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4. Striking Gear and Devices for Cutting off Power

In order to move the driving belt to and from fast and loose pulleys in transmission machine and prevent the belt from creeping back onto the fast pulley, suitable striking gear or other efficient mechanical appliance shall be provided, maintained and used. No driving belt when mused shall be allowed to rut or ride upon shafting in motion. Suitable devices are also maintained in every workroom for cutting off power emergencies.

5. Self-acting Machines

Section 25 of the Factories Act provides further safeguards to the workers injured by self-acting machines. It provides:

No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, m1hoefficer in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty five centimeters from any fixed structure which is not part of the machine.

6. Casing of New Machinery

Section 26 (1) provides that in all machinery driven by power, after the commencement of the Factories Act, 1948, every set screw; bolt or key on any revolving shaft, spindle, wheel or pinion shall be sunk, encased or effectively guarded as to prevent danger. [Section 26 (2)]. Further, all spur, worm and other toothed or friction gearing not requiring frequent adjustment while in motion shall be completely encased, unless they are safely situated. Furthermore, Section 26 (2) provides that, whoever sells or lets on hire or; as agent of the seller or hirer, cares or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (1), or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may-extend to three months or with fine which may extend to ₹ 500 or with both. Under the Act, the State Government is empowered to make rules for the safeguards to be provided form dangerous part of the machinery.

7. Prohibition of Employment of Women and Children near Cotton Openers

The Factories Act, 1948 prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work. But if the feed-end of the cotton-opener is in a room separated from the delivery and by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where feed-end is situated. (Section 27).

8. Roust and Lifts

Section 28 (I) requires that hoists and lifts must be of good mechanical construction, sound material and adequate strength. They should not 'only be properly maintained but also thoroughly examined at least twice a year by competent persons.

9. Revolving Machinery

Section 30 (1) provides that a notice indicating the maximum safe working peripheral speed of the grindstone or abrasive wheel the speed of the shaft, or spindle, must be permanently affixed on all rooms in a factory where grinding is carried on the speeds indicated in notices under sub-section (1) shall not be exceeded. [Sub-section (2) of Section 30]. Similarly, care shall be taken not to exceed the safe working peripheral speed of every revolving machine like revolving

Notes

vessel, cage, basket, fly-wheel, pulley, disc or similar appliances run by power. [Sub-section (3) of Section 30].

10. Pressure Plant

Section 31 (1) provides that effective measures should be taken to ensure safe working pressure of any part of the plant or machinery used in the manufacturing process operating at a pressure above the atmospheric pressure.

11. Pits, Sump and Opening in Floors

Section 33(1), of the Factories Act, 1948 requires that every fixed vessel, sump, tank, pit or opening in the ground or in the floor in every factory should be covered or securely fenced, if be reason of its depth, situation, construction or contents, they are or can be a source of danger.

Section 33(2) empowers the State Government to grant exemption from compliance of the provision of this section (i) in respect of any item mentioned in the section, (ii) to any factory or class of factories, and (iii) on such condition as may be provided in the rules.

12. Precautions against Dangerous Fumes, and Gases

In order to prevent the factory workers against dangerous fumes, special measures have been taken under the Factories Act. The Act prohibits entry in any chamber, tank, vat, pit, pipe, flue, or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present, to such an extent as to involve risk to persons being overcome thereby, except in cases where there is a provision of a manhole of adequate size or other effective means of egress. [Section 36 (1)]. No person shall be required or allowed to enter any confined space such as is referred to in sub-section (1) until all practicable measures have been taken to actually remove the gas, fumes or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust unless [Section 36 (2)].

13. Precaution Against Using Portable Electric Light

The Act prohibits any factory to use portable electric light or any other electric appliance of voltage exceeding 24 volts in any chamber, tank, vat, pipe, flue or other confined space unless adequate safety devices are provided [Section 36A (a)] The Act further prohibits the factory to use any lamp or light (other than that of flame-proof construction if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pet, pipe, flue or other confined space. [Section 36A (b)].

14. Explosive or Inflammable Materials

These measures include: (i) effective enclosures of the plant or machinery used in the process; (ii) removal or prevention of the accumulation of such dust, gas or vapour; (iii) exclusion or effective enclosure of all possible sources of ignition. [Section 37 (i)]

15. Precaution in Case of Fire

In every factory all practical measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain (i) safe means of escape for all persons in the event of fire, and (ii) the necessary equipment and facilities for extinguishing fire. Further effective measures should be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been trained in the routine to be followed in such cases. (Section 38).

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16. Safety of Building and Machinery

If it appears to the Inspector that any building or part of building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date. [Section 40 (1)].

17. Maintenance of Buildings

In order to ensure safety, the inspector is empowered to serve on the occupier or Manager (or both) of the factory an order specifying the measures to be taken and requiring the same to be carried out if it appears to him that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers. (Section 40A).

18. Safety Officers

In order to prevent accidents, the Act provides for the appointment of Safety Officers in factories employing 1,000 or more workers or where any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory. (Section 40B).

4.4.3 For Welfare

1. Washing facilities

In every factory

- adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein;
- separate and adequately screened facilities shall be provided for the use of male and female workers;
- such facilities shall be conveniently accessible and shall be kept clean.

The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing. (Section 42).

2. Facilities for storing and drying clothing

The State Government may, in respect of any factory or class or description of factories make rules requiring the provision therein of suitable place for keeping clothing not worn during working hours and for the drying of wet clothing. (Section 43)

3. Facilities for sitting

In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work. If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room, are able to do their work efficiently in a sitting position, he may, by order in writing,

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require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working. The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process. (Section 44).

4. First-aid-appliances

There shall, in every factory, be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory. Nothing except the prescribed contents shall be kept in a first-aid box or cupboard. Each first-aid box or cupboard shall be kept in the charge of a separate responsible person, who holds a certificate in first-aid treatment recognized by the State Government and who shall always be readily available during the working hours of the factory. In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory. (Section 45).

5. Canteens

The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. (Section 46).Without prejudice in the generality of the foregoing power, such rules may provide for-

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

6. Shelters, rest-rooms and lunch-rooms (Section 47)

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

- Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section:
- Provided further that where a lunch-room exists no worker shall eat any food in the work-room.

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

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

7. Creches (Section 48)

In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women. Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants. The State Government may make rules-

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

8. Welfare Officers (Section 49)

In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

50. Power to make rules to supplement this Chapter – The State Government may make rules-

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

Task As a Manager, how will you bring health, safety and welfare measures to your employees?

Self Assessment

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Fill in the blanks:

10. ..... of the Factories Act, 1948 provides for general cleanliness of the factory.

11. To eliminate ....., 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.

12. ..... provides that in every factory there shall be provided and' maintained, separate arrangement for toilets for male and female workers at convenient places.

4.5 Provisions regarding Employment of Adults, Women and Children in Factories

Following are the provisions regarding Provisions regarding Employment of Adults, Women and Children in factories are as follows:

4.5.1 Working Hours of Adult Workers

(i) ***Weekly and Daily Working Hours:*** Sections 51 and 54 contain general provisions regarding weekly and daily working hours. According to Section 51 no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week. As regards daily working hours under Section 54, no adult worker shall be required or allowed to work in a factory for more than 9 hours in a day. But with the previous approval of the Chief Inspector the daily maximum hours may be exceeded in order to facilitate and adjust the change of shifts. The above restriction is applicable to `workers' only as defined in the Act.

(ii) ***Weekly and Substituted Holidays:*** Section 52 speaks of weekly holiday to the workers of a factory. Accordingly an adult worker shall not be allowed or required to work in a factory on the first day of the week, i.e. Sunday. But if it becomes necessary to make Sunday a working day, a substituted holiday is made compulsory.

(iii) ***Compensatory Holidays:*** Such worker who has been deprived of weekly holiday should be allowed compensatory holidays of equal number to the holidays so lost within the month in which the holidays were due to him or within a months immediately following that month.

(iv) ***Intervals for Rest, Spread Over, Night Shifts and Double Employment:*** Every adult worker working in a factory is to be allowed rest during working hours of at least half an hour. This interval is to be so placed as to break the working hours for a maximum of 5 hours at a stretch. This period of 5 hours work can be extended to six hours by the permission of the State Government or subject to the control of State Government by the Chief Inspector on sufficient grounds to be recorded in the permission order. (Sections 55, 56, 57, 58).

(v) ***Extra Wages for Overtime:*** A worker of a factory required to work in excess of the maximum hours of work prescribed under Section 51 and Section 54 is to be paid extra wages for overtime work done by him. Therefore a worker required working for more than 9 hours in any day or 48 hours in any week shall be paid at twice the ordinary rate of wages for the extra hours of work done by him. Ordinary rate of wages for this purpose shall be the basic wages plus such allowances including the cash equivalent or the advantage accruing through the concessional sale of food grains and other articles made available to workers excluding bonus. Further, where any worker in a factory is employed on a piece rate basis the time rate wages admissible to worker in. such jobs shall be deemed to be equivalent to daily average wages for the piece rated worker.

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(vi) ***Notice of Periods of Work for Adult Workers:*** A notice in the prescribed form containing an abstract of Act and rules framed thereunder, the name and address of Inspector and name and address of Certifying Surgeon is required to be displayed in the factory. The notice so displayed should indicate the periods of work for which an adult worker is required to work everyday in a factory. The notice shall be in English language and a language understood by the majority of workers.

Notes The intention behind the displaying of notice is that no worker is employed to work in contravention of Sections 51, 52, 54, 55, 56 and 58 of the Act.

(vii) ***Section 66:*** Act provides for further restrictions on employment of women. Thus no exemption from the provisions of sec. 54 relative to daily hours of work may be granted in respect of any woman. No woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m.; except when the state Govt. varies the limits laid down. So however there is absolute prohibition on employment of woman between the hours of 10 p.m. and 5 a.m.

(viii) ***Power to Make Exempting Rules and Orders:*** The State Government has been empowered to make rules for granting exemption from the restrictions imposed with regard to working hours of adults as enumerated above on such conditions as it may deem necessary.

4.5.2 Employment of Women

(i) ***Prohibition of Employment of Women and children Near Cotton Openers:*** No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work:

Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

(ii) ***Restrictions on Employment of Women:*** The provisions of this shall, in their application to women in factories, be supplemented by the following further restrictions, namely

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

(b) no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M.: Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorize the employment of any woman between the hours of 10 P.M. and 5 A.M.

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

The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to or deterioration in, any raw material. The rules made under sub-section (2) shall remain in force for not more than three years at a time.

4.5.3 Employment of Children

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(i) ***Prohibition of Employment of Children and Adolescents:*** No factory can employ any person unless he has completed fourteen years of age. (Section 67) Thus there is total prohibition in employing children below 14 years of age. With regard to adolescent, i.e., above the age of 15 years but below 18 years, he too cannot be employed in a factory unless (i) he as well as the manager of a factory are in possession of certificates of fitness granted by the Certifying Surgeon and (ii) the adolescent carries with him while at work a token giving a reference to such certificate issued to him. (Section 68)

(ii) ***Effect of Certificate of Fitness Granted to Adolescent:*** An adolescent who has been granted certificate of fitness to work as an adult in a factory by the Certifying Surgeon is to be treated as an adult for the purposes of working hours and annual leave with wages. But in case, such certificate has not been granted to him then irrespective of his age he is to be treated as child for the purpose of this Act. But an adolescent who has not attained the age of seventeen years but has obtained a certificate of fitness to work in a factory as an adult shall be required or allowed to work between 6 a.m. and 7 p.m. only. However, the State Government may by notification in the Official Gazette, in respect of any factory or group or class or description of factories:

- vary the limit laid down in this sub-section. So, however, that no such sub-section authorise the employment of any female adolescent between 10 p.m. and 5 a.m.;
- grant exemption from the provision of this sub-section in case of serious emergency where national interest is involved.

(iii) ***Working Hours for Children:*** The Act regulates the working hours for children above age of 14 years eligible for employment in the factory. They can be employed for maximum hours of work lasting 4 $^{1}/_{2}$ hours in a day. The other prohibitions relating to their employment are

- the period of work is to be limited to shifts only:
- the shifts are not to overlap;
- the spread-over is not to exceed 5 hours;
- the child is to be employed only in one relay;
- the spread-over is not to change except once in 30 days; there should be no double employment;
- no exemption from the provisions of Section 52 dealing with weekly holidays; and
- employment during night, i.e., between 10 p.m., and 5 a.m. is prohibited.

(iv) ***Register of Child Workers:*** The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing –

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

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

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prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Self Assessment

State whether the following statements are true or false:

13. Section 52 speaks of weekly holiday to the workers of a factory.

14. No factory can employ any person unless he has completed 15 years of age.

15. The Act regulates the working hours for children above age of 14 years eligible for employment in the factory.

4.6 Provisions Relating to Hazardous Processes

Section 2 (cb) of the Factories (Amendment) Act, 1987 defines the term "hazardous process" as any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would :

- cause material impairment to the health of the persons engaged in or connected therewith, or
- result in the pollution of the general environment:

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

1. Constitution of site appraisal committee

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

- the Chief Inspector of the State who shall be its Chairman,
- a representative of the Central Board for the Prevention and Control of Water Pollution appointed by the Central Government under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974;
- a representative of the Central Board for the Prevention and Control of Air Pollution referred to in Section 3 of the Air (Prevention and control of Pollution) Act, 1981;
- a representative of the State Board appointed under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974;
- a representative of the Central Board for the Prevention and control of Air Pollution referred to in Section 5 of the Air (Prevention and Control of Pollution) Act, 1981;
- a representative of the Department of Environment in the State;
- a representative of the Meteorological Department of the Government of India;
- an expert in the field of occupational health; and

a representative of the Town Planning Department of the State Government, and not more than five other members who may be co-opted by the State Government who shall be-

- a scientist having specialized knowledge of the hazardous process which will be involved in the factory,

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- a representative of the local authority within whose jurisdiction the factory is to be established, and
- not more than three other persons as deemed fit by the, State Government.

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

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

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

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

2. Compulsory disclosure of information by the occupier

(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, health hazards and the measures to overcome them arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to :

- Workers employed in the factory
- the Chief Inspector,
- the local authority within whose jurisdiction the factory is situated, and
- general public in the vicinity.

(2) Section 41-B provided that at the time of registering the factory involving a hazardous process, the occupier shall lay down a detailed policy with respect to the health and safety of the workers-and intimate such policy to the Chief Inspector and the local authority.

(3) Such information shall include accurate information as to the quantity, specifications and other characteristics of wastes and manner of their disposal [Sub-section (3)].

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

(5) Every occupier of the factory is under an obligation to inform the Chief Inspector of the nature and details of the process in such form and in such manner as may by prescribe. [Sub-section (5)].

(6) On contravention of the provisions of sub-section (5), the license issued under Section 6 to such factory shall, be cancelled and the occupier shall he liable to penalty [Sub-section (6)].

(7) The occupier of the factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation

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and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the prescribed manner among the workers and the general public living in the vicinity [Sub-section (7)].

3. Specific responsibility of the occupier in relation to hazardous process

Under section 41C every occupier of a factory involving any hazardous process is required (a) maintain accurate and up-to-date health records or, the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to prescribed conditions; and (b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the prescribed manner (c) provide for medical examination of every worker- (i) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and (ii) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in prescribed manner.

4. Powers of Central Government to appoint Inquiry Committee

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

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

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

5. Emergency Standards

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

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

6. Permissible limits of exposure of chemical and toxic substances

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

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7. Worker's participation is safety management

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

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

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

8. Right of workers to warn about imminent danger

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

It shall be the duty of such occupier agent, manager or the person incharge or the factory or process to take immediate remedial action if is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.

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

Self Assessment

Fill in the blanks:

16. Section 2 (cb) of the Factories (Amendment) Act, 1987 defines the term ..... as any process or activity in relation to an industry specified in the First Schedule.

17. The ..... Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt.

18. The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes in any factory shall be of the value indicated in ..... Schedule.

Case Study

J. K. Industries Ltd vs. Chief Inspector of Fisheries and Boilers

In the landmark case of J. K. Industries Ltd vs. Chief Inspector of Fisheries and Boilers (1996 (7) SCALE 247), the Supreme Court observed that by the Amending Act, 1987, the legislature wanted to bring in a sense of responsibility in the minds of those w ho have the ultimate control over the affairs of the factory so that they take proper care

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for maintenance of the factories and the safety measures therein. The fear of penalty and punishment is bound to make the board of directors of the company more vigilant and responsive to the need to carry out various obligations and duties under the Act, particularly in regard to the safety and welfare of the workers.

Proviso (ii) was introduced by the Amending Act couched in a mandatory form - "any one of the directors shall be deemed to be the occupier" - keeping in view the experience gained over the years as to how the directors of a company managed to escape their liability for various breaches and defaults committed in the factory by putting up another employee as a shield and nominating him as the 'occupier' who would willingly suffer penalty and punishment.

It was held that where the company owns or runs a factory, it is the company which is in the ultimate control of the affairs of the factory through its directors. Even where the resolution of the board says that an officer or employee other than one of the directors shall have ultimate control over the affairs of the factory, it would only be a camouflage or an artful circumvention because the ultimate control cannot be transferred from that of the company to one of its employees or officers, except where there is a complete transfer of the control of the affairs of the factory.

An occupier of the factory in the case of a company must necessarily be any of its directors who shall be so notified for the purposes of the Factories Act. Such an occupier cannot be any other employee of the company or the factory. This interpretation of an 'occupier' would apply to all provisions of the Act wherever the expression `occupier' is used, and not merely for the purposes of Sec. 7 or Sec. 7A of the Act.

The Supreme Court further held that proviso (ii) is not ultravires the main provision of Sec. 2(n) and, as a matter of fact, there is no conflict at all between the main provision of Sec. 2(n) and proviso (ii) thereto. Both can be read harmoniously and when so read in the case of a company, the occupier of a factory owned by a company would mean any one of the directors of the company who has been notified/identified by the company to have ultimate control over the affairs of the factory. And where no such director has been identified, then, for the purposes of prosecution and punishment under the Act, the Inspector of Factories may initiate proceedings against anyone of the directors as the deemed occupier.

The Supreme Court further held that there is nothing unreasonable in fixing the liability on a director of a company and making him responsible for compliance with the provisions of the Act and the rules made thereunder and laying down that if there is contravention under of the provisions of the Act or an offence is committed under the Act the notified director and, in the absence of the notification, anyone of the directors of the company shall be prosecuted and shall be liable to be punished as the deemed occupier.

The restriction imposed by proviso (ii), if at all it may be called a restriction, has a direct nexus with the object sought to be achieved and is, therefore, a reasonable restriction within the meaning of clause (6) of Article 19. Proviso (ii) to Sec. 2 (n) is thus not ultravires Article 19(1)(g) of the Constitution.

Questions:

1. Study and analyze the case.
2. Write down the case facts.
3. What do you infer from it?

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

Notes

4.7 Summary

- The Factories Act, is a social legislation which has been enacted for occupational safety, health and welfare of workers at work places.
- This legislation is being enforced by technical officers i.e. Inspectors of Factories, Dy. Chief Inspectors of Factories who work under the control of the Chief Inspector of Factories and overall control of the Labour Commissioner, Government of National Capital Territory of Delhi.
- It applies to factories covered under the Factories Act, 1948.
- The industries in which ten (10) or more than ten workers are employed on any day of the preceding twelve months and are engaged in manufacturing process being carried out with the aid of power or twenty or more than twenty workers are employed in manufacturing process being carried out without the aid of power, are covered under the provisions of this Act.
- The enforcement of this legislation is being carried out on district basis by the district Inspectors of Factories.
- After inspection, Improvement Notices are issued to the defaulting managements and ultimately legal action is taken against the defaulting managements.
- The Inspectors of Factories file Challans against the defaulters, in the Courts of Metropolitan Magistrates.
- The work of Inspectors of Factories is supervised by the Dy. Chief Inspector of Factories on district basis.
- This Act provides for a maximum punishment up to two years and or a fine up to ₹ 1 lakh or both.
- Section 2 (cb) of the Factories (Amendment) Act, 1987 defines the term "hazardous process" as any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents.

4.8 Keywords

Adolescent: A person who has completed his fifteenth year of age has not completed his eighteenth year.

Adult: Adult means a person who has completed his 18th year of age.

Approval: The action of officially agreeing to something or accepting something as satisfactory.

Constitution: A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.

Creches: Crèches are short sessional care or temporary childcare arrangements to cover things such as shopping trips, conferences, or training events.

Factory: Whereon ten or more workers are working on any day of the preceding twelve months and in any part of which manufacturing process is being carried on.

Licensing: Licensing is the process of leasing a legally protected (that is, trademarked or copyrighted) entity – a name, likeness, logo, trademark, graphic design, slogan, signature, character, or a combination of several of these elements. The entity, known as the property or intellectual property, is then used in conjunction with a product.

Notes

Machinery: Prime movers transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.

Manufacturing Process: Manufacturing process management (MPM) is a collection of technologies and methods used to define how products are to be manufactured.

Occupier: Person performing the duties of a position, and enjoying the benefits and salary that go with it.

Overtime: Time in addition to what is normal; especially time worked beyond one's scheduled working hours.

Safety: Safety is a term that refers to the state or condition of being protected from some kind of risk, injury or danger.

Welfare: Availability of resources and presence of conditions required for reasonably comfortable, healthy, and secure living.

4.9 Review Questions

1. Give a brief history of Factory Legislation.
2. What amendments have been made by Act. No. 20 of 1987?
3. What is the object of the Factories Act?
4. Discuss the scope and applicability of the Act.
5. Explain the essentials of the term "Factory".
6. What do you mean by premises and precinct?
7. Discuss the responsibilities of an occupier in factory.
8. Discuss the provisions with respect to its occupiers who fail to discharge their responsibilities.
9. Critically examine the provisions for women and children working in a factory.
10. Are the following manufacturing processes hazardous?
    (a) bidi making
    (b) process of treatment and adaptation of sea water into salt.
    (c) conversion of raw films into a finished product.
11. Explain the essentials of the definition of worker under the Act.
12. Is it necessary for the occupier to get the premises approved when the factory is to be established?
13. What is the procedure for registration of factories?
14. Enumerate the provisions relating to protection of the health of workers.
15. Enumerate the provisions relating to welfare of workers.

Answers: Self Assessment

1. False
2. True
3. True
4. False
5. False
6. True

7.	Occupier	8.	Section 4	**Notes**
9.	15	10.	Section 11	
11.	Overcrowding	12.	Section 19	
13.	True	14.	False	
15.	True	16.	Hazardous Process	
17.	Site Appraisal	18.	Second	

4.10 Further Readings

Books

Davis, Ja E (2012). *Labour Laws.* General Books.

Kumar, H.L. (2010). *Labour Laws.* Universal Law Publishing.

Davidov, Guy & Langille, Brian (2011). *The Idea of Labour Law.* Oxford University Press.

Singh, B.D. (2009). *Labour Laws for Managers.* Excel Books India.

Rao, VSP (2008). *Industrial Relations & Labour Laws.* Excel Books.

Online links

http://www.vakilno1.com/bareacts/factoriesact/s27.htm

http://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm

http://www.vakilno1.com/bareacts/factoriesact/s66.htm

http://industrialrelations.naukrihub.com/factory-act.html

http://www.vakilno1.com/bareacts/factoriesact/s62.htm

Notes

Unit 5: Industrial Disputes Act

CONTENTS

Objectives

After studying this unit, you will be able to:

- Explain the definitions under Industrial Disputes Act
- Discuss the objectives and scope of Industrial Disputes Act
- Get an overview of authorities under this Act
- Describe the procedure and machinery for investigation and settlement of disputes
- Discuss measures for prevention of conflicts and disputes

Introduction

In the previous unit, we dealt with concepts of Factories Act. Based on the experiences of Trade Disputes Act, 1929 and usefulness of rule 81 (a) of the Defence of India Rules, the bill pertaining to Industrial Disputes Act, 1947 embodied the essential principles of rule 81 (a) which was acceptable to both employers and workers retaining most parts of the provisions of Trade Disputes Act, 1929. This legislation is designed to ensure industrial peace by recourse to a given form of procedure and machinery for investigation and settlement of industrial disputes. Its main objective is to provide for a just and equitable settlement of disputes by negotiations, conciliation, dedication, voluntary arbitration and adjudication instead of by trial of strength through strikes and lock-outs. As State Governments are free to have their own labour laws, States like UP., MP., Gujarat and Maharashtra have their own legislation for settlement of disputes in their respective states. U.P. legislation is known as U.P. Industrial Disputes Act, while others have Industrial Relations Act more or less on the lines of 'Bombay Industrial Relations Act, 1946. 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 Industrial Disputes Act.

Notes

5.1 Definitions

As per Section 2(k) of Industrial Disputes Act, 1947, an industrial dispute in defined as any dispute or difference between employers and employers, or between employers and workmen, or between workmen and which is connected with the employment or non-employment or the terms of employment or with the conditions of labor, of any person.

This definition includes all the aspects of a dispute. It, not only includes the disagreement between employees and employers, but also emphasizes the difference of opinion between worker and worker. The disputes generally arise on account of poor wage structure or poor working conditions. This disagreement or difference could be on any matter concerning the workers individually or collectively. It must be connected with employment or non-employment or with the conditions of labor.

The Industrial Disputes Act, 1947 recognizes certain rights to the employees employed by the employer. For the purposes of Industrial Disputes Act, 1947, workman has been defined as under:

"Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

- who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- who is employed in the police service or as an officer or other employee of a prison; or
- who is employed mainly in a managerial or administrative capacity; or
- who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Notes From the point of view of the employer, an industrial dispute resulting in stoppage of work means a stoppage of production. This results in increase in the average cost of production since fixed expenses continue to be incurred. It also leads to a fall in sales and the rate of turnover, leading to a fall in profits. The employer may also be liable to compensate his customers with whom he may have contracted for regular supply. Apart from the immediate economic effects, loss of prestige and credit, alienation of the labor force, and other non-economic, psychological and social consequences may also arise. Loss due to destruction of property, personal injury and physical intimidation or inconvenience also arises.

For the employee, an industrial dispute entails loss of income. The regular income by way of wages and allowance ceases, and great hardship may be caused to the worker and his family. Employees also suffer from personal injury if they indulge into strikes n picketing; and the psychological and physical consequences of forced idleness. The threat of loss of employment in case of failure to settle the dispute advantageously, or the threat of reprisal action by employers also exists.

Notes

In this Act, unless there is anything repugnant in the subject or context,

(a) "appropriate Government" means –

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government;

(aa) "arbitrator" includes an umpire;

(aaa) "average pay" means the average of the wages payable to a workman–

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;

(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

Notes

(bb) "banking company" means a banking company as defined in section 5 of the

Banking Companies Act, 1949 (10 of 1949), having branches or other establishments in more than one State, and includes the Export - Import Bank of India the Industrial Reconstruction Bank of India, the Industrial Development Bank of India, the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989, the Reserve Bank of India, the State Bank of India, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary bank, as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(c) "Board" means a Board of Conciliation constituted under this Act;

(cc) "closure" means the permanent closing down of a place of employment or part thereof;

(d) "conciliation officer" means a conciliation officer appointed under this Act;

(e) "conciliation proceeding" means any proceeding held by a conciliation officer or Board under this Act;

(ee) "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

(f) "Court" means a Court of Inquiry constituted under this Act;

(g) "employer" means–

(i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

(gg) "executive", in relation to a trade union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted;

(h) clause (h) omitted by the A.O. 1950.

(i) a person shall be deemed to be "independent" for the purpose of his appointment as the Chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute:

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company;

(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;

(ka) "Industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Notes

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then (a) if any unit of such establishment or undertaking carrying on any.

Notes Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Caselet

Twenty-first Century Printers Ltd., Mumbai v. K.P. Abraham and Anr - Is an Officer Functioning in the Management Capacity not a Workman?

Twenty-first Century Printers Ltd., Mumbai, was engaged in the manufacture of printed packing material. They had appointed K.P. Abraham as Purchase Officer. In the course of employment, the Company asked him to carry some article from Mumbai to Ahmedabad, which he declined to carry. The incident took an ugly turn and the Company decided to terminate K.P. Abraham's services. The main issue raised in this petition was whether K.P. Abraham was a workman as his function is managerial one coming under the exception in Section 2 (s) (iii) of the Industrial Disputes Act, 1947, and as such, he is not a workman.

Labour Court Judgment

However, the labour court held that K.P. Abraham was a workman under the Industrial Disputes Act, 1947, and termination of his service was illegal. The Presiding officer also directed his reinstatement with continuity of service and payment of full back wages. The Petitioner challenged the award of labour court in the Bombay High Court. Decision: The Hon'ble High Court allowed the writ petition and quashed the order of labour court which held K.P. Abraham a workman and set aside his termination. The High Court held that the purchase office functioning in the managerial capacity will not be a workman under the Industrial Disputes Act.

Source: http://www.phindia.com/srm/Court_Cases.pdf

Self Assessment

State whether the following statements are true or false:

1. The Industrial Disputes Act, 1957 recognizes certain rights to the employees employed by the employer.
2. The employer may also be liable to compensate his customers with whom he may have contracted for regular supply.
3. Arbitrator includes an umpire.

5.2 Objectives and Scope of Industrial Disputes Act

Notes

The Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

Various studies indicate that Indian labour laws are highly protective of labour, and labour markets are relatively inflexible. These laws apply only to the organised sector. Consequently, these laws have restricted labour mobility, have led to capital-intensive methods in the organised sector and adversely affected the sector's long-run demand for labour. Labour being a subject in the concurrent list, State-level labour regulations are also an important determinant of industrial performance. Evidence suggests that States, which have enacted more pro-worker regulations, have lost out on industrial production in general.

The Industrial Disputes Act (IDA) of 1947. Particular attention has been paid to its Chapter V-B, introduced by an amendment in 1976, which required firms employing 300 or more workers to obtain government permission for layoffs, retrenchments and closures. A further amendment in 1982 (which took effect in 1984) expanded its ambit by reducing the threshold to 100 workers. It is argued that since permission is difficult to obtain, employers are reluctant to hire workers whom they cannot easily get rid of.

Caution Job security laws thus protect a tiny minority of workers in the organised sector and prevent the expansion of industrial employment that could benefit the mass of workers outside. It is also argued that the restriction on retrenchment has adversely affected workplace discipline, while the threshold set at 100 has discouraged factories from expanding to economic scales of production, thereby harming productivity.

Several other sections of the IDA allegedly have similar effects, because they increase workers' bargaining strength and thereby raise labour costs either directly through wages or indirectly by inhibiting work reorganization in response to changes in demand and technology. The Act also lays down.

5.2.1 Objectives of Industrial Disputes Act

Following are the objectives of Industrial Disputes Act:

- promotion of measures for securing amity and good relations between employer and workmen
- Investigation and settlement of industrial disputes
- Prevention of illegal strike and lock-outs
- Relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking
- Promotion of Collective Bargaining

5.2.2 Scope and Coverage of Industrial Disputes Act

The Industrial Disputes Act, 1947, extends to the whole of India, and is applicable to all industrial establishments employing one or more workmen. It covers all employees both technical and non-technical, and also supervisors drawing salaries and wages upto ₹ 1600 per month. It excludes persons employed in managerial and administrative capacities and workmen subject to Army Act, Navy Act, Air Force Act and those engaged in police, prison and civil services of the Government. As regards disputes, it covers only collective disputes or disputes supported by trade unions or by substantial number of workers and also individual disputes relating to termination of service. For purposes of this act the term "dispute" is defined as dispute or difference between employers

Notes

and employees, which is connected with the employment and non-employment or the terms of employment or with the condition of labour of any person. [Section 2(k)].

Industrial Disputes concerning any industry carried on by or under the authority of Central Government or by a Railway company or concerning any such controlled industry as may be specified or major part the Central Government.

Example: In relation to other industrial disputes the State Government: In HEC Majdoor Union Vs. State of Bihar S.C. (1969), it was held that in respect of Central Public Sector Undertakings the State where the factory was situated was the appropriate Government. This decision was changed in Air India case S.C. 1997 where it was held that in respect of Central Public Undertakings the appropriate Government is the Central Government. This definition of appropriate Government is applicable to contract labour (R&A) Act, 1970 and Payment of Bonus Act, 1965.

The term "Industry" includes not only manufacturing and commercial establishments but also professionals like that of the lawyers, medical practitioners, accountants, architects, etc., clubs, educational institutions like universities, cooperatives, research institutes, charitable projects and other kindred adventures, if they are being carried on as systematic activity organised by cooperation between employers and employees for the production and/or distribution of goods and services calculated to satisfy human wants and wishes. It also includes welfare activities or economic adventures or projects undertaken by the government or statutory bodies, and, Government departments discharging sovereign functions if there are units which are industries and which are substantially severable units. (Judgement dated 21.2.78 in the civil appeals no. 753-754 in the matter of Bangalore Water Supply & Sewerage Board etc. vs. Rajappa & Sons, etc.).

Sec. 2 (s) defines "workman" as any person (including an apprentice) employed in any industry to do any skilled, unskilled manual, supervisory, operational, technical or clerical work for hire or reward. Whether the terms of employment be expressed or employed and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute but does not include any such person (i) who is subject to Air Force Act, Army Act or Navy Act or (ii) who is employed in police service or prison service, (iii) who is employed mainly in a managerial and advisory capacity or (iv) who being employed in supervisory capacity draws wages exceeding ₹ 1600 and exercises by the nature of the duties attached to the office or by means of powers vested in him, functions mainly of a managerial nature. May and Baker India case S.C. (1976) which led to passing of Sales Promotion Employees Act, 1976, had been stipulated that sales / medical representatives are not workmen under Sec. 2(s) of ID Act.

The provisions of ID Act, 1947 will be applicable to certain class of working journalists as per section 3 of Working Journalists Act 1955.

Self Assessment

Fill in the blanks:

4. ..... being a subject in the concurrent list, State-level labour regulations are also an important determinant of industrial performance.
5. For purposes of this Act the term ..... is defined as dispute or difference between employers and employees, which is connected with the employment and non-employment or the terms of employment or with the condition of labour of any person.
6. Sec. 2 (s) defines ..... as any person (including an apprentice) employed in any industry to do any skilled, unskilled manual, supervisory, operational, technical or clerical work for hire or reward.

5.3 Authorities under this Act

Notes

Following are the Authorities under the Industrial Disputes Act:

1. ***Works Committee:*** In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

Notes It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

2. ***Conciliation officers:*** The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes. A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

3. ***Boards of Conciliation:*** The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute. A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

   Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

   A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

   Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

4. ***Courts of Inquiry:*** The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute. A court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a court consists of two or more members, one of them shall be appointed as the chairman. A court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Notes

Provided that, if the appropriate Government notifies the court that the services of the chairman have ceased to be available, the court shall not act until a new chairman has been appointed.

5. ***Labour Courts:*** The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act. A Labour Court shall consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless

   - he is, or has been, a Judge of a High Court; or
   - he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
   - he has held any judicial office in India for not less than seven years; or
   - he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

6. ***Tribunals:*** The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such functions as may be assigned to them under this Act. A Tribunal shall consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

   (a) he is, or has been, a Judge of a High Court; or

   (aa) he has, for a period of not less than three-years, been a District judge or an Additional District Judge.

The appropriate Government may, if it so thinks, fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

Did u know? Section 7A empowers the appropriate Government to constitute one or more Industrial Tribunals for adjudication of the disputes relating to any matter specified in the Schedules. The Second Schedule enumerated the matters which fall within the jurisdiction of the Labour Court. The Third Schedule enumerates the matters which fall within the jurisdiction of the Industrial Tribunal, Jagdish Narain Sharma v. Rajasthan Patrika Ltd, 1994 ILR 265(Raj).

7. ***National Tribunals:*** The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. A National Tribunal shall consist of one person only to be appointed by the Central government. A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a Judge of a High Court. The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Self Assessment

Notes

State whether the following statements are true or false:

7. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926.
8. A Tribunal shall consist of two person only to be appointed by the appropriate Government.
9. The Central Government may, if it so thinks fit, appoint four persons as assessors to advise the National Tribunal in the proceeding before it.

5.4 Procedure and Machinery for Investigation and Settlement of Disputes

For Industrial; disputes which are not prevented or settled by, collective bargaining or Works Committees or by Bipartite negotiations, the following authorities are provided under the Industrial Disputes Act for resolving the same.

- Conciliation Officer and Board of Conciliation
- Voluntary Arbitration
- Adjudication by Labour Court, Industrial Tribunal, and National Tribunal

5.4.1 Conciliation

Conciliation in industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person or a body of persons with a view to induce or persuade them to arrive at some agreement to their satisfaction and in the larger interest of industry and community as a whole. This may be regarded as one of-the phases of collective bargaining and extension of process of mutual negotiation under the guidance of a third party, i.e. Conciliation Officer, or a Board of Conciliation appointed by the Government.

Both the Central and State Governments are -empowered under the Industrial Disputes Act, 1947 to appoint such number of conciliation officers as may be considered necessary for specified areas or for specified industries in specified areas either permanently or for limited periods.

Notes The main duty of a Conciliation Officer is to investigate and promote settlement of disputes. He has wide discretion and may do all such things, as he may deem fit to bring about settlement of disputes. His role is only advisory and mediatory. He has no authority to make a final decision or to pass formal order directing the parties to act in a particular manner.

Process of Conciliation

Where any industrial dispute exists or is apprehended, and is brought to the notice of conciliation officer by the parties concerned, or is referred to him by the government, or he receives a notice of strike or lock-out, he is to hold conciliation proceedings in the prescribed manner. Conciliation proceedings are obligatory in case of public utility services, and in such cases conciliation proceedings have to be started immediately after receiving notice of strike or lock-out or reference

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from the Government. In such cases conciliation proceedings are deemed to have commenced from the time the notice of strike is received by the conciliation officer. In other cases conciliation may be initiated at the discretion of the Government. The conciliation officer' may send formal intimation to the parties concerned declaring his intention to commence conciliation proceedings with effect from the date he may specify. He may hold meetings with the parties to the dispute either jointly or separately.

A joint meeting saves time and also affords parties an opportunity to meet each other and put forward their respective view points and comments about the dispute. Conciliation proceedings are to be conducted expeditiously in a manner considered fit by the conciliation officer for the discharge of his duties imposed on him by the Act, If a settlement is arrived at in the course of the conciliation proceedings, memorandum of settlement is worked out and signed by the parties concerned, and it becomes then binding on all parties concerned for a period agreed upon.

The conciliation officer is to send a report to the Government giving full facts along with a copy of the settlement. If no agreement is arrived at, the-conciliation- officer is required to submit a full report to the Government explaining the causes of failure.

After considering the failure report the Government may refer the dispute to the Board of Conciliation, arbitration, or for adjudication to Labour Court or Industrial Tribunal. If the Government does not make such a reference, it shall record and communicate to the parties concerned the reasons thereof. While exercising its discretion, the Government must act in a bonafide manner and on consideration of relevant matters and facts. The reasons must be such as to show that the question was carefully and properly considered. The conciliation officer has to send his report within 14 days of the commencement of conciliation proceedings, and this period may be extended as may be agreed upon by the parties in writing.

The conciliation officer is not the judicial officer. After reporting that no settlement could be arrived at, he cannot be debarred from, making fresh effort to bring about a settlement. But he cannot take final decision by himself.

Powers of Conciliation Officer

Under the Act, conciliation is not a judicial activity. It is only administrative, since it is executed by the Government agency. Although conciliation officer is not a judicial officer, but to enable him to discharge his duties cast upon him under the Act, he has been empowered to enter the premises occupied by an establishment to which the dispute relates after giving reasonable notice for inspecting same, or any of its machinery, appliances or articles. He can also interrogate any person there in respect of any thing situated therein or any matter relevant to the subject matter of conciliation. He can also call for any document which he has ground for considering relevant in the dispute, or to be., necessary for the purposes of verifying the implementation of any award or carrying out any other duty imposed on him under the Act. He is also empowered to enforce the attendance of any person for the purpose of examination of such persons. For all these purposes the conciliation officer shall have the same power as are vested in a Civil Court under the Code of Civil Procedure. He is also deemed to be public servant within the meaning of Sec. 21 of the Indian Penal Code.

Settlements In and Outside Conciliation

A settlement arrived at in proceedings under the Act is binding on all the parties to the dispute. It is also binding on other parties if they are summoned to appear in conciliation proceedings as parties to the dispute: In case of employer such a settlement is also binding on his heirs, successors, assigns in respect of establishment to which these dispute relate. In regard to employees, it is binding on all persons who were employed in establishment or part of the establishment to which the dispute relates on the date of dispute, and to all persons who subsequently become employed in that establishment.

A settlement arrived at by agreement between the management and workers or their unions outside conciliation proceedings are binding only on the parties to the agreement. (Section 18).

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Board of Conciliation

This is a higher forum which is constituted for a specific dispute. It is not a permanent institution fake the Conciliation Officer, The Government may, as occasion arises, constitute a Board of Conciliation for settlement of an industrial dispute with an independent chairman and equal representatives of the parties concerned as its members. . The chairman, who is appointed by the Government, is to be a person unconnected with the dispute or with any industry directly affected by such dispute. Other members are to be appointed on the recommendations of the parties concerned; and if any party fails to make recommendation, the Government shall appoint such persons as it thinks fit to represent that party. The Board cannot admit a dispute in conciliation on its own. It can act only when reference is made to it by the Government. (Section 5).

Notes As soon as a dispute is referred to a Board, it has to endeavour to bring about a settlement of the same. For this purpose, it has to investigate the dispute and all matters affecting the merits and right settlement thereof, for the purpose of inducing the parties to come to a fair and amicable settlement. Procedure followed by the Board in this regard is almost the same as adopted by the conciliation officers. The Board is, however, required to submit its report within two months of the date on which the dispute was referred to it, or within such short period as the Government may fix in this behalf. The proceedings before the Board are to be held in public, but the Board may at any stage direct that any witness shall be examined or proceedings shall be held in camera.

If a settlement is arrived at, a report with a copy of the settlement is submitted, to the Government. If the Board fails to bring about settlement, a report is submitted to the Government stating the facts and circumstances, the steps taken, reasons for failure along with its findings. After considering its findings the Government may refer the dispute for voluntary arbitration if both the parties to the dispute agree for the same, or for Adjudication to Labour Court or Industrial Tribunal or National Tribunal. There period of submission of report may be extended by the Government beyond two months as agreed upon by the parties in writing. A member of the Board may record any minute of dissent from the report, or from any recommendation made therein. With the minute of dissent the report shall be published by, the Government within thirty days from the receipt thereof. A Board of Conciliation can only try to bring about a settlement. It has no power to impose a settlement on the parties to the dispute. The Board has the power of a Civil Court for, (i) enforcing the attendance of any person and examining on oath; (ii) compelling the production of documents and material objects; (iii) issuing commissions for the examination of witnesses. The enquiry or investigation by the Board is regarded as judicial proceedings.

The Boards of conciliation are rarely appointed by the Government these days. The original intention was that major disputes should be referred to a Board and minor disputes shout be handled by the conciliation officers. In practice, however, it was found that when the Parties to the dispute could not come to an agreement between themselves, their representatives on the Board in association with independent chairman (unless latter had the role of an umpire or arbitrator), could rarely arrive at a settlement. The much more flexible procedure followed by the conciliation officer is found to be more acceptable. This is more so when disputes relate to a whole industry, or important issues, and a senior officer of the Industrial Relations Machinery, i.e. a senior officer of the Directorate of Labour, is entrusted with the work of conciliation. The Chief Labour Commissioner (Central) or Labour Commissioner of the State Government generally intervene themselves in conciliation when important issues form the subject matters of the dispute.

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Did u know? Court of Inquiry may be constituted for inquiring about matter appearing to be connected with or relevant to an I.D. The court may consist of one or more independent persons. It has to submit its report within six months on the matter referred to Units. (Sec. 6).

5.4.2 Voluntary Arbitration

When Conciliation Officer or Board of Conciliation fails to resolve conflict/dispute, parties can be advised to agree to voluntary arbitration for settling their dispute. For settlement of differences or conflicts between two parties, arbitration is an age old practice in India. The Panchayat system is based on this concept. In the industrial sphere, voluntary arbitration originated at Ahmedabad in the textile industry under the influence of Mahatma Gandhi. Provision for it was made under the Bombay Industrial Relations Act by the Bombay Government along with the provision for adjudication, since this was fairly popular in the Bombay region in the 40s and 50s. The Government of India has also been emphasizing the importance of voluntary arbitration' for settlement of disputes in the labour policy chapter in the first three plan documents, and has also been advocating this step as an essential feature of collective bargaining. This was also incorporated in the Code of Discipline in Industry adopted at the 15th Indian Labour Conference in 1958. Parties were enjoined to adopt voluntary arbitration without any reservation. The position was reviewed in 1962 at the session of the Indian Labour Conference where it was agreed that this 'step would be the normal method after conciliation effort fails, except when the employer feels that for some reason he would prefer adjudication. In the Industrial Trade Resolution also which was adopted at the time of Chinese aggression, voluntary arbitration was accepted as a must in all matters of disputes. The Government had thereafter set up a National Arbitration Board for making the measure popular in all the states, and all efforts are being made to sell this idea to management and employees and their unions.

In 1956 the Government decided to place voluntary arbitration as one of the measures for settlement of a dispute through third party intervention under the law. Sec. 10A was added to the Industrial Disputes Act, and it was enforced from 10th March, 1957.

Reference of Disputes for Arbitration

Where a dispute exists or is apprehended, it can be referred for arbitration if the parties to the dispute agree to do so by submitting a written agreement to that effect, mentioning the person acceptable to them as arbitrator and also the issues to be decided in arbitration - proceedings, to the Government and the Conciliation Officer concerned before it is referred for adjudication to Labour Court or Tribunal. The Agreement must be signed by both the parties. Both under Sec. 10A and 10(2) reference is obligatory.

Where an agreement provides for even number of arbitrators, it will provide for the appointment of another person as an Umpire who shall decide upon the reference if the arbitrators are divided in their opinion. The award of the Umpire shall be deemed to be the arbitration award for the purposes of the Act.

The appropriate Government shall within one month from the date of the receipt of the copy of the arbitration agreement publish the same in the Official Gazette if the Government is satisfied that the parties, who have signed the agreement for arbitration, represent majority of each party; otherwise it can reject the request for arbitration.

Where any such notification has been issued, the employer and workmen who are not parties to the arbitration agreement, but are concerned in the dispute, shall be given an opportunity to present their case before the arbitrator or arbitrators.

Notes

The arbitrator shall investigate the dispute and submit to the Government the Arbitration Award signed by him.

Where an industrial dispute has been referred for arbitration and notification has been issued, the Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute, which may be in existence on the date of reference.

The arbitration award which is submitted to the Government and becomes enforceable, is binding on all parties to the agreement and all other parties summoned to appear in the proceedings as parties to 'dispute. Such an award is also binding on all, employees at the time of award, or to be employed subsequently even if they are not party to the initial agreement. If the arbitration agreement is not notified in the Official Gazette under Sec. 10A, it is applicable only to the parties who have agreed to refer the dispute for arbitration.

Arbitration Award is enforceable in the same manner as the adjudication award of Labour Court or Industrial Tribunal.

Arbitration is an alternative-to adjudication and the two cannot be used simultaneously. It is voluntary at the discretion of the parties to a dispute. Arbitrator is a quasi-judicial body. He is an independent person and has all the attributes of a statutory arbitrator. He has wide freedom, but he must function within the limit of his powers. He must follow due procedure of giving notice to parties, giving fair hearings, relying upon all available evidence and documents. There must be no violation of the principles of natural justice.

Acceptance of Arbitration

Voluntary arbitration has been recommended and given place in law by the Government. Experience, however, shows that although the step has been strongly pressed by the Government for over thirty years it has yet to take roots. During the last decade not even 1% of the disputes reported were referred for arbitration. The National, Commission on Labour examined the working of arbitration as a method of settling disputes, and found that it was yet to be accepted by the parties, particularly by the 'employers, unreservedly. The main hurdles noticed yet are:

- Choice of suitable arbitrator acceptable to both parties.
- Payment of-arbitration-fees-Unions can seldom afford to share such costs equally with management.

Apart from these, it appears that arbitration under the Act is not correctly understood by the employers and trade unions. When arbitration is suggested, the impression often is that matter is to be left to the sole decision of an individual who can act in any manner he likes. The sanctity of the decision by an arbitrator is also held in doubt. The fact that law covers voluntary arbitration, and places it almost parallel to adjudication, is not appreciated or known widely.

Caution Undoubtedly an arbitrator can give a decision more promptly and enjoys greater freedom since he is not bound by fetters of law and procedure. He is also not required to only interpret the technicality and meaning of statutory provisions. He is required in fact to decide the issue on grounds of natural justice and fair play to both the parties. Arbitration if accepted voluntarily and not under any duress or pressure, should provide a more wholesome answer. It, however, is for the parties to give a trial to this measure.

5.4.3 Adjudication

Unlike conciliation and arbitration, adjudication is compulsory method of resolving conflict. The Industrial Disputes Act provides the machinery for adjudication, namely, Labour Courts, Industrial Tribunals and National Tribunals. The procedures and powers of these three bodies

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are similar as well as provisions regarding commencement of award and period of operation of awards. Under the provisions of the Act, Labour Courts and Industrial Tribunals can be constituted by both Central and State Governments, but the National Tribunals can be constituted by the Central Government only, for adjudicating disputes which, in its opinion, involve a question of national importance or of such a nature that industrial establishments situated in more than one State are likely to be affected by such disputes.

Labour Court

It consists of one person only, who is also called the Presiding Officer, and who is or has been a judge of a High Court, or he has been a district judge or an additional district judge for a period not less than three years, or has held any judicial office in India for not less than seven years. Industrial disputes relating to any matter specified in the Second Schedule of the Act may be referred for adjudication to the Labour Court. (Section 7).

Industrial Tribunal

This is also one-man body (Presiding Officer). The Third Schedule of the Act mentions matters of industrial disputes which can be referred to it for adjudication. This Schedule shows that Industrial Tribunal has wider jurisdiction than the Labour Court. The Government concerned may appoint two assessors to advise the Presiding Officer in the proceedings. (Section 7A).

National Tribunal

This is the third adjudicatory body to be appointed by the Central Government under the Act for the reasons already mentioned above. It can deal with any dispute mentioned in Schedule II and III of the Act or any matter which is not specified therein. This also consists of one person to be appointed by the Central Government, and he must have been a Judge of a High Court. He may also be assisted by two assessors appointed by the Government to advise him in adjudicating disputes.

The presiding officers of the above three adjudicatory bodies must be independent persons and should not have attained the age of 65 years. Again, these three bodies are not hierarchical. It is the prerogative of the Government to refer a dispute to these bodies. They are under the control of the labour department of the respective State Government and the Central Government. The contending parties cannot refer any dispute for adjudication themselves, and the awards of these bodies are binding on them. (Section 7B).

Reference of Dispute for Adjudication (Section 10)

If a dispute is not settled by direct negotiation, or conciliation, if the parties do not agree to get it settled by voluntary arbitration, the Government at its discretion may refer it to Labour Court, Industrial Tribunal or National Tribunal, depending upon whether the matter of the dispute appears in the Second or Third Schedule of the Act. However, if the parties to the dispute jointly or separately apply for a reference to Labour Court or Tribunal, the Government is obliged to make a reference accordingly if it is satisfied that the persons applying represent the majority of each party. Disputes which are considered vexatious or frivolous, are not referred to adjudication. The Government has also the power to refer disputes which have not taken place, but are only apprehended. After referring the dispute to adjudication the Government can prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of its reference.

An order referring a dispute to Labour Court or Industrial Tribunal or National Tribunal shall specify the period within which they shall submit their award on such dispute to the Government concerned. In case of individual disputes such a period shall not exceed three months. The period

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can, however, be extended if the parties concerned apply for such extension, or the Labour Court or Industrial Tribunal may consider expedient to do so for the reason to be recorded. The proceedings before these authorities shall not lapse on the ground that the proceedings have not been completed' within the specified time or by reason of the death of any of the parties to dispute being a workman. In computing any period specified in the order of reference, the period if any, for which proceedings had been stayed by the injunction of the Civil Court, shall be excluded.

When the Central Government is the appropriate Government in relation to any industrial dispute, it can refer the dispute for adjudication to Labour Court or Industrial Tribunal appointed by the State Government instead of setting up its own Labour Court or Tribunal for that purpose.

Effectiveness of Adjudication Machinery

Initially trade unions affiliated to all political parties were enthusiastic in getting their disputes settled by conciliation and adjudication as provided under the Industrial Disputes Act, 1947. Their enthusiasm started waning when they found this method of settling disputes as very time consuming. Not a few employers also started questioning the credibility of the presiding officers of the Labour Courts and Industrial Tribunals, who are generally retired persons engaged on yearly contract basis. Some trade union leaders now prefer to get disputes settled by pressurised bargaining rather than by adjudication. Quite a number of disputes are reported to be pending with Labour Courts and Industrial Tribunals for four or five years, and for still longer periods in High Courts and the Supreme Court. It, therefore, appears that the machinery provided by the Industrial Disputes Act is failing to cope with demand made on it. Its record shows that is far from successful in resolving conflict effectively. This may be due to red-tapism and bureaucratic delays and complicated procedure which are inherent in the Government organisation. Such delays have encouraged militancy or violence in management and union relations.

The Industrial Disputes Act as amended recently (Act 46 of 1982), provides time limits for the disposal of disputes by Labour Courts and Tribunals, but these time limits are observed rarely. The amended Act also provides for setting up machinery- within the establishment for prompt handling of grievances, but this amendment has yet to be given effect to. Over thirty years back, National Commission on Labour recommended setting up of more independent machinery in the form of Industrial Relations Commissions, and this recommendation is still under the consideration of the Government. In view of all this it is no wonder that union and management relations in the country are still brittle, and arrangements for settlement of disputes need considerable improvement.

Self Assessment

Fill in the blanks:

10. The main duty of a ..... Officer is to investigate and promote settlement of disputes.
11. A Board of Conciliation can only try to bring about a ..... .
12. The Boards of conciliation are rarely appointed by the ..... these days.

5.5 Measures for Prevention of Conflicts and Disputes

The Act not only provides machinery for investigation and settlement of disputes, but also some measures for the containment and prevention of conflicts and disputes. Important preventive measures provided under the Act are:

1. Setting up of Works Committees in establishments employing 100 or more persons, with equal number of representatives of workers and management for endeavouring to compose

Notes

any differences of opinion in matters of common interest, and thereby promote measure for securing and preserving amity and cordial relations between the employer and workmen. The representatives of workmen will not be less than the representatives of employers and such representatives of workmen will be from among the workmen engaged in the establishment and in consultation with registered trade unions. The decision of the works committee carries weight but is not conclusive and binding; its duties is to smooth away friction then to alter conditions of services, etc. (Section 3).

2. Prohibition of changes in the conditions of service in respect of matters laid down in the Fourth Schedule of the Act (a) without giving notice to the workmen affected by such changes; and (b) within 21 days of giving such notice. No such prior notice is required in case of (a) Changes affected as a result of any award or settlement; (b) Employees governed by Government rules and regulations.

3. Prohibition of strikes and lock outs in a public utility service (a) without giving notice to other party within six weeks before striking or locking out, (b) within 14 days of giving such notice, (c) before the expiry, of the date of strike or lock-out specified in the notice and during the pendency of any conciliation proceedings before a conciliation office and seven days after the conclusion of such proceedings. In non-public utility services strikes and lock out are prohibited during the pendency of conciliation proceedings before the Board of Conciliation and seven days after the conclusion of such proceedings, during the pendency of proceedings before an arbitrator, labour court, and Industrial Tribunal and National Tribunal, during the operation of an award and settlement in respect of matters covered by the settlement or award. (Sections 22 and 23).

4. Prohibition of Unfair Labour Practices: Secs. 25T and 25U prohibit employers, employees and unions from committing unfair labour practices mentioned in the Schedule V of the Act. Commission of such an offence is punishable with imprisonment upto six months and fine upto ₹ 1000, or both. (Ch. V -C)

5. Requiring employers to obtain prior permission of the authorities concerned before which disputes are pending for conciliation, arbitration and adjudication, for changing working and employment conditions, or for dismissal or discharging employees and their union leaders. (Section 33).

6. Regulation, of lay-off and retrenchment and closure of establishment: Sec. 25 and its sub-sections require employers to (a) pay lay-off compensation to employees (in establishments employing 50 or more) for the period that they are laid-off, at the rat of 50% of the salary or wages which they would have paid otherwise, (b) give one month notice, and three months notice in case of establishments employing 100 or more persons or pay in lieu of notice, and also pay compensation at the rate of 15 days wages for every completed year of service for retrenchment and closing establishments (c) Retrench employees on the basis of first come last go, and (d) obtain permission from the Government for retrenchment and laying off employees and closing, of establishments employing 100 or more persons.

Task As a Manager, what measures will you take in order to prevent Conflicts and Disputes in your organisation.

Self Assessment

State whether the following statements are true or false:

13. Setting up of Works Committees in establishments employing 200 or more persons, with equal number of representatives of workers and management for endeavouring to compose any differences of opinion in matters of common interest.

Notes

14. Employees and unions from committing unfair labour practices mentioned in the Schedule V of the Act.

15. In non-public utility services strikes and lock out are prohibited during the pendency of conciliation proceedings before the Board of Conciliation and seven days after the conclusion of such proceedings, during the pendency of proceedings.

Case Study

V.J. Textiles – Industrial Disputes Resolution System under the Industrial Disputes Act, 1947

V.J. Textiles is a leading industry having a workforce of more than 1,200 employees, engaged in manufacturing cotton yarn of different counts. The Company has a well-established distribution network in different parts of the country. It has modernized all its plants, with a view to improve the productivity and maintain quality. To maintain good human relations in the plants and the organization as a whole, it has extended all possible facilities to the employees. Compared to other mills, the employees of V J. Industries are enjoying higher wages and other benefits. The Company has a Chief executive, followed by executives' in-charge of different functional areas. The Industrial Relations Department is headed by the Industrial Relations Manager.

The employees are represented by five trade unions — A, B, C, D and E (unions are alphabetically presented based on membership) — out of which the top three unions are recognized by the management for purposes of negotiations. All the unions have maintained good relations with the management, both individually and collectively. For the past ten years, the Company has been distributing bonus to the workers at rates more than the statutory minimum prescribed under the Bonus Act. Last year, for declaration of the rate of bonus, the management had a series of discussions with all recognized unions and finally announced a bonus which was, in turn, agreed upon by all the recognized unions. The very next day when the management prepared the settlement and presented it before the union representatives, while Unions A and C signed the same, the leader of Union B refused to do so and walked out, stating that the rate of bonus declared was not sufficient. The next day Union B issued a strike notice to the management asking for higher bonus.

The management tried its best to avoid the unpleasant situation, but in vain. As a result, the members of Union B went on strike. They were joined by the members of Union D also. During the strike, the management found that leader of Union A, soon after the first meeting, had stated in the presence of a group of workers, "lt is because of me that the management has agreed to declare this much amount of bonus to the employees; Union B has miserably failed in its talks with the management for want of initiative and involvement". This observation somehow reached the leader of Union B as a result of which he felt insulted. Soon after identifying the reason for Union B's strike call, the Industrial Relations Manager brought about a compromise between the leaders of Unions A and B. Immediately after this meeting, the strikers (members of Unions B and D) resumed work and the settlement was signed for the same rate of bonus as was originally agreed upon.

Questions:

1. Was the leader of Union A justified in making remarks which made the leader of Union B feel offended?
2. What should be management's long-term strategy for avoiding recurrence of inter union differences on such issues?
3. If you were the Industrial Relations Manager, what would you have done had the Union B resorted to strike for a reason other than that mentioned in the case?

Source: http://www.phindia.com/srm/Real-Time-Chap-07.pdf

Notes

5.6 Summary

- An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment.
- It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions.
- When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other.
- The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.
- The object of the Act is to make provisions for investigation and settlement of industrial disputes.
- The purpose is to bring the conflicts between employer and employees to an amicable settlement.
- The Act provides machinery for settlement of disputes, if dispute cannot be solved through collective bargaining.
- Section 10, Industrial Disputes Act, 1947 provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time; by order in writing refer the dispute for redressal before the competent Jurisdictional Tribunals or as provided in the Act.
- Section 10A, Industrial Disputes Act, 1947 provides that where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may at any time before the dispute has been referred to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such persons (including the presidency officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator as may be specified in the arbitration agreement.
- Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice has been received, shall hold conciliation proceedings in the prescribed manner.

5.7 Keywords

Adjudication: Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure.

Arbitration: Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.

Arbitrator: An independent person or body officially appointed to settle a dispute.

Conciliation: Conciliation in industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person or a body of persons with a view to induce or persuade them to arrive at some agreement to their satisfaction and in the larger interest of industry and community as a whole.

Conflict: Conflict may be defined as a struggle or contest between people with opposing needs, ideas, beliefs, values, or goals.

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Government: A group of people that governs a community or unit. It sets and administers public policy and exercises executive, political and sovereign power through customs, institutions, and laws within a state.

Industrial Disputes: Industrial disputes are conflicts, disorder or unrest arising between workers and employers on any ground.

Industry: Economic activity concerned with the processing of raw materials and manufacture of goods in factories.

Labour Courts: It consists of one person only, who is also called the Presiding Officer, and who is or has been a judge of a High Court, or he has been a district judge or an additional district judge for a period not less than three years, or has held any judicial office in India for not less than seven years.

Tribunals: A tribunal is a committee or court which is convened to address a special issue.

Workman: A person with specified skill in a job or craft.

5.8 Review Questions

1. What do you mean by Industrial disputes?
2. Define an industrial dispute as per Industrial Disputes Act, 1947.
3. Discuss the concept of workman according to Industrial Disputes Act, 1947.
4. Discuss the objectives and scope of Industrial Disputes Act.
5. Describe in detail the scope and coverage of Industrial Disputes Act.
6. What authorities are included under Industrial Disputes Act?
7. Discuss the functions of Industrial Tribunals in detail.
8. What is the function of Labour Court? Discuss.
9. Explain the differences between Adjudication and Arbitration.
10. What measures does Industrial Dispute Act provides for Prevention of Conflicts and Disputes?

Answers: Self Assessment

1. False
2. True
3. True
4. Labour
5. Dispute
6. Workman
7. True
8. False
9. False
10. Conciliation
11. Settlement
12. Government
13. False
14. True
15. True

Notes

5.9 Further Readings

Books

Davidov, Guy & Langille, Brian (2011). *The Idea of Labour Law.* Oxford University Press.

Davis, Ja E (2012). *Labour Laws.* General Books.

Kumar, H.L. (2010). *Labour Laws.* Universal Law Publishing.

Rao, VSP (2008). *Industrial Relations & Labour Laws.* Excel Books.

Singh, B.D. (2009). *Labour Laws for Managers.* Excel Books India.

VSP Rao, *Industrial Relations & Labour Laws,* Excel Books, New Delhi, 2008

Online links

http://artassam.nic.in/Industries%20&%20Commerce%20%20Deptt/Industrial%20Disputes%20Act,%201947.pdf

http://business.gov.in/legal_aspects/indl_disputes.php

http://industrialrelations.naukrihub.com/industrial-disputes.html

http://www.irtsa.net/Industrial_Disputes_Act.pdf

http://www.vakilno1.com/bareacts/industrialdisputesact/industrialdisputesact.htm

Unit 6: Payment of Wages Act, 1936

Notes

CONTENTS

Objectives

After studying this unit, you will be able to:

- Discuss the definitions of industrial establishment, wages, etc.
- Get an overview of basic provisions and responsibility of the Act
- Identify the method for computation and fixing of wages
- Discuss the rules in payment of Wages Act
- Explain the deduction from wages

Notes

Introduction

In the previous unit, we dealt with Industrial Dispute Act. The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them. It applies to the persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly, through a sub-contractor. Further, the Act is applicable to employees drawing wages upto ₹ 1600 a month. The Central Government is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the State Governments are responsible for it in factories and other industrial establishments. 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 payment of wages to workers.

6.1 Definitions

Prior to 1936, there was no law regarding the regulation of payment to workmen. It was as early as 1925 that a Private Bill called the "Weekly Payment Bill" was for the first time introduced in the Legislative Assembly. The Bill was, however withdrawn on an assurance from the Government that the matter was under active consideration of the Government at that time. This was an attempt to remedy some of the evils like delay in payment of wages, non-payment of wages, deductions made from wages on account of fines imposed by the employer etc. For the purpose of this Act:

(a) industrial establishment means any tramway or motor omnibus service; air transport service; dock, wharf or jetty, inland vessel mechanically propelled; mine, quarry or oil field; plantation; workshop or other establishment in which articles are produced, adapted or manufactured with a view to there use, transport or sale; establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;

(b) wages means all remuneration's (whether by way of salary, allowance or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and include:

  (i) any remuneration payable under any award or settlement between the parties or order of a Court;

  (ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

  (iii) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

  (iv) any sum by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

  (v) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force; but does not include:

    - any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under terms of employment

Notes

or which is not payable under any award or settlement between the parties or order of a Court;

- the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the state Government;
- any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- any travelling allowance or the value of any travelling concession;
- any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- any gratuity payable on the determination of employment in cases other than those specified in sub-clause (d).

Caselet

Bank of India v. T.S. Kelawala and Ors

In the case of Bank of India v. T.S. Kelawala and Ors., the question which came for consideration was that whether an employer has a right to deduct wages unilaterally and without holding an enquiry for the period the employees go on strike or resort to go-slow. The appellant in this case is a nationalized bank. The demands for wage-revision made by the employees of all the banks were pending at the relevant time, and in support of the said demands the All India Bank Employees' Association had given a call for a countrywide strike.

The appellant-Bank issued a circular to all its managers and agents to deduct wages of the employees who would participate in the strike for the days they go on strike. The Bank issued an Administrative Circular warning the employee that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw the salary for the full day if they did so, and consequently, they need not report for work for the rest of the working hours on that day. The court held that, Section 7 (2) read with Section 9 of the Payment of Wages Act provides the circumstances under which and the extent to which deduction can be made. It is only when the employer has right to make deduction, resort should be had to the act to ascertain the extent to which the deduction can be made. No deduction exceeding the limit provided by the act is permissible even if the contract so provides. There cannot be contract contrary to or in terms wider than the input of sections 7 and 9 of the act. Therefore wage deduction cannot be made under section 7(2) of the Payment of Wages Act if there is no such power to the employer under the terms of contract.

Source: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1593043

Self Assessment

State whether the following statements are true or false:

1. The State Government is responsible for enforcement of the Act in railways and air transport services, while the Central Governments are responsible for it in factories.
2. Prior to 1936, there was no law regarding the regulation of payment to workmen.