissed in May 2005. Apparently there was a show of strength between the management and the workers.

While the management alleged that the workers were resorting to 'go-slow' tactics and were threatening not to return to work until their colleagues had been reinstated, the workers alleged that the management was using pressure tactics such as victimization of active union members and a 'lock-out' to break the back of the union.

On July 25, 2005, the workers of the plant were demanding reinstatement of the suspended employees when some workers allegedly attacked policemen on the plant premises. This led to police intervention and a violent tussle ensued between the police and the workers in which workers protesting peacefully were also beaten up.

The police were reported to have overreacted and it was alleged that they had been overzealous in protecting the interests of the HMSI management, even without any direct request from the company's.

For companies, the incident brought to the fore the need to maintain sound industrial relations to ensure productive and profitable operations. The management and the workers traded allegations and counter allegations on what the root cause of the dispute was. They blamed each other for the situation that ultimately took an ugly turn on July 25, 2005. The management held the workers responsible for indiscipline and for slowing down production, while the workers insisted that there had been no indiscipline on their part and that the management was bringing up this issue only to prevent the formation of a trade union at HMSI.

Some analysts charged that the incident was fallout of the long-term oppression and malpractices at the Gurgaon factory by the HMSI management. They alleged that HMSI's management had violated certain laws relating to the welfare of workers. It was reported that a worker had allegedly been kicked by a Japanese manager on the shop floor in December 2004. The services of four other workers who had come to his rescue were allegedly terminated.

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Questions:

1. Analyze the role of external parties such as trade unions; political parties etc., in disturbing the working environment in a company
2. Examine top management's role in maintaining a peaceful working environment.

Source: <http://www.icmrindia.org/casestudies/catalogue/Human%20Resource%20and%20Organization%20Behavior/Honda%20Motorcycle-Scooter%20India%20Private%20Limited-HROB%20Case%20Study.htm>

3.5 Summary

- The evolution of labour jurisprudence is the culmination of the incessant struggle waged by the workers', all over the world for just and better conditions of work as well as security of their job.
- Labour legislations have now acquired the status of a separate branch of jurisprudence because of its special features and changing juristic ideas.
- As labour legislations are to regulate the conditions of labour, in the industrial milieu, it is required to be adjusted as per the changing requirements of industry.
- Industrial Revolution is an epoch-making event, which completely changes the lifestyles of society from agricultural and pastoral to industrial and materialistic one.
- Social equality provides the flexibility in labour legislations to adjust to the need of the industrial society.
- The origin of labour legislation is the history of continuous and relentless struggle for emancipation of working class from clutches of aggressive capitalism.
- Proper regulation of employee-employer relationship is a condition precedent for planned, progressive and purposeful development of any society.
- The main objective of the regulative legislations is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes.
- Every society on its onwards march revises, reviews, refurbishes and reinvents its legal concept and civilised ways of living.
- Labour legislation seeks to deal with problems arising out of occupational status of the individual.

3.6 Keywords

Benefits: A payment or entitlement, such as one made under an insurance policy or employment agreement, or public assistance program.

Economy: The wealth and resources of a country or region, especially in terms of the production and consumption of goods and services.

Individualism: Concept that all values, rights, and duties originate in individuals and, therefore, the interests of the individuals are (or ought to be) ethically paramount as opposed to those of an abstract entity such as society. See also conservatism and liberalism.

Industrial Revolution: The Industrial Revolution was the transition to new manufacturing processes that occurred in the period from about 1760 to some time between 1820 and 1840.

Labour Legislations: Labour legislation seeks to deal with problems arising out of occupational status of the individual.

Laissez-faire: Laissez-faire is an economic environment in which transactions between private parties are free from tariffs, government subsidies, and enforced monopolies, with only enough government regulations sufficient to protect property rights against theft and aggression.

Legislations: Legislation (or “statutory law”) is law which has been promulgated (or “enacted”) by a legislature or other governing body, or the process of making it.

Social Justice: Social justice is defined as justice exercised within a society, particularly as it is exercised by and among the various social classes of that society.

Social Security: Any government system that provides monetary assistance to people with an inadequate or no income.

Trade Union: An organization whose membership consists of workers and union leaders, united to protect and promote their common interests.

Wages: A wage is remuneration paid by an employer to an employee. It may be calculated as a fixed task based amount, or at an hourly rate, or based on an easily measured quantity of work done.

3.7 Review Questions

1. Discuss the concept of Labour Legislations.
2. What are the main ingredients of Labour Legislations?
3. Explain the principles of Social Justice, Social Equality, Social Security, National Economy and Labour Legislations.
4. Throw some light on the origin of labour legislation.
5. Highlight the factors affecting labour legislations.
6. Write brief note on the struggle for national emancipation and adoption of Indian Constitution.
7. Discuss the Objectives of the Labour Legislations.
8. Explain the regulative Labour Legislations.
9. Elucidate Welfare Labour Legislations.
10. Highlight Wage-Related Labour Legislations.

Answers: Self Assessment

- | | |
|----------------------|------------------------------------|
| 1. False | 2. True |
| 3. True | 4. False |
| 5. False | 6. True |
| 7. False | 8. True |
| 9. Employer–Employee | 10. Continuous |
| 11. Protect | 12. Industrial |
| 13. Regulative | 14. Protective Labour Legislations |
| 15. Minimum | 16. Welfare Labour Legislations |

Notes

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<http://www.on-lyne.com/HR/legal.htm>

Unit 4: Factories Act, 1948

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Objectives

After studying this unit, you will be able to:

- Explain the historical development of factory legislation
- Discuss the definitions included in Factories Act
- Get an overview of approval, licensing and registration of factories
- Describe the health, safety and welfare measures of employees
- Discuss provisions regarding employment of adults, women and children in factories
- Get an overview of provisions relating to hazardous processes

Introduction

In the previous unit, we dealt with the concept, origin, objectives and classification of labour law. The Factories Act is the principal legislation, which governs the health, safety, and welfare of workers in factories. The Act extends to the whole of India. Mines and Railways workers are not included as they are covered by separate Acts. The new Act addressed the issues of safety, health, and welfare. Many amendments were aimed to keep the Act in tune with the developments in the field of health and safety. However, it was not until 1987 that the elements of occupational health and safety, and prevention and protection of workers employed in hazardous process, got truly incorporated in the Act. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the basic concept of Factories Act.

4.1 Historical Development of Factory Legislation

With the establishment of a Cotton Mills in 1851, and a Jute Mill in Bengal in 1855, modern factory system was founded in India. Women and children were employed. There were excessive and long hours of work with little recreation. The employers used to have their way. In 1881, Indian Factories Act was passed which gave protection to the employees, especially to the children. The Factory Commission was appointed in 1890 by the Government of India. On the basis of the recommendations of the Commission an Act was passed in 1891, whereby the definition of Factory was amended to include premises in which fifty persons or more were employed. The Local Governments were empowered to extend it to premises in which twenty persons or more were employed. There were provisions about women employees and hours of work for them were limited with a provision for thirty minute's interval for rest. The Act was amended from time to time. It was amended twice in 1923 and 1926. The Act was thoroughly revised and redrafted in 1934 on the lines of recommendations made by the Royal Commission on Labour, which was appointed in 1929.

The Factories Act, 1934, was several times, amended and then the new Act of 1948 was passed. Under the 1934 Act, Provincial Government had power to apply the Act to the establishments where power was used and where more than ten person were employed. It reduced the hours of work and aimed to improve the working condition in factories; provisions were also made for adequate inspection and enforcement of the Act.

In the year 1948, the Factories Act, 1934 was revised and its scope extended to include welfare, health, cleanliness, overtime payments and similar measures. The Factories Act was to ensure proper, safe and healthy working conditions in the factories, so that the workers may feel interest and while in factories, devote their time and labour in the working process of the factory without being afraid of bodily strain and without fear and danger of accidents. The Act was amended periodically upto 1976.

By this time a very large number of chemical factories had been set up involving the manufacture and handling of hazardous and toxic chemicals. This brought in more problems of safety and health. By the time the Government could assess the possible impact of the problem and foresee the possibilities of major disasters, the world's worst tragedy shocked Bhopal wiping out in hours thousands of innocent, ignorant, lives and rendering many more incapacitated. In 1987, Factories (Amendment) Act, 1987 was passed, a memorial to the victims of Bhopal.

It provides better safeguards in the use and handling of hazardous substance in factories. It calls upon the management to provide for greater safety measures (including precautions regarding the use of portable electric light in the factories), appointment of safety officers in factories where 1000 or more workers are employed, or where in any manufacturing process or operation is carried on, which involves any risk of bodily injury, poisoning or disease, or any other hazard to health to the persons employed in the factory. The amended Act also provided for investigations

of all fatal accidents within a month of their occurrence. It also empowered the Chief Inspector or the Director General of Factory Advice Service and Labour Institutes or the Director General of Health Services to the Government of India or such other officer as may be authorised by them, to undertake safety and occupational health surveys. The Act also brought under its protective clause the contract labour, as also any other category of labour employed directly or through any agency with or without the knowledge of the principal employer, whether for remuneration or not. The amended Act further prescribed the provision of creche facility in every factory wherein more than 30 women workers (instead of 50, as provided in the Principal Act) are ordinarily employed. According to the Act, if a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave due. The amended Act also provided for modified rates of general penalty for offences and enhanced penalty after previous conviction.



Caution Besides amendments to Sections 2, 4, 9, 13, 16, 18, 19, 23, 25, 28-32, 36A, 64, 70, 80, 87, 89, 90, 91A, 92, 94-99, 114, 119 and schedule to the Principal Act, the amended Act of 1987 also provides for omission of Section 100 of the Principal Act and insertion of new Section 7A, 7-13, 87A, 96A, 104A, 106A, 111A and 118A, substitution of new sections for Sections 36 and 38, insertion of a new Chapter IV-A, after Chapter IV and the insertion of two new schedules before the schedule to the Principal Act. The newly inserted Sections 7A, 7B, 87A, 96A, 104A, 106A, 111A and 118A relate to general duties of the occupier, general duties of manufacturers, etc., regarding articles and substances for use in factories; power to prohibit employment on account of serious hazard; penalty for contravention of the provisions of Sections 41B, 41C and 41H, onus of providing limits of what is practicable, etc; jurisdiction of a court for entertaining proceedings, and so on, for offence, right of workers, etc.; and restriction on disclosure of information; respectively.

The new Sections 36 and 38 relate to precautions against dangerous fumes, gases, etc., and precautions in case of fire, respectively. The new Chapter IV-A inserted after Chapter IV of the principal Act, includes the following provisions relating to hazardous processes:

- Constitution of Site Appraisal
- Compulsory disclosure of information by the occupier
- Specific responsibility of the occupier in relation to hazardous processes
- Power of Central Government to appoint Inquiry Committees
- Emergency standards
- Permissible limits of exposure of chemical and toxic substances
- Workers' participation in safety management
- Right of workers to warn about imminent danger.

The new schedules, inserted before the Schedule to the Principal Act, include the list of industries involving hazardous processes and permissible levels of certain chemical substances in the working environment.

All the provisions of the Factories (Amendment) Act, 1987 came into force with effect from 1st December, 1987 except the Schedule containing list of notifiable diseases and Sections 7-13 and 41-F which came into force with effect from 1st June, 1988.

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4.1.1 Object of the Act

The object of the Act is to protect human beings from being subject to unduly long hours of bodily strain or manual labour. It also seeks to provide that employees should work in healthy and sanitary conditions so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents.

4.1.2 Scope and Applicability of the Act

The Act extends to whole of India. It applies to all factories including factories belonging to Central or any State Government unless otherwise excluded. The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "worker" as defined in the Act. It would, therefore, be desirable to discuss the meaning and definition of the term "factory" and "worker". Since the term "factory" refers to manufacturing process, it would be helpful to know the meaning of the term "manufacturing process" as defined by the Act.



Caselet

Indian Oil Corporation vs. Chief Inspector of Factories

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

It was held in the case that the relevant provisions regarding the establishment of the appellants corporation and its working leave no doubt that the "ultimate control" over all the affairs of the corporation, including opening and running of the factories, is with the Central Government. Acting through the corporation is only a method employed by the Central Government for running its petroleum industry. In the context of Sec. 2(n), it will have to be held that all the activities of the corporation are really carried on by the Central Government with a corporate mask.

Source: <http://www.thehindubusinessline.in/2000/01/10/stories/211001ak.htm>

Self Assessment

State whether the following statements are true or false:

1. In 1981, Indian Factories Act was passed which gave protection to the employees, especially to the children.
2. The Factories Act, 1934, was several times, amended and then the new Act of 1948 was passed.
3. The amended Act also provided for investigations of all fatal accidents within a month of their occurrence.

4.2 Definitions

Following are the definitions included in the Factories Act:

1. Factory

Section 2(n) of the Factories Act, 1948 defines “factory” to mean:

Any premises including the precincts thereof-

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



Caution It specifically excludes:

A mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Meaning of the words “Premises and Precinct”

The word ‘premises’ means open land or land with building or building alone. Therefore salt works where process of converting seawater into salt is carried on in the open comes within ‘premises’ as defined in the Act. [(Ardeshir H. Bhiwandiwalla v. State of Bombay, A.I.R. 1962 SC 29)] Precincts means a space enclosed by wall. [in re K.V.V. Sharma, Manager, Gemini Studio, Madras, A.I.R 1953 Mad. 29] Any ‘premises’ to be categorised as factory two conditions must be fulfilled.

- Ten or more persons are employed in the premises using power or be employed not using power.
- Twenty or more workers must be employed not using power.

2. Manufacturing Process

The expression “manufacturing process” has been defined in Section 2(k) to mean any process.

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

It was held in State of Bombay v Ali Saheb Kashim Tamboli, [(1995) 2 LLJ 182] that bidi making is a manufacturing process.

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In *Ardeshir v Bombay State* [Air 1962 SC 29] the process carried out in the salt works comes within the definition of 'manufacturing process' in Section 2 (k) in as much as salt can be said to have been manufactured from sea water by the process of treatment and adaptation of sea water into salt.

In *re K. V V Sharma* [(1950) 1 LLJ 29] conversion of raw films into a finished product was held to be a manufacturing process. Similarly in *New Taj Mahal Cafe Ltd., Mangalore v. Inspector of Factories, Mangalore, 1956 1 LLJ 273* the preparation of foodstuffs and other eatable in the kitchen of a restaurant and use of a refrigerator for treating or adapting any article with a view to its sale were also held to be manufacturing process.

3. Worker

Section 2 (1) of the Factories Act 1,948 defines a "worker" to mean:

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

Broadly speaking, therefore, worker is a person:

- who is employed;
- who is employed either directly or through any agency;
- who is employed in any manufacturing process, or in clearing any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with the manufacturing process or the subject of the manufacturing process.

If the aforesaid conditions are satisfied, then it is immaterial whether a person was employed for remuneration or not.

In *Chintaman Rao v State of Madhya Pradesh*, [AIR 1958 All 44] the factory entered into contracts with independent contractors known as *sattedars*. The *sattedars* were supplied tobacco by the factories and, in some cases, *bidi* leaves also. The *sattedars* were neither bound to work in the factory nor were they bound to prepare the *bidis* themselves but could get them prepared by others. In fact they engaged coolies for rolling *bidis* and made payments to them. They used to collect *bidis* from these coolies and take them to the factory where the *bidis* were sorted and checked by the workers of the factory. The factory made payments to the *sattedars* for work of rolling *bidis*. The Supreme Court gave the restricted meaning to words "directly or through any agency" in Section 2(l) and held that (i) worker was a person employed by the management and (ii) there must be a contract of service and a relationship of master and servant between them. On the facts of the case the Supreme Court held that the *sattedars* were independent contractors and they and the coolies engaged by them for rolling *bidis* were not workers.



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

In *Shankar Balaji Waje v. State of Maharashtra*, [AIR 1957 SC 517] *Pandurang* was engaged for rolling *bidis*. Although the hours of work were fixed but there was no obligation to attend during those hours. There was freedom to come and go. There was neither fixed salary nor actual supervision on the work. Payment was made on the quantum of work. The Supreme Court held that such person were not workers because there was no control and the supervision over *pandurang*.



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

4. Occupier

Section 2 (n) of the Act defines “occupier” of a factory to mean

The person who has ultimate control over the affairs of the factory: Provided that -

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

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

- (i) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under -
 - ❖ Section 6, Section 7, Section 7A, Section 7B, Section 11 or Section 12;
 - ❖ Section 17, in so far as it relates to the providing and maintenance of sufficient suitable lighting in or around the dock;
 - ❖ Section 18, Section 19, Section 42, Section 46, Section 47 or Section 49, in relation to the workers employed on such repair or maintenance;
- (ii) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purpose of any matter provided for by or under Section 13, Section 14, Section 16 or Section 17 (save as otherwise provided in this provided) or Chapter IV (except Section 27) or Section 43, Section 44 or Section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or Section 108, Section 109 or Section 110, in relation to the workers employed directly by him, or by or through any agency; and
- (iii) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other Officer-in charge or person.

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Notes General Duties of the Occupier are:

Section 7A has been inserted by the Factories (Amendment) Act and the new section lays down the general duties of an occupier as follows

1. Plant maintenance that is safe and without risk to health of workers.
2. Safeguard health and safety with the use, handling, storage and transport of articles and substance.
3. Provide information, instruction, training and supervision to ensure health and safety of all workers.
4. Monitoring of work environment.

It also lays down a duty on the occupier to prepare 9 written statements of policy with respect to the health and safety of workers and to give notice to the workers as per rules.

General duties of manufacturers etc. as regards articles and substances for use in factories (for the purpose of this section 7B, article includes plant and machinery). It lays down general duties of designers, manufacturers; importers, suppliers. As regard the articles and substances used in the factory, it would be the duty of the designers to ensure that the articles designed would be safe and without risk to the health of the workers. It would also be this duty to carry out necessary tests and provide adequate information regarding of safety and risk to health.

Importers of articles also will have to ensure that articles imported conform to the standard set out in the country or of the standard adopted outside the country.

5. Other Definitions

- Adult means a person who has completed his 18th year of age. [Section 2 (a)]
- Adolescent means a person who has completed his 15th year of age but has not completed his 18th year. [Section 2 (b)]
- Calendar year means the period of twelve months beginning with the first day of January in any year. [Section 2 (bb)]
- Child means a person, who has not completed his 15th year of age. [Section (c)]
- Young person means a person, who is either a child or an adolescent. [Section 2 (d)]
- Day means period of twenty-four hours beginning at mid-night [Section 2 (e)]
- Week means a period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories. [Section 2 (f)]
- Power means electrical energy, or any other form of energy, which is mechanically transmitted and is not generated by human or animal agency. [Section 2 (g)]
- Prime Mover means any engine, motor or other appliance, which generates or otherwise provides power. [Section 2 (h)]
- Transmission Machinery means any shaft, drum, pulley, system of pulleys, coupling clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance. [Section 2 (i)]

- Machinery includes prime movers, transmission machinery and all other appliances, whereby power is generated, transformed, transmitted or applied. [Section 2 (j)]
- Managing Agent has the meaning assigned to it in the Indian Companies Act, 1913 (VII of 1913). [Section 2 (o)]
- Prescribed means prescribed by rules made by the State Government under this Act. [Section 2 (p)]
- Relay and Shift means where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay' and each of such period is called 'shift'. [Section 2 (r)]

Self Assessment

State whether the following statements are true or false:

4. The word 'premises' means close land or land with building or building alone.
5. The expression "manufacturing process" has been defined in Section 3(k) to mean any process.
6. Child means a person, who has not completed his 15th year of age.

4.3 Approval, Licensing and Registration of Factories

The responsibility for getting the premises approved, when the factory is to be established, lies on the occupier. Under Section, 6 the State Government have been vested with the powers to frame rules which are to be complied with. Section 4 empowers the State Government to declare different departments' or branches of a factory as separate factories, in case a request is made in writing in this regard by the occupier. But there is no provision to enable two or more factories of the same occupier being declared as a single factory. The State Governments are also empowered to exempt any factory or any class of factories from all or any of the provisions of the Act (except section 67) for a specified period on the conditions notified in case of public emergency, which means grave emergency whereby the security of India or any part thereof is threatened, whether by war or external aggression or internal disturbance. Such a notification can be made for 3 months at a time.

4.3.1 Procedure for Approval, Licensing and Registration of Factories

The factory is to be got approved and registered after obtaining a licence by the occupier in accordance with the rules framed by the State Government in this behalf. The, State Governments are empowered to frame rules requiring the occupier of a factory for the purposes of this Act for the submission of plans of any class or description of factories to the Chief Inspector or State Government and to obtain previous permission of the Chief Inspector of Factories with regard to site where factory is proposed to be constructed, or extension, in case the factory already exists. A factory shall not be deemed to be extended by reason only of the replacement of any plant or machinery if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affects the environmental conditions from the evolution or emission of steam, heat or dust or flames injurious to health. The occupier is required to submit full building plans along with necessary particulars of specifications according to which the building is to be got approved in accordance with the rules. The registration, obtaining of licence or renewal of licence, as the case may be, is to be done by the occupier in accordance with the rule by paying the prescribed fees. The permission relating to site on which the factory is proposed to be constructed or extension to be executed in the existing factory in accordance with the plan is to be given within 3 months by the authority to whom, the

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request is made. If no reply is received within the aforesaid period, the permission is presumed. In case permission is refused then, in that case, the applicant may appeal to the State Government if permission is refused by the Chief Inspector or to the Central Government if the permission is refused by the State Government, within 30 days.



Did u know? No license or renewal of license shall be granted unless the occupier gives at least 15 days notice in writing to the Chief Inspector of factories before he proposes to occupy or use any premises as factory.

The notice shall state the full particulars of the factory, namely:

- the name and situation of the factory;
- the name and address of the occupier;
- the name and address of the owner of the premises or building;
- the nature of manufacturing process;
- the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate standby plant;
- The name of manager of the factory for the purpose of this Act;
- The number of workers likely to be employed in the factory ;
- the average number of workers per day employed during the last twelve months, in case of a factory, is in existence on the date of the commencement of this Act;
- such other particulars as may be prescribed under the rules. [Section 7 (1)]

The occupier is required to give notice to the Chief Inspector of Factories containing the above particulars with regard to those factories which were already functioning before this Act, within 30 days from the commencement of the Act [Section 7 (2)]. Before a factory engaged in a manufacturing process which is ordinarily carried on for less than 180 working days in a year resumes working, the occupier is required to send full particulars of the factory to the Chief Inspector within 30 days of such resumption of work [Section 7 (3)]. Any change in the appointment of a manager or the factory is to be intimated within 7 days by the occupier to the Chief Inspector, [Section 7 (4)]. During the time no manager functions in the factory, the occupier is deemed as manager for the purpose of the Act. Non-compliance with the provisions of Sections 6 and 7 is an offence for which the occupier can be punished.

Self Assessment

Fill in the blanks:

7. The responsibility for getting the premises approved, when the factory is to be established, lies on the
8. empowers the State Government to declare different departments' or branches of a factory as separate factories, in case a request is made in writing in this regard by the occupier.
9. No license or renewal of license shall be granted unless the occupier gives at least days notice in writing to the Chief Inspector of factories before he proposes to occupy or use any premises as factory.

4.4 Health, Safety and Welfare Measures of Employees

Notes

The Factories Act, 1948 provides the following provisions for maintaining health, security and safety of employees:

4.4.1 For Health

1. Cleanliness

Section 11 of the Factories Act, 1948 provides for general cleanliness of the factory. It lays down that dust, fumes and refuse should be removed daily; floors, stair-cases and passages should be cleaned regularly by sweeping and other effective means while washing of interior walls and roofs should take place at least once in 14 months and where these are painted with washable water paint, be repainted after every three years and -where oil paint is used at least once in five years. Further, all doors and window frames and other wooden or metallic framework and shutters should be kept painted or varnished and the painting or varnishing shall be carried out at least once in five years.

2. Disposal of Wastes and Effluents

Section 12 of the Factories Act makes it obligatory on the owner of every factory to make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

3. Ventilation and Temperature

The occupier is required to make effective and suitable provisions for securing and maintaining in every workroom adequate ventilation for the circulation of fresh air and to maintain such temperature as will secure to workers reasonable conditions of comfort and prevent injury to health.

4. Dust and Fume

Section 14 (1) deals with the measures, which should be adopted to keep the workrooms free from dust and fume. Every factory in which by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any work-room. If any exhaust appliance is necessary for the above purposes, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity and such point shall be enclosed as far as possible.

5. Artificial Humidification

Section 15 (1) lays down that in respect off all factories in which the humidity of the air is artificially increased the State Government may make rules-

- prescribing standard of humidification;
- regulating the methods used for artificially increasing the humidity of the air;
- directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;

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- prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workroom.

6. Overcrowding

To eliminate overcrowding, the Factories Act, 1948 prescribes that no room of any factory shall be overcrowded to the extent it is injurious to the health of the workers. The Act further prescribes that in every work-room, each worker should be provided with a minimum space of 9.9 cubic meters which was there on the commencement of this Act, 1948 or 4.2 cubic meters after such commencement (Section 16). No account shall however be taken of any space which is more than 4.2 meters above the level of the floor of the room for the aforesaid purpose. If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the Provisions of this section, be employed in the room. The Chief Inspector may, by order in writing exempt, subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

7. Lighting

Section 17 (1) provides that in every part of the factory, where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural, artificial or both.

8. Drinking Water

Section 18 deals with the provisions relating to arrangements for drinking water in factories. Sub-section (1) provides that in every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

9. Conservancy Arrangements

Section 19 provides that in every factory there shall be provided and maintained, separate arrangement for toilets for male and female workers at convenient places. These should be adequately lighted, ventilated and maintained in a clean sanitary condition.

10. Spittoons

Section 20 (1) lays down that in every factory there shall be provided a sufficient number of spittoons in convenient places. They shall be maintained in a clean and hygienic condition.

4.4.2 For Safety

1. Fencing of Machinery

Section 21 (1) requires that in every factory, the following must be securely fenced by safe guards of substantial construction while the machinery is in motion or use:

- every moving part of a prime mover and fly wheel connected to prime mover, whether the prime mover or fly-wheel is in the engine house or not;
- the headrace and tailrace of every water-wheel and water turbine;

- (iii) any part of stock-bar which projects beyond the head stock of a lathe; and
- (iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely,
 - ❖ every part of electric generator, a motor or rotary converter;
 - ❖ every part of transmission machinery; and
 - ❖ every dangerous part of any other machinery;

shall be securely fenced by safeguards of substantial construction which shall be consistently maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

2. Work on or Near Machinery in Motion

Section 22 (1) requires that, where in the factory it is essential to examine any part of the machinery (referred to in Section 21) while it is in motion or as a result of such examination, it is necessary to carry out:

- lubrication or other adjusting operation; or
- any mounting or shipping of belts or lubrication or other adjusting operation.

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

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

3. Employment of Young Person on Dangerous Machine

Section 23 prohibits the employment of a young person on dangerous machine unless he has been fully instructed as to the dangers arising from machine and the precautions to be observed and (i) has received sufficient training in work at the machine, or (ii) is under adequate supervision by a person who has a thorough knowledge and experience of the machine