KLE LAW ACADEMY BELAGAVI

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STUDY MATERIAL

for

LABOUR LAW I

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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This Study Material is prepared by me in consultation with Principal by reading the following reference books mentioned below, for more and further reading the reader can refer these books.

Books Referred:

- Malhotra O. P. – Law of Industrial Disputes, Vol. I and II.
- S C Srivastava, Industrial Relations and Labour Laws
- Dr V G Goswami Labour Insdustrial Laws
- S. N Mishra - Labour Laws S. C. Srivastava - Social Security and Labour Laws.
- G Ramanujam, Industrial Labour Movement
- P L Malik, Industrial Law
- Mamoria and Memoria, Dynamic of Industrial Relations
- First National Labour Commission Report, 1969
- Second National Labour Commission Report, 2002
- International Labour Conventions and Recommendations.

Bare Acts:

- The Trade Unions Act,1926
- The Industrial Disputes Act, 1947
- The Industrial Disputes Act, 1947
- The Employees Standing Orders Act, 1946
- The Employees Compensation Act, 1923
- The Employers State Insurance Act, 1948
- The Payment of wages Act,1936
- The Factories Act, 1948

LABOUR LAW-I

UNIT-I:

Historical aspects - Master and Slave Relationship, Trade Unionism in India and UK, Enactment of the Trade Unions Act, 1926, ILO Conventions relating to Trade Unions and relevant Constitutional provisions. A bird's eye view of the Act- Definitions - Trade Union, Trade Dispute, etc. Provisions relating to registration, withdrawal and cancellation of registration Funds of Trade Union, Immunities, problems of Trade Union, Amalgamation of Trade Union, Recognition of Trade Unions - Methods, need and efforts in this regard, Collective Bargaining - Meaning, methods, status of collective bargaining settlements, collective bargaining and liberalization.

UNIT -II:

Historical Background and Introduction to the Industrial Disputes Act, 1947- Definitions - Industry, Workman, Industrial Dispute, Appropriate Government, etc, - Authorities/Industrial Dispute resolution machinery - Works Comrnittee, Conciliation and Board of Conciliation - powers and Functions, court of Inquiry, Grievance settlement Authority,

Voluntary Arbitration Li/S 10-4, Compulsory Adjudication- Government's power of reference U/S- l0 - Critical analysis with reference to decided cases. Compulsory Adjudication- Composition, Qualification, Jurisdiction, powers of adjudication authorities - Award and Settlement - Definition, Period of operation, binding nature and Juridical Review of award.

UNIT –III:

Law relating to regulation of strikes and lockouts- Definition of strikes and lockouts' Analysis with reference to Judicial interpretations, Regulation U/Ss 22,23,10-A(4A), and 10 (3) Illegal strikes and lockouts, penalties. - Regulation of Job losses- concepts of Lay-off' Retrenchment, closure and Transfer of undertakings with reference to statutory definition and Judicial interpretations - Regulation of job losses with reference to the provisions of chapter V-A and V-B of the ID Act, l947 - Regulation of managerial prerogatives - Sections 9A, 1lA, 33 and 33A of ID Act, 1947, Certified Standing orders - Meaning and Procedure for certification' certifying officers- Powers and Functions etc.

UNIT-IV:

Concept and Importance of Social Security - Influence of I'LO' - Constitutional Mandate, The Employees Compensation Act, 1923 - Definitions - employee, employer, dependent, partial disablement, total disablement, etc. - Employer's liability for compensation -Conditions and Exceptions - Procedure for claiming compensation. Computation of Compensation, Commissioner- Jurisdiction, Powers etc.

The Employees State Insurance Act, 1948 - Definitions - Employment injury, Contribution, Dependent, Employee, Principal Employer etc. Employees State Insurance Funds- Contribution, Benefits available - Administrative Mechanism - ESI Corporation, Standing Committee, Medical Benefits Council - Composition, Powers, Duties - Adjudication of Disputes, E.S.I Courts. Comparative analysis of the ESI Act, 1948 with the Employees' Compensation Act, 1923

UNIT-V:

The Payment of wages Act, 1936 - Definitions - employed person, factory, industrial and other establishment, wages, etc. – Deductions - Authorities - Inspectors and Payment of Wages Authority.

The Factories Act, 1948 - Definitions - factory, manufacturing process, occupier' worker, hazardous process, etc. - Provisions of the Factories Act relating to health, safety and welfare of workers - provisions relating to Hazardous process - provisions relating to working conditions of employment - Working hours, Weekly leave, Annual leave facility, Provisions relating to regulation of employment of women, children and young persons.

UNIT-I

LAW RELATING TO TRADE UNION IN INDIA

Introduction:

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". Industrialization is considered to be one of the key engines to support the economic growth of any country. The commence of industry and its growth is not a venture of the employer alone; yet it involves the hard work and tough grind of each and every stakeholder of the industry including the labourers, supervisors, managers and entrepreneurs. With the initiation of the concept of welfare state in the early realm of independence of our country, various legislative efforts have made their first move in the direction of welfare, equitable rights, social justice, social equity and equitable participation of the labour as a stakeholder at parity. A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

Labour laws are the one dealing with employment laws in any organization – whether it is a manufacturing organization or trading organization or shops and establishment. The labour laws address the various administrative rulings (such as employment standing orders) and procedure to be followed, compliance to be made and it addresses the legal rights of, and restrictions on, working people and their organizations. By and large the labour law covers the industrial relations, certification of unions, labour management relations, collective bargaining and unfair labour practices and very importantly the workplace health and safety with good environmental conditions. Further the labour laws also focus on employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay and many other issues related to employer and employee and the various compliance requirements.

The labour laws derive their origin, authority and strength from the provisions of the Constitution of India. The relevance of the dignity of human labour and the

need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour law reforms are an ongoing and continuous process and the Government has been introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic economic environment. Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Historical aspects: Master and Slave Relationship

Since the Industrial Revolution, the law and practice of capital-labour relationship which is the most important aspect of master and servant relationship have undergone a great evolution and for the proper understanding of the significance and development of industrial Jurisprudence, a resume of this evolution is very essential.

During the early stage of capitalism, the relationship between the capitalist and the labourer was governed by the principle of master and slave. According to this principle, the capitalist was a man and the labour was a thing. The former, therefore, could not confer on the latter nor could the latter contract from the former any rights. The capitalist did not employ the labourer; either he bought him or got him. The relationship between them was based on coercion and not on free will. In the language of law, it was status and not contract that determined their relationship.

Later on, when the labourer's position improved from slave to serf, he could contract few rights. But even then, the capitalist retained most of his unrestricted coercive powers over him. As a serf, the labourer was neither an unfree slave nor a free servant; he was rather a half slave and half servant. It was predominantly status, again, that determined the relationship between the labourer as a serf and the capitalist.

In the next stage, the capital-labour relationship came to be based on contract instead of on status. The relationship between the capitalist and the labourer was now that of master and servant. They were, at least in theory, free to acquire rights from

and impose duties upon each other by voluntary mutual contract; though in practice the freedom was false. The then prevailing state of policy of laissez faire i.e. of letting the bargain between the capitalist and the labourer be what they liked in combination with the superior social and economic position of the capitalist, rendered the freedom of contract meaningless.

In an industrial era, now the evolution of capital labour relationship is marked by the recognition of two aspects, namely-

(i) The existence of two distinct social groups or classes i.e. Capitalist and Labourers, each possessing a different social and economic position; and

(ii) The necessity of State intervention in capital-labour relationship for protecting and balancing the contracting claims of these groups.

The enhancement of industrial laws in particular, and State support to trade unionism and collective bargaining in general, are the important characteristics of the new basis of capital-labour relationship. The new capital-labour relationship is still that of master and servant and is based on the freedom of contract, but unlike in the past, the freedom is now no more the individual freedom of a labourer, but is the collective freedom of a group or union of labourers and the contract is no more an individual contract between the capitalist and the labourer but is 'collective agreement' between a group or class or union of labourers on the one hand and the capitalist or group of capitalists on the other. In short, the labourer is now no more a condemned slave, neither an unfree serf nor a submissive servant, but is a free member of a group or class or union of labourers now known by the name 'employee' or 'worker'. However, this recognized right assuming different dimensions with the changing needs of the State and employer.

The Nature of Master and Servant Relationship

A servant is one who works for another individual, known as the master, with or without pay. The master and servant relationship only arises when the tasks are performed by the servant under the direction and control of the master and are subject to the master's knowledge and consent. Advocate S. R. Samant observed that: "The words master and servant are suggestive of the ideas of domination and submission hidden behind them. According to the settled law of master and servant, the master

holds authority over the servant and the servant owes obeyance to the master. In other words, the servant is under the control and bound to obey the orders of the master. The master is the superior of the servant and the servant is the inferior of the master. The so called equality of persons before the law is conspicuous by absence in the master and servant relation. The masters economic and social might determine his legal rights. The strong is never wrong and the weak must ever be meek is the maxim of the master and servant law. The master and the servant are truly the ruler and the ruled".

In recent times of democratic order and social justice, however, the words master and servant have almost fallen out of use and new ones like manager and worker or employer and employee have taken their place. No doubt, this is in conformity with the great social revolution, sometimes styled as the "New Industrial Revolution" or the "Second Industrial Revolution" that is taking place in the field of industrial relations. This transformation of words master and servant is certainly significant in that the new words no more smell at least in theory of the ideas of domination and submission, unlike their predecessors. Taken at their dictionary meaning, these new words are truly descriptive of the functions rather than the relations of the master and the servant.

But though outwardly, the new words possess dignity and respect, it is quite evident after a little reflection that the transformation of the words is more apparent than real as regards the actual facts. They are certainly changed in point of form, but they remain more or less the same in substance. There is no improvement in the relationship between the employer and the employee formerly known as the master and the servant which ought to have followed the improvement in their nomenclature. The transformation is incomplete giving rise to a problem known as the human relations problem.

The cherished objectives of harmonious and amicable relations between the employer and the workmen could not in these circumstances be achieved within the framework of the then prevailing juristic thought, legal principles or legal traditions; (it called for altogether new approach, based on new legal thought and philosophy so that new legal traditions could come up so as to pave the way for social justice and for an equitable distribution of profits and benefits accruing from the industry between

the industrialist and the workers), which alone could afford real protection to the workers against harmful effects to the health, safety and morality rather than mere compliance with the contract of employment.

Thus, the need for Industrial Jurisprudence was imminent and imperative; it was a sociological necessity so that the dominance of the laissez faire based as it was upon the so called natural rights of the individual could bid a goodbye.

Constitution and Labour Laws

The Constitution of a country is the fundamental law of the land on the basis of which all other laws are made and enforced. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the constitution and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution.

Thus, a Constitution is the supreme or fundamental law of the country which not only defines the framework of the basic political principles, but also establishes what the different government institutions should do in terms of procedure, powers and duties. A Constitution if the vehicle of a nation's progress. The Constitution is the supreme law of the country and it contains laws concerning the government and its relationships with the people.

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The Labour Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. These include right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management.

Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.

The extent of state control or intervention is determined by the stage of economic development. In a developed economy, work stoppages to settle claim may

not have much impact, unlike in developing economy. Countries like the U.S. and England, etc. with advanced and free market economy only lay down bare rules for observance of employers and workers giving them freedom to settle their disputes. In the U.S., States intervention in industrial dispute is eliminated to actual or threatened workers' stoppages that may imperil the national economy, health or safety.

However, in a developing economy, the States rules cover a wider area of relationship and there is equally greater supervision over the enforcement of these rules. This is emphatically so in developing countries with labour surplus. It is a concern of the state to achieve a reasonable growth rate in the economy and to ensure the equitable distribution thereof. This process becomes more complex in a country with democratic framework guaranteeing fundamental individual freedoms to its citizens. Hence, the State in a developing country concerns itself not only with the content of work rules but also with the framing of rules relating to industrial discipline, training, and employment.

The founding fathers of democratic Constitution of India were fully aware about these implications while they laid emphasis to evolve a welfare state embodying federal arrangement. Entries about labour relations are represented in all the three lists in the Constitution. Yet most important ones come under the Concurrent list. These are industrial and labour disputes, trade unions and many aspects of social securities and welfare like employer's' liability, employees' compensation, provident fund, old age pensions, maternity benefit, etc. Thus, the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, etc. come under the concurrent list. Some States have enacted separate amendment Acts to some of the above legislations to meet local needs. Such amendments are recommended either with the assent of the President of India or by promulgating rules pursuant to the powers delegated by the Central Act. Under the rule making powers delegated by the Centre, the States have often been able to adopt Central Act to local needs without the President's assent. The Central acts often delegate such powers. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective.

Similarly, Section 29 and Section 30 of the Minimum Wages Act and Section 26 of the Payment of Wages Act delegated the rule making power to the State. In pursuance to this, several States have promulgated separate minimum wages rules and

payment of wage rules. The Factories Act also contains similar provisions and they have been similarly availed of.

Further, the goals and values to be secured by labour legislation and workmen have been made clear in Part IV, Directive Principles of the State Policy of the Constitution. Thus, the State shall secure a social order for the promotion of welfare of the people and certain principles of policy should be followed by the State towards securing right to adequate means of livelihood, distribution of the material resources of the community to subserve the common good, prevention of concentration of wealth via the economic system, equal pay for equal work for both men and women, health and strength of workers including men, women and children are not abused, participation of workers in management of industries, just and humane conditions of work and that childhood and youth are protected against exploitation against exploitation and against moral and material abandonment.

By and large industrial and labour legislations have been directed towards the implementation of these directives. Factories Act, 1948, ESI Act, 1948, Employees' Compensation Act, 1923 are focused to the regulation of the employment of the women and children in factories, just and humane conditions of work, protection of health and compensation for injuries sustained during work. Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 regulate wage payment. Payment of Bonus Act, 1965 seeks to bridge the gap between the minimum wage and the living wage. However, the directives relating to distribution of wealth, living wages, equal pay for equal work, public assistance, etc. have not been generally implemented as yet.

TRADE UNIONS ACT, 1926

Trade Union Movement in India is not a new idea. From the Marxian to the Gandhian, move violently to non violence, howlingness to achievement Trade Union Movement has been gradually developed till date. It is mentionable that, in industrially developed countries, there are every Trade Unionism in the fields of Agriculture, Industry, Bus and Lorry, Handy Workers and Labours, and Edu-Professionals etc. Their Trade Unionism had made a great impact on the social, political and economic life, while in India; Trade Unionism can be seen only in the field of Industrial area. As long as history of human society various conflicts between workers group and employers group have been lasting in the form of strike, gherao,

lock out, pen down etc against exploitation. To make people strengthen in a democratic way to asset their demands over their contribution to an organization, people associate themselves in a group and constitute a Union for common welfare. Thus Trade Union is an instrument of defence formed by employees against exploitations to protect themselves from economic as well as social interests. This is a complex institution with a numerous facts like social, economic, political and psychological. Trade Union provides services as an agent of workers and working classes at large. In this epistle thought on Trade Union Movement in India, a brief discussion is made on stipulations in relation to Trade Unionism.

The need for Trade Unionism:

The need for Trade Unionism since the human set up has been felt necessary in the following ways-

a) To provide job security to the workers group working in different industries.
b) To safe guard workers common interest.
c) To bring the situation in participation of decision making.
d) To communicate better industrial relation among workers, employers and system groups.
e) To bring an industrial relation with win-win- situation through collective bargaining with the union leaders' representativeness.

Gandhiji comments, Trade Union movement as a reformist and economic organization and considers capital and lobour are equally parts and parcels of an organization.(Known as Sorvodya)

History of Trade Union Movement in India:

In India, Trade Union movement has been considered as the product of industrial development since the First World War 1914-18. Before the time Indian workers were poor and did not have strong union to effort legal fight against any exploiters. At that time they used to follow the guidelines of Government of India's Factory Act 1881 which was not perfect to protect the interests of employees. The system of collective bargaining was totally absent. In several industries, the workers went on strikes every now and then to secure wage increase. In that mean time, Labour leader Narayan Meghaji Lokkande led a labour movement and formed

"Bombay Mill Hands Association" and succeeded a weekly holiday system for Bombay Mill Owners Association.

In 1918 Trade Union Movement in India became more organized and formed varieties of unions e.g. Indian Collie or Employees Association, Indian Seamen's' Union, Railway Men's Union, Port Trust Employees Union etc. Meanwhile Gandhiji formed The Textile Labour Association in 1920 for fulfilling the demands of spinners and weavers society. More over the different labour unions and their representatives from all over India met in Bombay in 1920 and established the All India Trade Union Congress (AITUC) led by Lala Lajpat Rai.

With the days passed, Trade Union Movement in India gradually strengthened and became national figure in leading of periodic strikes, Gherao, picketing and boycotts etc in contrary of different work fields for prevention and settlement of industrial disorders. The historic background of Bombay Mill Case of 1920 over which Madras High Court witnessed Madras Labour Union forbidding by an interim injunction against The Laborers' strike which was pondered about some necessary legislation for protecting the sustained Trade Union in India.

As a result Mr. N.M. Joshi, the then General Secretary of All India Trade Union Congress moved a resolution in the Central Legislative Assembly in 1921 recommending the Government to introduce legislation for the registration and protection of Trade Union's existence in India. The resolution was strongly protested by Bombay Mills Owners and it took a long bed rest on the table of the Central Legislative Assembly.

While in the year of 1924, many communist leaders were arrested and prosecuted against aggressive and lengthy strikes. From the period numbers of Indian working classes including Peasants Party united and demanded Indian government through the AITUC to pass an act to protect the interest of all India workers group which results The Trade Union Act 1926 in India. More over different situations in different times formed many Unions and Federations, which of some are All India Trade Union Congress 1920, Red Trade Union Congress 1931**,** National Federation of Labour 1933 Red Trade Union Congress merged with AITUC in 1935 and Indian Federation of Labour 1941 etc.

The importance of the formation of an organized trade union was realized by nationalist leaders like Mahatma Gandhi who to improve the employer and worker relationship gave the concept of trusteeship which envisaged the cooperation of the workers and employers. According to the concept, the people who are financially sound should hold the property not only to make such use of the property which will be beneficial for themselves but should make such use the property which is for the welfare of the workers who are financially not well placed in the society and each worker should think of himself as being a trustee of other workers and strive to safeguard the interest of the other workers.

Many commissions also emphasized the formation of trade unions in India for eg. The Royal Commission on labour or Whitley commission on labour which was set up in the year 1929-30 recommended that the problems created by modern industrialization in India are similar to the problems it created elsewhere in the world and the only solution left is the formation of strong trade unions to alleviate the labours from their miserable condition and exploitation.

The Eighteenth Session of the All-India Trade Union Congress led by Suresh Chandra Banerjee, President of the Congress, was held at Bombay on 28 and 29 September 1940; The session constituted a landmark in the history of the Indian Trade Union Movement is that it witnessed the restoration of complete unity in Indian Trade Union from the merging of the National Trades Union Federation in the All-India Trade Union Congress.

A Tripartite Labour Conference was convened in 1942 to provide common platform for discussion between employees and employers. Indian National Trade Union Congress (INTUC) was formed in 1947 to settle the industrial disputes in democratic and peaceful methods. Moreover, the Indian Federation of Labour formed in 1949, Hind Mazdoor Sabha in 1948 and United Trade Union Congress formed in 1949 in the national level and recognized by the government of India as to serve national and International conference. Trade Union Movement does not delimit its operation within Bombay vicinity nor Delhi only. With the passage of time the movement spreads all across the country and convenient groups welcome the organism of Trade Union Movement from different parts of India. In state of Assam, the garden men's forum, Assam Chah Mazdoor Sangha, claims for their minimum

wages from their employers according to the rules of The Plantation Labour Act, 1951, which regulates the wages of tea-garden workers, their duty hours and the amenities, states that the management is supposed to provide housing, drinking water, education, health care, child care facilities, accident cover and protective equipment.

ILO Conventions relating to trade Unions and Constitutional Provision:

International Labour Organisation (ILO) is the most important organisation in the world level and it has been working for the benefit of the workers throughout the world. It was established in the year 1919. It is a tripartiate body consisting of representatives of the Government, Employer, workers. It functions in a democratic way by taking interest for the protection of working class throughout the world.

It is also working at the international level as a 'saviour of workers' 'protector of poor' and it is a beacon light for the change of social justice and social security. The I.L.O examines each and every problem of the workers pertaining to each member country and discusses thoroughly in the tripartiate body of all the countries. The I.L.O passes many Conventions and Recommendations on different subjects like Social Security, Basic Human Rights, Welfare Measures and Collective Bargaining. On the basis of Conventions and Recommendations of I.L.O. every country incorporates its recommendations and suggestions in its respective laws.

The idea of protecting the interest of the labour against the exploitation of capitalists owes its origin to the philanthropic ideology of early thinkers and philosophers, and famous among them is "Robert Owen" who being himself an employer took interest in regulating hazardous working conditions of the workers and also in human conditions under which the workers were being crushed underneath the giant wheels of production.

Aims of the International Labour Organisation:

The principle aim of the I.L.O is the welfare of labour as reaffirmed by the Philadelphia Conference of 1944 under the Philadelphia Declaration, on which the I.L.O. is based

1. Labour is not a commodity;

2. Freedom of expression and of association are essential to sustained progress;
3. Poverty anywhere constitutes danger to prosperity everywhere; and
4. The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, employing equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

International Labour Standards on Freedom of Association:

The principle of freedom of association is at the core of the ILO's values: it is enshrined in the ILO Constitution (1919), the ILO Declaration of Philadelphia (1944), and the ILO Declaration on Fundamental Principles and Rights at Work (1998). It is also a right proclaimed in the Universal Declaration of Human Rights (1948). The right to organize and form employers' and workers' organizations is the prerequisite for sound collective bargaining and social dialogue. Nevertheless, there continue to be challenges in applying these principles: in some countries certain categories of workers (for example public servants, seafarers, workers in export processing zones) are denied the right of association, workers' and employers' organizations are illegally suspended or interfered with, and in some extreme cases trade unionists are arrested or killed. ILO standards, in conjunction with the work of the Committee on Freedom of Association and other supervisory mechanisms, pave the way for resolving these difficulties and ensuring that this fundamental human right is respected the world over.

1. **Freedom of Association and Protection of the Right to Organize Convention, 1948:**

This Convention provides that workers and employers shall have the right to establish and join organizations of their own choosing without previous authorization. The public authorities are to refrain from any interference which would restrict the right to form organization or impede its lawful exercise. These organizations shall not be liable to be dissolved or suspended by administrative authority. It also provides protection against act of anti-union discrimination in respect of their employment. This convention has been ratified by Albania, Argentina, Austria, Belgium, Brazil,

Byelorussia, Cuba, Denmark, Dominican Republic, Finland and France. Federal Republic of Germany and India have not ratified this particular convention.

As regards the Trade Unions Act, 1926, it limits the number of outsiders in the executive of a trade union. Further there is restriction on outsiders in the federations of Government servants who cannot affiliate themselves with any central federations of workers. Also, the Government in public interest can forego any association or trade union and detain or arrest a trade union leader under the Essential Services Act, 1967 , the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, 1971 Likewise the Code of discipline in industry, although non-legal and non-statutory, one regulates the organization of constitution of India itself, while guaranteeing freedom in public interest and public good. These laws and practice on trade unions do not conform to the requirements of the convention.

2. **Right to Organize and Collective Bargaining Convention, 1949**

This fundamental convention provides that workers shall enjoy adequate protection against acts of anti-union discrimination, including requirements that a worker not join a union or relinquish trade union membership for employment, or dismissal of a worker because of union membership or participation in union activities. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other, in particular the establishment of workers' organizations under the domination of employers or employers' organizations, or the support of workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. The convention also enshrines the right to collective bargaining.

3. **Workers' Representatives Convention, 1971**

Workers' representatives in an undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. Facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

4. **Rural Workers' Organizations Convention, 1975**

All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations, of their own choosing without previous authorization. The principles of freedom of association shall be fully respected; rural workers' organizations shall be independent and voluntary in character and shall remain free from all interference, coercion or repression. National policy shall facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers as an effective means of ensuring the participation of these workers in economic and social development.

Freedom of Association and Constitution of India:

Article 19(1)(c) of the Constitution of India, 1950 which envisages fundamental right to freedom of speech and expression also guarantees the country's citizens the right "to form associations or unions" including trade unions. The right guaranteed in Article 19(1) (c) also includes the right to join an association or union. This right carries with it the right of the State to impose reasonable restrictions. Furthermore, it has been established that the right to form associations or unions does not in any manner encompass the guarantee that a trade union so formed shall be enabled to engage in collective bargaining or achieve the purpose for which it was formed. The right to recognition of the trade union by the employer was not brought within the purview of the right under Article 19(1)(c) and thus, such recognition denied by the employer will not be considered as a violation of Article 19(1)(c). The various freedoms that are recognized under the fundamental right, Article 19(1)(c), are

1. The right of the members of the union to meet,
2. The right of the members to move from place to place,
3. The right to discuss their problems and propagate their views, and
4. The right of the members to hold property.

Objectives of Trade Union Act:

Trade union is a voluntary organization of workers relating to a specific trade, industry or a company and formed to help and protect their interests and welfare by collective action. Trade unions are the most suitable organizations for balancing and

improving the relations between the employees and the employer. They are formed not only to cater to the workers' demand, but also for imparting discipline and inculcating in them the sense of responsibility. They aim to:-

1. Secure fair wages for workers and improve their opportunities for promotion and training.
2. Safeguard security of tenure and improve their conditions of service.
3. Improve working and living conditions of workers.
4. Provide them educational, cultural and recreational facilities.
5. Facilitate technological advancement by broadening the understanding of the workers.
6. Help them in improving levels of production, productivity, discipline and high standard of living.
7. Promote individual and collective welfare and thus correlate the workers' interests with that of their industry.
8. to take participation in management for decision-making in connection to workers and to take disciplinary action against the worker who commits in-disciplinary action.

Definition of Trade Union:

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

Important elements of Trade Union:

1. There must be combination of workmen and employers;
2. There must be trade or business; and
3. The main object of the Union must be to regulate relations of employers and employees or to impose restrictive conditions on the conduct of any trade or business.

In Rangaswami V. S Registrar of Trade Unions, in the Raj Bhavan at Guindy, a number of persons are employed in various capacities such as household, staff, peons, chauffers, tailors, carpenters, maistries, gardeners, sweepers etc. There are also

gardeners and maistries employed at the Raj Bhavan at Ootacamund. Those persons are employed for doing domestic and other services and for the maintenance of the Governor's household and to attend to the needs of the Governor, the members of his family, staff and State guests. When employees applied for the registration of trade union, the registrar had rejected their application on the ground that, Raj Bhavan not comes under the meaning of trade and business. The petition has been field seeking to set aside the order of the Registrar of Trade Unions, Madras refusing to register the union of employees of the Madras Raj Bhavan as a trade union under the Trade Unions Act.

Supreme Court rejecting the petition, held that, even apart from the circumstance that a large section of employees at Raj Bhavan are Government servants who could not form themselves into a trade union, it cannot be stated that the workers are employed in a trade or business carried on by the employer. The services rendered by them are purely of a personal nature. The union of such workers would not come within the scope of the Act, so as to entitle it to registration there under.

The term "trade union" as defined under the Act contemplates the existence of the employer and he employee engaged in the conduct of a trade or business. The definition of the term "workmen" in Sec. 2 (g) would prima facie indicate that it was intended only for interpreting the term "trade dispute". But even assuming that that definition could be imported for understanding the scope of the meaning of the term "trade union" in S. 2 (h), it is obvious that the industry should be one as would amount to a trade or business, i.e., a commercial undertaking. So much is plain from the definition of the term "trade union", itself. I say this because the definition of "industry" in the Industrial Disputes Act is of wider significance. Section 2 (j) of the Industrial Disputes Act which defines "industry" states its meaning as “any business, trade undertaking, manufacture or calling of employers and includes any calling, services, employment, handicraft or industrial occupation or avocation of workmen."

In Tamil Nadu NGO Union v. Registrar, Trade Unions, in this case Tamil Nadu NGO Union, which was an association of sub magistrates of the judiciary, tahsildars, etc., was not a trade union because these people were engaged in sovereign and regal functions of the State which were its inalienable functions. In GTRTCS and Officer’s Association, Bangalore and others vs Asst. Labor Commissioner and

anothers, in this case the definition of workmen for the purpose of Trade Unions is a lot wider than in other acts and that the emphasis is on the purpose of the association rather than the type of workers and so it is a valid Trade Union.

Definition of Trade Dispute:

"trade dispute" means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labor, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises;

Procedures for the Registration of Trade Unions:

The main object of the Trade Unions Act, 1926 is to provide machinery for registration and regulation of Trade Unions. Although registration of a trade union is not mandatory, it is advisable to register the trade unions as the registered trade unions are entitled to get several benefits, immunities and protection under the act. There are specific rights and privileges conferred on the members of the registered trade unions. The members of the registered trade unions are entitled to get protection, immunity and certain exceptions from some civil and criminal liabilities. A trade union can only be registered under the Trade Unions Act, 1926**.**

Trade union Act, 1926 not provides compulsory registration. However, there are certain disadvantages of non registration. Therefore it is better to register the trade union. The following is the procedure for registration of trade union.

Appointment of Registrar:

Section 3 of the Trade Union Act, 1926 empowers the appropriate Government to appoint a person to be a registrar of Trade Unions. The appropriate Government is also empowered to appoint additional and Deputy Registrars as it thinks fit for the purpose of exercising and discharging the powers and duties of the Registrar. However, such person will work under the superintendence and direction of the Registrar. He may exercise such powers and functions of Registrar with local limit as may be specified for this purpose.

Mode of registration:

Sec 4 of the Act states that, any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act. However, no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.

No Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Where an application has been made under sub-section (1) of Sec 4 for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the applications.

The Supreme Court in Tirumala Tirupati Devasthanam held that, any group of employees may be registered as a trade union under the Act for the purpose of regulating the relations between them and their employer or between themselves. It would be apparent from this definition that any group of employees which comes together primarily for the purpose of regulating the relations between them and their employer or between them and other workmen may be registered as a trade union under the Act.

Application for registration:

Application for registration must be submitted in the prescribed format. Sec 5 provides that, every application for registration of a Trade Union shall be made to the

Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:

1. the names, occupations and addresses of the members making the application;
2. in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
3. the name of the Trade Union and the address of its head office; and
4. the titles, names, ages, addresses and occupations of the 4 office-bearers of the Trade Union.

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

Provisions to be contained in the rules of a Trade Union:

Every application must accompany the rules of trade union that has been provided under Sec 6 of the Act. A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely:

a) the name of the Trade Union;
b) the whole of the objects for which the Trade Union has been established;
c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of Trade Union;
e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers required under section 22 to form the executive of the Trade Union;

f) the payment of a minimum subscription by members of the Trade Union which shall not be less than—
   i. one rupee per annum for rural workers;
   ii. three rupees per annum for workers in other unorganized sectors; and
   iii. twelve rupees per annum for workers in any other case;
g) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
h) the manner in which the rules shall be amended, varied or rescinded;
i) the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected and removed;
j) the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;
k) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and
l) the manner in which the Trade Union may be dissolved.

Power to call for further particulars and to require alteration of name:

Under Sec 7 of the Act, the Registrar has power to call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied.

It further states that, if the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

Registration:

As per sec 8 of the Act, the Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

Certificate of registration:

Sec 9 of the Act empowers the Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

Minimum requirement about membership of a Trade Union:

Sec 9-A provides that, a registered Trade Union of workmen shall at all times continue to have not less than ten percent or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members.

Cancellation of registration:

A certificate of registration of a Trade Union may be withdrawn or cancelled under Sec 10 of the Act, by the Registrar

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

Registrar to the Trade Union shall give a previous notice of two months in writing specifying the ground on which he proposed to withdraw or cancel the certificate of registration otherwise than on the application of the Trade Union.

Appeal:

Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal under Sec 11 of the Act,

a) where the head office of the Trade Union is situated within the limits of a Presidency town to the High Court, or
b) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be;
c) where the head office is situated in any area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.

The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order or withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

Advantages of registration of trade Union:

A trade union enjoys the following advantages after registration under sec 13, namely

a) A trade union after registration becomes a body corporate
b) It gets perpetual succession and common seal
c) It can acquire and hold both movable and immovable property
d) It can enter into a contract
e) It can sue and be sued in its registered name

Objects on which general funds may be spent:

Sec 15 provides the objects on which general fund may be spent. The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely:—

1. the payment of salaries, allowances and expenses to office-bearers of the Trade Union;
2. the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;
3. the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
4. the conduct of trade disputes on behalf of the Trade Union or any member thereof;
5. the compensation of members for loss arising out of trade disputes;
6. allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;
7. the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
8. the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;
9. the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
10. the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year.

Constitution of a separate fund for political purposes:

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

Sub Sec (2) of sec 16 provides the following object on which political fund may be spent, namely

1. the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority, before, during, or after the election in connection with his candidature or election; or
2. the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
3. the maintenance of any person who is a member of any legislative body constituted under the Constitution or for any local authority; or
4. the registration of electors or the selection of a candidate for any legislative body constituted under the Constitution or for any local authority; or
5. the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

Contribution to political fund is not compulsory:

The subscription to a trade union for political funds is only voluntary. Sec 16 (3) provides that, If a member does not contribute to the political fund, he will be under no disadvantage or disability but in respect of control and management of this fund. He cannot be excluded in any way from the benefits of the trade union nor can any condition be imposed for his admission to the trade union.

Immunities/Privileges of a Registered Trade Union:

In the case of Buckinghum and Carnatic Mills, the employers were awarded damages and the unions were held responsible for illegal conspiracies. The Trade Unions Act, 1926 has made provisions for the members and office-bearers of a

registered trade union from criminal and civil conspiracies during the strikes and causing any financial loss to the employer.

Workmen's Right to sell his labour at his own price, and the employer's right to determine the terms and conditions on which he would get the work done, have seldom been absolute. In former days. statutes fixing wages prohibited labour to claim more. In modem times, minimum standard legislations prohibit employers to pay less.

The repeal of mediaeval statutes opened the theoretical possibility of free bargaining between workmen and employers (subject, of course, to the provisions of the minimum standard statutes). If the terms of employment were not satisfactory, the worker could withdraw his labour until the employer paid more. Ifthe terms were too onerous, the employer could suspend the work until the workmen accepted less. But, in practice, mechanization of industries which took away the importance of their craftsmanship, surplus labour market which made alternative cheap labour available, the statutes penalizing breach of contract under which workmen except on pain of imprisonment, agitated for better terms. and the overall economic superiority of employers heavily tilted the bargaining power in favour ofthe employer and the workmen became helpless participants.

Under the circumstances, it was natural for the working class to combine together to retrieve their lost position. But the Act of combination invited the application of the concept of conspiracy to labour management relations and although the law did not make any distinction between employers and workmen as such. the element of combination made labourers the worst sufferers. Further, in an era which was fast moving from status to contract, the workmen's "protest" also invited the application of the common law doctrine of restraint of trade. By the time law courts refined the "objectives" and the "means" tests to protect protest movement from conspiracy and disentangled labour management relations from the concept of restraint of trade, the community itself had intervened to protect labour from the hazards of the aforesaid common law doctrines. But, the passage of time and resulting experience made it equally clear that the community could not altogether ignore strikes and lock-outs. Quite apart from the economic aspects, and law and order which in themselves were important, the health and welfare of the people depended on the smooth running of industries.

Until 1926, unions of workers indulging in strike and causing financial loss to management were liable for illegal conspiracies. For instance in Buckingham and Carnatic Mills the unions were held liable for illegal conspiracies and employers were awarded damages. It was only in 1926 that the Trade Unions Act, 1926 immunizes trade union activity, from restraint of trade and conspiracy. But these provisions are of pre constitutional era. These statutory provisions must now be considered in the light of the Constitutional guarantees of the right to freedom of speech and expression, to assemble peaceably, to form associations and unions, to practice any profession and to carry on any occupation, trade or business, and grants protection against economic exploitation.

Let's examine the nature and scope of the immunity afforded to the members and office-bearers of registered trade union from civil and criminal conspiracies and restraint of trade under the Trade Unions Act, 1926.

1. **Immunity From Criminal Conspiracy**

Section 17 of the Trade Unions Act, 1926 seeks to insulate trade unions activity from liability for criminal conspiracy. It states that, no office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in Section 15, unless the agreement is an agreement to commit an offence.

The immunity is, however, available only:

(i) to office-bearers and members of registered trade unions;

(ii) for agreement;

(iii) which further any such trade union object as is specified in section 15 of the Act; and

(iv) which are not agreements to commit offences.

The last of the limitations on the scope of the immunity granted by section 17 of the Trade Unions Act, 1926 raises an issue relating to the very nature of the immunity. Section 120-A of the Indian Penal Code defines criminal conspiracy to mean: (i) an agreement between two or more persons to commit an offence, t.e., in general," an act which is punishable under the Indian Penal Code or any other law for

the time being in force; and (ii) an overt act done in pursuance of an agreement between two or more persons to do an illegal act or to do a legal act by illegal means. The Indian Penal Code defines the word "illegal" to include, inter alia, everything which is prohibited by law, or which furnishes ground for a civil action.

Since workman's use of instruments of economic coercion in an industrial dispute involve breach of contract and 'frequently injury to the property right of the employer both of which are actionable, use of the instruments of economic coercion amounts to an illegal act within the meaning of section 120-A read with section 43 of the Indian Penal Code. However, section 18 of the Trade Unions Act, inter alia. provides: No suit or other legal proceeding shall be maintainable in any. Civil Court against any registered Trade Union or any office bearer or member thereof in respect of any act 'done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

Thus, under Section 17 the breach of contract and injury to employers property right cease to be actionable and. therefore, does not amount to criminal conspiracy" as defined in section 120-A read with section 43 of the Indian Penal Code. A question, therefore, arises as, what is the criminal liability in respect of which Section 17 of the Trade Unions Act, 1926 grants immunity? In considering the matter it is relevant to note that section 17 does not grant charter of liberty to commit an offence, which is punishable with death, life imprisonment or rigorous imprisonment for a term of two years or more. In fact as the last words of the section 17 of the Trade Union Act, 1926 indicate that it does not insulate agreement to commit any offence whatsoever. Perhaps the immunity is confined to agreement between two or more persons to do or cause to be done, acts which are prohibited by law but which neither amounts to an offence nor furnishes ground for civil action.

Breach of contract does give rise to a civil cause of action, therefore, under section 43 of the Indian Penal Code an agreement to commit breach of contract through withdrawal of labour as an instrument of economic coercion in an industrial dispute, is a criminal conspiracy. Further, so long as any law declares withdrawal of

labour in breach of contract to be an offence of a member of the consenting party takes any step to encourage, abet, instigate, persuade, incite or in any manner act in furtherance of the objective, the crime of criminal conspiracy would have been committed. Finally, since criminal conspiracy is a substantive offence punishable under section 120-B of the Indian Penal Code it is doubtful if Section 17 grants immunity at all.

The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action, and a person is said to be "legally' bound to do, whatever it is illegal for him to omit. Reading section 18 of the Trade Unions Act with section 43 of the Indian Penal Code it would appear that withdrawal of labour as an instrument of economic coercion in an industrial dispute in breach of contract is not illegal. Accordingly, an agreement between two or more workmen, members of a registered trade union to withdraw labour as an instrument of economic coercion in an industrial dispute is not an agreement "to do or cause to be done an illegal act" and amounts to a criminal conspiracy within the meaning of section 120-A of the Indian Penal Code. Accordingly, withdrawal of labour in breach of contract does not give rise to a cause of action in civil courts.

The Calcutta High Court in Jay Engineering Works Ltd. v. Staff while interpreting the provisions of section 17 of the Trade Unions Act, 1926 held that, no protection is available to the members of a trade union for any agreement to commit an offence. When a group of workers, large or small, combined to do an act for the purpose of one common aim or object it must be held that there is an agreement among the workers to do the act and if the act committed is an offence, it must similarly be held that there is an agreement to commit an offence.

2. Immunity From Civil Actions

Section 18 of the Trade Unions Act, 1926, grants immunity to registered trade unions from civil suits

i. No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officebearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in

interference with the trade business or employment ofsome other person or with the right ofsome other person to dispose of his capital or his labour as he wills.

ii. A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortuous act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the trade unions

The above section does not afford immunity to the members or office bearers of a trade 'union for an act of deliberate trespass.? The immunity also cannot be availed of by them for unlawful or tortuous act. IO Further such immunity is denied if they indulge in an illegal strike or gherao. Moreover the immunities enjoyed by the union do not impose any public duty on the part of the union.

In Rohtas Industries Staff Union v. State of Bihar, certain workmen went on an illegal and unjustified strike at the instance of the union. A question arose whether the employers have any right of civil action for damages against the strikers. The arbitrator held that the workers who participated in an illegal and unjustified strike, were jointly and severely liable to pay damages. On a writ petition the Patna High Court quashed the award of the arbitrator and held that employers had no right of civil action for damages against the employees participating in an illegal strike within the meaning of section 24 of the Industrial Disputes Act, 1947. From this decision it is evident that section 18 grants civil immunity in case of strike by the members of the trade union. On appeal, the Supreme Court affirmed the judgment of the high court on the ground that the claim for compensation and the award thereof in arbitration proceedings were invalid and such compensation for loss of business was not a dispute or difference between the employers and the workmen which was connected with the employment or non-employment or terms of employment or with the condition of labour of any person. The Supreme Court found itself not obliged to decide the question as to whether the Patna High Court was right in relying on section I8 of the Act to rebuff the claim for compensation because the learned judges of

In Jay Engineering Works v, Staff the Calcutta High Court was invited to consider the question whether the protection under sections 17 and 18 of the Trade Unions Act can be availed of where workers resort to gherao. The net result of the

decision set out above is that Sections 17 and 18 of the Indian Trade Unions Act grant certain exemption to members of a trade union but there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence, where they amount to an offence. Members of a trade union may resort to a peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. Such strikes must be peaceful and not violent and there is no exemption where an offence is committed. Therefore, a concerted movement by workmen by gathering together either outside the industrial establishment or inside within the working hours is permissible when it is peaceful and not violate the provisions of law. But when such a gathering is unlawful or commits an offence then the exemption is lost. Thus, where it resorts to unlawful confinement of person's criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed.

The Calcutta High Court once again in Reserve Bank of India v. Ashis held that in oder to secure immunity from civil liability under section 18 inducement or procurement in breach of employment in furtherance of trade dispute must be by lawful means and not by means which would be illegal or wrong under any other provisions of the law. The Madras High Court in Sri Ram Vilas Service Ltd. v. Simpson Group Company Union held that it was not within the purview of the high court to prevent or interfere with the legitimate rights of the labour to pursue their agitation by means of a strike so long as it did not indulge in acts unlawful and tortious.

In Indian Newspapers (Bom) Pvt. Ltd. v. T.M. Nagarajan the Delhi High Court held that when there are allegations of violence made by the management in the plaint supported by documents then prima facie a suit would be maintainable and the protection of section 18 of the Trade Unions Act, 1926 would not be available. The fact whether any act of violence was committed or not would be decided in the suit.

In Ahmedabad Textile Research Association v. ATIRA Employees Union a Division Bench of the Gujarat High Court held that it is not within the purview of the civil court to prevent or interfere with the legitimate rights of the workmen to pursue their demands by means of strike or agitation or other lawful activities so long as they do not indulge in acts unlawful, tortious and violent. The court further held that any

agitation by the workmen must be peaceful and not violent. Any concerned movement by workmen to achieve their objectives is certainly permissible even inside the industrial establishment.

3. **Enforceability of Agreements:**

Section 19 grants protection to the agreements (between the members of a registered trade union) whose objects are in restraint of trade notwithstanding anything contained in any other law for the time being in force declaring such agreements to be void or voidable.

Problems of trade Union:

Following are some of the problems that are faced by trade unions in India, namely

1. **Multiplicity of unions:** Unlike the developed countries of the world (like U.K. and U.S.A) the number of unions is relatively large in India. A number of unions exist in one industrial unit. The rival unions sometimes do more harm to the workers than good.
2. **Absence of union structure:** The structure of the trade union may be a craft union, industrial union or the general union. A craft union is a union of workers representing particular skills such as electricians. When all the workers of an industry become members of the union, it is known as industrial union. A general union on the other hand covers various types of workers working in the different industries. In India, there is an absence of craft union. National commission on labour has recommended the formation of industrial unions and industrial federations.
3. **Limited membership:** The membership of the trade unions in India is very less. A trade union cannot become strong unless it can enroll large number of workers as its members.
4. **Scarcity of finances:** The main problem faced by trade unions in India is the paucity of financial resources. Fragmentation necessarily keeps the finances of the union very low. The membership fees paid by the members are very nominal. For this reason it is not possible for the union to take up welfare activities for its members.

5. **Small size:** On account of the limited membership, the size of the unions in India is very small. About 70 to 80% of the unions have less than 500 members.
6. **Lack of unity:** The major weakness of the trade union movement in India is the lack of unity among the various unions existing in India at present. The labour leaders have their own political affiliations. They use labour force for achieving their political gains rather than concentrating on the welfare of the workers.
7. **Lack of trained workers:** The workers in India are uneducated and untrained. The politicians, who are least concerned with the welfare of the workers, become their leaders. Backwardness of the workers and their fear of victimisation keep them away from union activities.
8. **Political dominance:** It is very unfortunate for the workers that all trade unions in India are being controlled by political parties. In order to achieve their political ends, they exaggerate workers' demands and try to disturb the industrial peace of the country.
9. **Hostile attitude of employers:**The employers have their own unions to oppose the working class. According to M. M. Joshi "They first try to scoff at it, then try to put it down; lastly if the movement persists to exist, they recognise it". In order to intimidate the workers, employers use many foul means which go to the extent of harassing the leaders by black-listing them or threatening them through hired goondas.

Certain other reasons which also make the union movement weak are

a) recruitment of workers through the middlemen who do not allow these persons to become members of the union
b) workers in India come from different castes and linguistic groups it affects their unity
c) unions least care for the welfare activities of their members.

The weak position of the Trade Unions in the country stands in the way of the healthy growth of the device of collective bargaining for the achievement of workers' aims. It is one of the principal reasons that adjudication rather than negotiation has to be applied for the settlement of industrial disputes.

It is incumbent on the part of all concerned with the welfare of the workers to make the trade unions strong and effective for the purposes for which they are formed. A strong union is good for the workers, the management, as well as for the community.

Amalgamation of Trade Unions:

Sec 24 provides that, any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent. of the votes recorded are in favour of the proposal.

Notice of change of name or amalgamation:

Sec 25 provides that, notice in writing of every change of name and of every amalgamation signed, in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar and where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State.

Recognition of Trade Union:

There is no specific provision for the recognition of the trade unions under the Trade Unions Act, 1926. Hence, recognition is a matter of discretion in the hands of the employer. Provisions for the recognition of trade unions were included in the Trade Union (Amendment) Act, 1947, but the act has not been implemented. The Trade Union Bill, 1950 also provided for recognition of trade union (based on the largest membership among the existing trade unions), but the bill lapsed due to dissolution of parliament.

Recognition of Central Trade Unions

The Central Government gives recognition to Trade Union as Central Trade Union for the purpose of representing in the International Labour Organizations and International Conferences, if such trade union fulfils the following conditions:

a) The Union has a minimum of five lakhs membership as on March, 1997.
b) The Union must have members from at least four states,
c) The Union must have a membership at least in four industries.

The Central Chief Labour Commissioner is authorized to verify the fulfillment of above conditions.

Collective Bargaining:

The term "Collective Bargaining" was used by Beatrice Webb in 1897 for the first time in his famous book "Industrial Democracy". Collective Bargaining means negotiation between the employer and workers to reach agreement on working conditions and other conflicting interests of both sides (employer and workers).

In simple words, collective bargaining means bargaining between an employer or group of employers and a bonafide labour union. There are few advantages and disadvantages of collective bargaining.

Advantages:

1. Collective Bargaining imposes an obligation on both parties to the dispute and creates a specific code of conduct for parties to the process.
2. The parties to the dispute undertake not to resort to strikes or lock-outs, and thus collective bargaining ensures peace and industrial harmony.

Disadvantages:

1. Increase in wages, and extra expenses to provide other amenities to workmen and improvement of working conditions can cause higher cost of production.
2. Political interference in the labour unions during the collective bargaining process increases the chance for adverse effects.

UNIT II

INDUSTRIAL DISPUTES ACT, 1947

Historical background and Introduction to the Industrial Disputes Act, 1947

Industrial disputes are the disputes which arise due to any disagreement in an industrial relation. Industrial relation involves various aspects of interactions between the employer and the employees. In such relations whenever there is a clash of interest, it may result in dissatisfaction for either of the parties involved and hence lead to industrial disputes or conflicts. These disputes may take various forms such as protests, strikes, demonstrations, lock-outs, retrenchment, dismissal of workers, etc.

Industrial Disputes Act, 1947 provides machinery for peaceful resolution of disputes and to promote harmonious relation between employers and workers. The Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counterproductive battles and assurance of industrial may create a congenial climate. The Act enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial unit can be closed down and several other matters related to industrial employees and employers. Under the Act various Authorities are established for Investigation and settlement of industrial disputes. They are Works Committee; Conciliation Officers; Boards of Conciliation; Court of Inquiry; Labour Tribunals; Industrial Tribunals and National Tribunals. The knowledge of this legislation is a must for the students so that they develop a proper perspective about the legal frame work stipulated under the Industrial Disputes Act, 1947.

The first enactment dealing with the settlement of industrial disputes was the Employers' and Workmen's Disputes Act, 1860. This Act weighed much against the workers and was therefore replaced by the Trade Disputes Act, 1929. The Act of 1929 contained special provisions regarding strikes in public utility services and general strikes affecting the community as a whole. The main purpose of the Act, however, was to provide a conciliation machinery to bring about peaceful settlement of

industrial disputes. The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for their settlement. The next stage in the development of industrial law in this country was taken under the stress of emergency caused by the Second World War. Rule 81-A of the Defence of India Rules was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. This rule also put a blanket ban on strikes which did not arise out of genuine trade disputes.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by issuing an Ordinance in the exercise of the Government's Emergency Powers. Then Industrial Disputes Act, 1947 enacted. The provisions of this Act, as amended from time to time, have furnished the basis on which industrial jurisprudence in this country is founded.

OBJECT AND SIGNIFICANCE OF THE ACT

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees. Definitions of the words 'industrial dispute, workmen and industry' carry specific meanings under the Act and provide the framework for the application of the Act.

In the case of *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate*, AIR 1958 S.C. 353, the Supreme Court laid down following objectives of the Act:

(i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.

(ii) Investigation and settlement of industrial disputes between employers and employers, employers and workmen, or workmen and workmen with a right of representation by registered trade

union or federation of trade unions or an association of employers or a federation of associations of employers.

(iii) Prevention of illegal strikes and lock-outs.

(iv) Relief to workmen in the matter of lay-off and retrenchment.

(v) Promotion of collective bargaining.

This Act extends to whole of India. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice. This being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728).

Important Definitions under Industrial Disputes Act, 1947

Definition of Industry:

Section 2(j) defines industry, 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.

This definition is in two parts. The first says that industry means any business, trade, undertaking, manufacture or calling of employers and the second part provides that it includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. "If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part takes in the different kinds of activity of employees mentioned in the second part. But the second part standing alone cannot define industry. By the inclusive part of the definition the labour force employed in any industry is made an integral part of the industry for the purpose' of industrial disputes

although industry is ordinarily something which employers create or undertake". However, the concept that "industry is ordinarily something which employers create or undertake" is gradually yielding place to the modern concept which regards industry as a joint venture undertaken by employers, and workmen, an enterprise which belongs equally to both. Further it is not necessary to view definition of industry under Section 2(j) in two parts.

The definition read as a whole denotes a collective which employers and employees are associated. It does not consist either by employers alone or by employees alone. An industry exists only when there is relationship between employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. There must, therefore, be an rise in which the employers follow their avocations as detailed in the defamation and employ workmen. Thus, a basic requirement of 'industry' is that the employers must "Be" ""carrying on any business, 'trade, undertaking, manufacture or calling of employers'. There is next much difficulty in ascertaining the meaning of the words business, trade, manufacture, or calling of employers in order to determine whether a particular activity carried on with the co-operation of employer and employees is an industry or not but the difficulties have cropped up in defining the word 'undertaking'.

"Undertaking" means anything undertaken, any business, work or project which one engages in or attempts, or an enterprise. It is a term of very wide denotation have been evolved by the Supreme Court in a number of decisions which But all decisions of the Supreme Court are agreed that an undertaking to be within the definition in Section 2(j) must be read subject to a limitation, namely, that it must be analogous to trade or business.1 Some working principles furnish a guidance in determining what are the attributes or characteristics which will indicate that an undertaking is analogous to trade or business. The first principles was stated by Gajendragadkar, J. in Hospital Mazdoor Sobfefl case as follows :

"As a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community- with, the

help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized an arranged in a manner in which trade or business is generally organized or arranged. It must not be casual, nor must it be for one's self nor for pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between the employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies."

In Bangalore Water Supply v. A. Rajappa, a seven Judges' Bench of the Supreme Court exhaustively considered the scope of industry and laid down the following test which has practically reiterated the test laid down in Hospital Mazdoor Sabha case.

Triple Test:

Where there is (i), systematic activity, (ii) organised by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an "industry" in that enterprise. This is known as tripple test. The following points were also emphasized in this case:

1. Industry does not include spiritual or religious services or services geared to celestial bliss, e.g., making, on a large scale, prasad or food. It includes material services and things.
2. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
3. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
4. If the organization is a trade or business-it does not cease to be one because of philanthropy animating the undertaking.

Therefore the consequences of the decision in this case are that professions, clubs, educational institutions co-operatives, research institutes, charitable projects

and other kindred adventures, if they fulfill the triple test stated above cannot be exempted from the scope of Section 2(j) of the Act.

Dominant nature test:

Where a complex of activities, some of which qualify for exemption, others not, involve employees on the total undertaking some of whom are not workmen or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments will be true test, the whole undertaking will be "industry" although those who are not workmen by definition may not benefit by status.

Exceptions:

A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if in simple ventures, substantially and, going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit. If in pious or altruistic mission, many employ themselves, free or for small honorarium or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to-run a free legal services, clinic or doctors serving in their spare hours in a free medical centre of ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and-those who serve are not engaged for remuneration or on the .basis of 'master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical are hired. Such elementary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

Sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section It was further observed that : "Undertaking must suffer a contextual and associational shrinkage as explained in D.N. Barterjee v. P.R. Mukherjee, so also, service calling and the like. This yields to the inference that all

organised activities possessing the triple elements abovementioned, although not trade or business, may still be industry provided the nature of the activity,, viz. the employer-employee basis, bears resemblance to what is found in, trade or business. This takes into the fold of "industry" undertaking, callings and services, adventures analogous to the carrying on of trade or business. All features other than the methodology of carrying on the activity, viz., in organizing the co-operation between employer and employee, may be dissimilar. It does not matter if on the employment terms there is analogy".

The Supreme Court in Management of Safdarjung Hospital, Delhi v. Kuldip Singh counter to the principles enunciated in Bangalore Water Supply v. A. Rajappa case and overrule its decision.

Whether Municipal corporation can be regarded as an industry

This question was decided by the court in D.N. Banerjee v. P.R. Mukherjee. In this case the Budge Municipality dismissed two of its employees, Mr. P.C. Mitra, a Head clerk and Mr. P.N. Ghose a Sanitary Inspector on charges for negligence, insubordination and indiscipline. The Municipal Workers Union of which the dismissed employees were members questioned the propriety of the dismissal and the matter was referred to the Industrial Tribunal. The Tribunal directed reinstatement and the award was challenged by the Municipality on the ground that its duties being connected with the local self-government it was not an industry and the dispute was not an industrial dispute and therefore reference of the dispute to the tribunal was bad in law.

The Supreme Court observed that in the ordinary or non-technical sense industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, tools etc. and for making profits. In the opinion of the Court every aspect of activity in which the relationship of master and servant or employer and employees exists or arises does not become an industry It was further observed that 'undertaking' in the first part and industrial occupation or avocation in the second part of Section 2(j) obviously mean much more than what is ordinarily understood by trade or business.

The definition was apparently intended to include within its scope what might not strictly be called a trade or business. Neither investment of capital nor profit making motive is essential to constitute an industry as they are generally, necessary in a business, A public utility service such as railways, telephones, and the supply of power, light or water to the public may be carried on by private companies or business corporations and if these public utility services are carried on by local bodies like a Municipality they do not cease to be an industry, for the reasons stated above Municipal Corporation was held to be an industry.

In Permanand v. Nagar Palika, Dehradun and others the Supreme Court held that the activity of a Nagar Palika in any of its department except those dealing with levy of house tax etc, falls within the definition of industry in U.P. Industrial Disputes Act, 1947.

Whether hospital is an industry:

The question whether hospital is an industry or not has come for determination by the Supreme Court on a number of occasions and the uncertainty has been allowed to persist because of conflicting judicial decisions right from Hospital Mazdoor Sabha case to the Bangalore Water Supply v. A. Rajappa.

In State of Bombay v. Hospital Mazdoor Sabha case, the Hospital MazdoorSabha was a registered Trade Union of the employees of hospitals in the State of Bombay, The services of two of its members were terminated by way of retrenchment' by the Government and the Union claimed their reinstatement through a writ petition. It was urged by the State that the writ application was misconceived because hospitals did not constitute an industry. The group of hospitals were run by the State for giving medical relief to citizens and imparting medical education.

The Supreme Court held the group of hospitals to be industry and observed as follows :

1. The State is carrying on an 'undertaking' within Section 2(j) when it runs a group of hospitals for purpose of giving medical relief to the citizens and for helping to impart medical education.
2. An activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the

community at large or a part of such community with the help of employees is an undertaking.

3. It is the character of the activity in question which attracts the provisions of Section 2(j), who conducts the activity and whether it is conducted for profit or not make a material difference.
4. The conventional meaning attributed to the words, 'trade and business' has lost some of its validity for the purposes of industrial adjudication...it would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days gone by. Hospital run by the Government as a part of its function is not an industry.

Hospitals run by the State of Orissa are places where persons can get treated. they are run as departments of Government. The mere fact that payment is accepted in respect of some beds cannot lead to the inference that the hospitals are run as a business in a commercial way. Primarily, the hospitals are meant as free service by the Government to the patients without any profit motive". But in view of the decision of the Supreme Court in Bangalore Water Supply v. A. Rajappa Dhanrajgiri Hospital case has been overruled and all hospitals fulfilling the test laid down in Bangalore Water Supply case will be industry.

Thus on an analysis of the entire case law up to Bangalore Water Supply case on the subject it can be said that such hospitals as are run by the Government as part of its sovereign functions with the sole object of rendering free service o the patients are not industry. But all other hospitals, both public and private; whether charitable or commercial would be industry if they fulfil the triple test laid down in Bangalore Water Supply v. A. Rajappa.

Whether University and Educational Institutions:

In University of Delhi v. Ram Nath, the respondent Mr. Ram Nath was employed as driver by University College for women. Mr. Asgar Mashih was initially employed as driver by Delhi University but was later on transferred to the University College for women in 1949. The University of Delhi found that running the busess for transporting the girl students of the women's college has resulted in loss. Therefore it decided to discontinue that facility and consequently the services of the above two drivers were terminated.

The order of termination was challenged on the ground that the drivers were workmen and the termination of their services amounted to retrenchment. They demanded payment of retrenchment compensation under Section 25-F of the Act by filing petitions before the Industrial Tribunal. The Tribunal decided the matter in favour of the drivers and hence the University of Delhi challenged the validity of the award on the ground that activity carried on by the University is not industry. It was held by the Supreme Court that the work of imparting education is more a mission and a vocation than profession or trade or business and therefore University is not an industry. But this case has been overruled by the Supreme Court in Bangalore Water Supply case and in view of the triple test laid down in Bangalore Water Supply case even a University would be an industry although such of its employees as are not workmen within the meaning of Section 2(s) of the Act, may not get the desired benefits to which a workman in an industry may be entitled to.

In Brahma Samaj Education Society v. West Bengal College Employees' Association, the society owned two colleges. A dispute arose between the society and non-teaching staff of the colleges. It was pleaded that the society was purely an educational institution and not an industry because there was no production of wealth with the co-operation of labour and capital as is necessary to constitute an industry. The Calcutta High Court observed that our conception of industry has not been static but has been changing with the passage of time. An undertaking which depends on the intelligence or capacity of an individual does not become an industry simply because it has a large establishment. There may be an educational institution to which pupils go because of the excellence of the teachers; such institutions are not industry. On the other hand, there may be an institution which is so organized that it is not dependent upon the intellectual skill of any individual, but is an organization where a number of individuals join together to render services which might even have a profit motive. Many technical institutions are run on these lines. When again we find these institutions also do business by manufacturing things or selling things and thereby making a profit they certainly come under heading of "industry". These being the tests, it is clear that it will be a question of evidence as to whether a particular institution can be said to be an industry or not.

In Osmania University v. Industrial Tribunal Hyderabad, a dispute having arisen between the Osmania University and its employees, the High Court of Andhra

Pradesh, after closely examining the Constitution of the University, held the dispute not to be in connection with an industry. The correct test, for ascertaining whether the particular dispute is between the capital and labour, is whether they are engaged in co-operation, or whether the dispute has arisen inactivities connected directly with, or attendant upon, the production or distribution of wealth.

In Ahmedabad Textile Industry's Research Association v. State of Bombay an association was formed for founding a scientific research institute. The institute was to carry on research in connection with the textile and other allied trades to increase efficiency. The Supreme Court held that "though the association was established for the purpose of research, its main object was the benefit of the members of the association, the association is organised, and arranged in the manner in which a trade or business is generally organised; it postulates cooperation between employers and employees; moreover the personnel who carry on the research have no right in the result of the research. For these reasons the association was held to be "an industry". But a society which is established with the object of catering to the intellectual as distinguished from material needs of men by promoting general knowledge of the country by conducting research and publishing various journals and books is not an industry. Even though it publishes books for sale in market, when it has no press of its own the society cannot be termed even an 'undertaking' for selling of its publication was only an ancillary activity and the employees were engaged in rendering clerical assistance in this matter just as the employees of a solicitor'firm help the solicitors in giving advice and service.

Since University of Delhi v. Ram Nath has been overruled by the Supreme Court in Bangalore Water Supply v. A. Rajappa the present position is that the educational institutions including the university are industry in a limited sense. Now those employees of educational institutions who are covered by the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947 will be treated as workman of an industry.

Is Government Department an industry?

In State of Rajasthan v. Ganeshi lal, the Labour Court had held the Law Department of Government as an industry. This view was upheld by the Single Judge and- Division Bench of the High Court. It was challenged by the State before

Supreme Court. It was held that the Law Department of Government could not be considered as an industry. Labour Court and the High Court have not indicated as to how the Law Department is an industry. They merely stated that in some cases certain departments have been held to be covered by the expression industry in some decisions. It was also pointed out that a decision is a precedent on its own facts. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

Whether Club is an industry:

Clubs or self-service institutions or non-proprietary member's club will be industry provided they fulfill the triple test laid down in Bangalore 'Water Supply v, A. Rajappa.1 The Cricket Club of India case and Madras Gymkhana Club case (discussed below) which were the two leading cases, on- the point so far have been overruled by Bangalore Water Supply case.

In Cricket Club of India v. Bombay Labour Union the question was whether the Cricket Club of India, Bombay which was a member's club and not a proprietary club, although it was incorporated as a company under the Companies Act was an industry or not. The club had membership of about 4800 and was employing 397 employees. It was held that the club was a self service institution and not an industry and it was wrong to equate the catering facilities provided by the club to its members or their guests (members paying for that), with a hotel. The catering facility also was in the nature of self service by the club to its members. This case has now been overruled.

Madras Gymkhana Club Employees' Union v. Management; is another case on this point. This was a member's club and not a proprietary club with a membership of about 1200. Its object was to provide a venue for sports and games and facilities for recreation and entertainment. It was running a catering department which provided food and refreshment not only generally but also on special occasion. It was held that the club was a member's self-serving institution and not an industry. No doubt the material needs or wants of a section of the community were catered but that was not enough as it was not done as part of trade or business or as an undertaking analogous to trade or business. This case has also been overruled. Now it is not necessary that the activity should be a trade or business or analogous to trade or business It may,

therefore, be submitted that both Cricket Club of India and Madras Gymkhana Club would now be an industry because they fulfill the triple test laid down in Bangalore Water Supply case. Both are systematically organized with the co-operation of employer and employee for distribution of service to satisfy human wishes.

Whether Agricultural Operation is an industry:

The carrying on of agricultural operations by the company for the purposes of making profits, employing workmen who contribute to the production of the agricultural commodities bringing profits to the company was held to be an industry within the meaning of this clause. Where a Sugar Mill owned a cane farm and used its produce for its own consumption and there was evidence that the farm section of the mill was run only to feed the mill, it was held that the agricultural activity being an integral part of industrial activity, the farm section was an industry.

Whether Solicitor's Firm or Lawyer's Office are industries:

In N.N.U.C. Employees v. Industrial Tribunal31; the question was whether a solicitor's firm is an industry or not. It was held that a solicitor's firm carrying on work of an attorney is not an industry, although specifically considered it is organized as an industrial concern. There are different categories of servants employed by a firm, each category being assigned by separate duties and functions. But the service rendered by a firm, each category being assigned separate duties or functions. But the service rendered by a solicitor functioning either individually or working together with parties is service which is essentially individual; it depends upon the professional equipments, knowledge and efficiency of the solicitor concerned. Subsidiary work which is purely incidental type and which is intended to assist the solicitor in doing his job has no direct relation to the professional service ultimately rendered by the solicitor. The work of his staff has no direct or essential nexus or connection with the advice which it is the duty of the solicitor to give to his client. There is, no doubt, a kind of cooperation between the solicitor and his employees, but that cooperation has no direct or immediate relation to the professional service which the solicitor renders to his client. This case has been overruled again in Bangalore Water Supply case and now a solicitor's firm employing persons to help in catering to the needs of his client is an industry.

Amended definition of 'industry' under the Industrial Disputes (Amendment) Act, 1982

2(j) "Industry" means any systematic activity carried on by co-operation between an employer and his workmen (Whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not:

i. any capital has been invested for the purpose of carrying on such activity; or
ii. such activity is carried on with a motive to make any gain or profit, and includes:

(a) any activity of the Dock Labour Board established under Section 5A of the Dock Workers (Regulations of Employment) Act, 1948, (9 of 1948);

(b) Any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include:

1. Any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one. Explanation: For the purpose of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or
2. hospitals or dispensaries; or
3. educational, scientific, research to training institutions; or
4. institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
5. khadi or village industries; or
6. any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research atomic energy and space; or
7. any domestic service; or

8. any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or
9. any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

Definition of Workman:

Under sec 2(s) of the Act "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 expressed or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes:

a) any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or
b) any person whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:
    i. who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957; or
    ii. who is employed in the police service or as an officer or other employee of a prison; or
    iii. who is employed mainly in a managerial or administrative capacity; or
    iv. who is employed in a supervisory capacity drawing more than Rs. 1,600 per month as wages; or
    v. who is exercising 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.

Some of the expressions used in the definition of "workman" have been the subject of judicial interpretation and hence they have been discussed below: (a) Employed in "any industry" To be a workman, a person must have been employed in an activity which is an "industry" as per Section 2(j). Even those employed in

operation incidental to such industry are also covered under the definition of workman.

(a) Employed in "any industry"

To be a workman, a person must have been employed in an activity which is an "industry" as per Section 2(j). Even those employed in operation incidental to such industry are also covered under the definition of workman.

In the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. L.A.T., AIR 1964 S.C. 737, the Supreme Court held that 'malis' looking after the garden attached to bungalows provided by the company to its officers and directors, are engaged in operations incidentally connected with the main industry carried on by the employer. It observed that in this connection it is hardly necessary to emphasise that in the modern world, industrial operations have become complex and complicated and for the efficient and successful functioning of any industry, several incidental operations are called in aid and it is the totality of all these operations that ultimately constitutes the industry as a whole. Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry.

(b) Person employed

A person cannot be a workman unless he is employed by the employer in any industry. The relationship of employer and workman is usually supported by a contract of employment which may be expressed or implied. This is also a must for regarding an apprentice as a worker (Achutan v. Babar, 1996-LLR-824 Ker.). But such a question cannot be derived merely on the basis of apprenticeship contract (R.D. Paswan v. L.C., 1999 LAB 1C Pat 1026). The employee agrees to work under the supervision and control of his employer. Here one must distinguish between contract for employment or service and contract of employment or service. In the former, the employer can require what is to be done but in the latter, he can not only order what is to be done, but also how it shall be done. In the case of contract for employment, the person will not be held as a 'workman' but only an 'independent

contractor'. There should be due control and supervision by the employer for a master and servant relationship (Dharangadhara Chemical Works Ltd. v. State of Saurashtra). Payment on piece rate by itself does not disprove the relationship of master and servant. Even a part time employee is a worker (P.N. Gulati v. Labour Commissioner). Since he is under an obligation to work for fixed hours every day, jural relationship of master and servant would exist. A casual worker is nonetheless a workman.

(c) Employed to do skilled or unskilled etc.

Only those persons who are engaged in the following types of work are covered by the definition of "workman":

(i) Skilled or unskilled manual work;
(ii) Supervisory work;
(iii) Technical work;
(iv) Clerical work.

Where a person is doing more than one work, he must be held to be employed to do the work which is the main work he is required to do (Burma Shell Oil Storage & Distributing Co. of India v. Burma Shell Management Staff Association, Manual work referred in the definition includes work which involves physical exertion as distinguished from mental or intellectual exertion. A person engaged in supervisory work will be a workman only if he is drawing more than Rs. 1,600 per month as wages. The designation of a person is not of great importance, it is the nature of his duties which is the essence of the issue. If a person is mainly doing supervisory work, but incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally, will not convert his employment as a clerk into one in supervisory capacity. In other words, the dominant purpose of employment must be taken into account at first and the gloss of additional duties to be rejected, while determining status and character of the job. The work of labour officer in jute mill involving exercise of initiative, tact and independence is a supervisory work. But the work of a teller in a bank does not show any element of supervisory character.

Whether teachers are workmen or not

After amendment of Section 2(s) of the Act, the issue whether "teachers are workmen or not" was decided in many cases but all the cases were decided on the basis of definition of workman prior to amendment. The Supreme Court in Sunderambal v. Government of Goa held that the teachers employed by the educational institution cannot be considered as workmen within the meaning of Section 2(s) of the Act, as imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. The Court in this case also said that manual work comprises of work involving physical exertion as distinct from mental and intellectual exertion. The teacher necessarily performs intellectual duties and the work is mental and intellectual as distinct from manual.

A person doing technical work is also held as a workman. A work which depends upon the special training or scientific or technical knowledge of a person is a technical work. Once a person is employed for his technical qualifications, he will be held to be employed in technical work irrespective of the fact that he does not devote his entire time for technical work. Thus, the person doing technical work such as engineers, foreman, technologist, medical officer, draughtsman, etc., will fall within the definition of "workman". A medical representative whose main and substantial work is to do convassing for promotion of sales is not a workman within the meaning of this Section (1990 Lab IC 24 Bom. DB). However, a salesman, whose duties included manual as well as clerical work such as to attend to the customer, prepare cash memos, to assist manager in daily routine is a workman (Carona Sahu Co. Ltd. v. Labour Court 1993 I LLN 300). A temple priest is not a workman (1990 1 LLJ 192 Ker.).

Person employed mainly in managerial and administrative capacity:

Persons employed mainly in the managerial or administrative capacity have been excluded from the definition of "workman". Development officer in LIC is a workman (1983 4 SCC 214). In Standard Vacuum Oil Co. v. Commissioner of Labour, it was observed that if an individual has officers subordinate to him whose work he is required to oversee, if he has to take decision and also he is responsible for ensuring that the matters entrusted to his charge are efficiently conducted, and an

ascertainable area or section of work is assigned to him, an inference of a position of management would be justifiable. Occasional entrustment of supervisory, managerial or administrative work, will not take a person mainly discharging clerical duties, out of purview of Section 2(s).

Industrial Dispute:

Industrial Dispute "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 person. [Section 2(k)]

The above definition can be analyzed and discussed under the following heads:

1. There should exist a dispute or difference;
2. he dispute or difference should be between:
   (a) Employer and employer;
   (b) Employer and workmen; or
   (c) Workmen and workmen.
3. The dispute or difference should be connected with (a) the employment or non-employment, or (b) terms of employment, or (c) the conditions of labour of any person;
4. The dispute should relate to an industry as defined in Section 2(j).

1. Existence of a dispute or difference

The existence of a dispute or difference between the parties is central to the definition of industrial dispute. Ordinarily a dispute or difference exists when workmen make demand and the same is rejected by the employer. However, the demand should be such which the employer is in a position to fulfill. The dispute or difference should be fairly defined and of real substance and not a mere personal quarrel or a grumbling or an agitation. The term "industrial dispute" connotes a real and substantial difference having some element of persistency, and likely, and if not adjusted, to endanger the industrial peace of the community. An industrial dispute exists only when the same has been raised by the workmen with the employer. A mere

demand to the appropriate Government without a dispute being raised by the workmen with their employer regarding such demand, cannot become an industrial dispute.

However, in Bombay Union of Journalists v. The Hindu, the Supreme Court observed that for making reference under Section 10, it is enough if industrial dispute exists or is apprehended on the date of reference. Therefore, even when no formal demands have been made by the employer, industrial dispute exists if the demands were raised during the conciliation proceedings. When an industrial dispute is referred for adjudication the presumption is that, there is an industrial dispute.

Unless there is a demand by the workmen and that demand is not complied with by the management, there cannot be any industrial dispute within the meaning of Section 2(k). Mere participation by the employer in the conciliation proceedings will not be sufficient.

2. Parties to the dispute

Most of the industrial disputes exist between the employer and the workmen and the remaining combination of persons who can raise the dispute, has been added to widen the scope of the term "industrial dispute". So the question is who can raise the dispute? The term "industrial dispute" conveys the meaning that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides. The disputes can be raised by workmen themselves or their union or federation on their behalf. This is based on the fact that workmen have right of collective bargaining. Thus, there should be community of interest in the dispute.

It is not mandatory that the dispute should be raised by a registered Trade Union. Once it is shown that a body of workmen either acting through their union or otherwise had sponsored a workmen's case, it becomes an industrial dispute. The dispute can be raised by minority union also. Even a sectional union or a substantial number of members of the union can raise an industrial dispute. However, the members of a union who are not workmen of the employer against whom the dispute is sought to be raised, cannot by their support convert an individual dispute into an industrial dispute. In other words, persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are

not the employees of the same employer cannot be regarded as so interested. But industrial dispute can be raised in respect of non-workmen. Industrial dispute can be initiated and continued by legal heirs even after the death of a workman;

Individual dispute whether industrial dispute?

Till the provisions of Section 2-A were inserted in the Act, it has been held by the Supreme Court that an individual dispute per se is not industrial dispute. But it can develop into an industrial dispute when it is taken up by the union or substantial number of workmen. This ruling was confirmed later on in the case of Newspaper Ltd. v. Industrial Tribunal. In the case of Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, the Supreme Court held that it is not that dispute relating to "any person" can become an industrial dispute. There should be community of interest. A dispute may initially be an individual dispute, but the workmen may make that dispute as their own, they may espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. All workmen need not to join the dispute. Any dispute which affects workmen as a class is an industrial dispute, even though, it might have been raised by a minority group. It may be that at the date of dismissal of the workman there was no union. But that does not mean that the dispute cannot become an industrial dispute because there was no such union in existence on that date. If it is insisted that the concerned workman must be a member of the union on the date of his dismissal, or there was no union in that particular industry, then the dismissal of such a workman can never be an industrial dispute although the other workmen have a community of interest in the matter of his dismissal and the cause for which on the manner in which his dismissal was brought about directly and substantially affects the other workmen.

The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of Dimakuchi Tea Estate is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. Further, the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred, for, without his being a member the dispute may be such that other workmen by having a common interest therein would be justified in taking up the

dispute as their own and espousing it. Whether the individual dispute has been espoused by a substantial number of workmen depends upon the facts of each case.

If after supporting the individual dispute by a trade union or substantial number of workmen, the support is withdrawn subsequently, the jurisdiction of the adjudicating authority is not affected. However, at the time of making reference for adjudication, individual dispute must have been espoused, otherwise it will not become an industrial dispute and reference of such dispute will be invalid.

DISMISSAL ETC. OF AN INDIVIDUAL WORKMAN TO BE DEEMED TO BE AN INDUSTRIAL DISPUTE

According to Section 2-A, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the 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.

The ambit of Section 2-A is not limited to bare discharge, dismissal, retrenchment or termination of service of an individual workman, but any dispute or difference between the workman and the employer connected with or arising out of discharge, dismissal, retrenchment or termination is to be deemed industrial dispute. It has to be considered whether the claim for gratuity is connected with or arises out of discharge, dismissal, retrenchment or termination of service. The meaning of the phrase “arising out” of is explained in Mackinnon Mackenzie & Co. Ltd. v. I.M. Isaak. A thing is said to arise out of another when there is a close nexus between the two and one thing flows out of another as a consequence. The workman had claimed gratuity and that right flowed out of the termination of the services. Whether he is entitled to gratuity is a matter for the Tribunal to decide. It cannot be accepted that the claim of gratuity does not arise out of termination.

3. Subject matter of dispute

The dispute should relate to employment or non-employment or terms of employment or conditions of labour of any person. The meaning of the term “employment or non-employment” was explained by Federal Court in the case of

Western India Automobile Association v. Industrial Tribunal. If an employer refuses to employ a workman dismissed by him, the dispute relates to non-employment of workman. But the union insists that a particular person should not be employed by the employer, the dispute relates to employment of workman. Thus, the "employment or non-employment" is concerned with the employer's failure or refusal to employ a workman. The expression "terms of employment" refers to all terms and conditions stated in the contract of employment. The expression terms of employment would also include those terms which are understood and applied by parties in practice or, habitually or by common consent without ever being incorporated in the Contract.

The expression "condition of labour" is much wider in its scope and usually it was reference to the amenities to be provided to the workmen and the conditions under which they will be required to work. The matters like safety, health and welfare of workers are also included within this expression. It was held that the definition of industrial dispute in Section 2(k) is wide enough to embrace within its sweep any dispute or difference between an employer and his workmen connected with the terms of their employment. A settlement between the employer and his workmen affects the terms of their employment. Therefore prima facie, the definition of Industrial dispute in Section 2(k) will embrace within its sweep any fraudulent and involuntary character of settlement. Even a demand can be made through the President of Trade Union (1988 1 LLN 202). Dispute between workmen and employer regarding confirmation of workman officiating in a higher grade is an industrial dispute.

Employer's failure to keep his verbal assurance, claim for compensation for loss of business; dispute of workmen who are not employees of the Purchaser who purchased the estate and who were not yet the workmen of the Purchaser's Estate, although directly interested in their employment, etc. were held to be not the industrial disputes. Payment of pension can be a subject matter of an industrial dispute.

4. Dispute in an "Industry"

Lastly, to be an "industrial dispute", the dispute or difference must relate to an industry. Thus, the existence of an "industry" is a condition precedent to an industrial dispute. No industrial dispute can exist without an industry. The word "industry" has been fully discussed elsewhere. However, in Pipraich Sugar Mills Ltd. v. P.S.M.

Mazdoor Union, it was held that an "industrial dispute" can arise only in an "existing industry" and not in one which is closed altogether. The mere fact that the dispute comes under the definition of Section 2(k) does not automatically mean that the right sought to be enforced is one created or recognised and enforceable only under the Act. Where the right of the employees is not one which is recognised and enforceable under the Industrial Disputes Act, the jurisdiction of the Civil Court is not ousted.

"Definition of Appropriate Government"

According to Section 2 (a) of the Act, the term 'Appropriate Government' to include both the Central and State Government and lays down their respective dominions in relation to industrial disputes. The Constitution of India also envisages jurisdiction of both the Central and State Government on all matters of labour and industrial disputes in respect of both legislative and executive powers.

The definition of Appropriate Government under Section 2(a), the Act is exhaustive. To facilitate the meaning it may be divided in following six headings.

(i) Industrial disputes concerning any industry carried on by or under authority of the Central Government, the Central Government is an Appropriate Government. For example, Defense Factories, Central Government printing press, mint houses and press for currency notes, opium factory etc.

(ii) Industrial disputes concerning any industry carried on by Railway Company, the Central Government is an Appropriate Government; and

(iii) Industrial disputes concerning any industry which is a controlled industry, the Central Government is an Appropriate Government. It has two ingredients i.e. the industry must be a controlled industry and the same must be specified that the Appropriate Government under Section 2(a) would be the Central Government.

The provision has been clarified by Hon'ble Apex Court in *Bijay Cotton Mills Ltd. v. Its workman*, and in *Management of Vishnu Sugar Mills Ltd. v. Workmen*, and held that "it is not enough that the industry is controlled industry, but it must be specified also under Section 2 (a) of the Act that the Appropriate Government for such controlled industry would be the Central Government".

(i) Industrial disputes concerning any industry which are established under the provisions of any Central legislation, the Central Government is an Appropriate Government.

(ii) Industrial disputes concerning some other industries which are specified by the Central Government not covered under above categories under its wisdom and authority which are, the Industrial Finance Corporation of India Ltd. formed and registered under the Companies Act, an Air Transport Service or a Banking or an Insurance Company, Mine, an oil field, a Cantonment Board or a major port, the Appropriate Government would be the Central Government; and

(iii) In relation to any other industrial disputes, Appropriate Government would be the State Government.

If the Government refers a dispute for adjudication is not the Appropriate Government within the meaning of this definition, the Tribunal to which the dispute is referred would not acquire jurisdiction to adjudicate upon the dispute and even if an award is rendered, it would be invalid. Therefore, the parties in certain cases exploited this legal position by challenging the awards on the ground that the Government that referred the dispute for adjudication was not the Appropriate Government.

A controversy arose on the phrase "under the authority of Central Government". In construing the phrase 'carried on by or under the authority of the Central Government,' the word authority must be construed according to its ordinary meaning and, therefore must mean a legal power given by one person to another to do an act. The words 'under the authority of' mean pursuant to the authority, such as where an agent or servant acts under such authority of his principal. These words mean much the same as 'on behalf of'. This phrase must, therefore, mean and is intended to apply to industries carried on directly under the authority of the Central Government.

The expression 'carried on by or under the authority of the Central Government' involves a direct nexus with the industry, through servants or agents of the Central Government. In *Bharat Glass Works Pvt. Ltd. v. State of West Bengal*, the appellant carried on an industry in the manufacture of glass and ceramics. Their contention was that it was a 'controlled industry' and as such the Central Government being the Appropriate Government the reference made by the Government of West

Bengal was bad. It was held that "an industry mentioned in the first schedule of the Industries (Development and Regulation) Act, 1951 is a 'Controlled Industry', but it is not necessarily an industry carried on by or under the authority of the Central Government. For an industry to be carried on under the authority of the Central Government it must be an industry belonging to the Central Government i.e. its own undertaking".

In *Shri Sankara Allom Ltd.v. The State of Travancore, Cochin*, it was held that, "merely because the manufacture of salt was carried on by the company under a license from Government, it cannot become a Government business or one carried on under authority of the Government".

The Kerala High Court in *India Naval Canteen Control v. Industrial Tribunals*, held that, "the question as to whether an industry is carried on by or under the authority of the Central Government, is essentially a question of fact depending on the circumstances of each case". As such a business carried on by a Naval Canteen Control Board was held not to be carried on by or under the authority of Central Government even if the trust was constituted by the Central Government.

In the light of the above two cases, simply because an industry is a controlled industry or the license is granted by the Central Government, industry is not necessarily one carried on by or under the authority of the Central Government. The Act requires that, not only the industry should be a controlled industry but also that Central Government must specify in this behalf that the industry concerned is a controlled industry. In other words, the specification must be taken by the Central Government by reference to and for the purpose of this Act, in order that the Central Government may itself become the Appropriate Government in such industry under this provision.

In *Administrative officer Central Electro Chemical Research Institute Karaikudi v. State of Tamilnadu*, the question was whether the Central or State Government was the Appropriate Government in respect of the National Laboratory setup by its parent body i.e. Council of Scientific and Industrial Research (CSIR). It was held that the Central Electro Chemical Research Institute as well as the CSIR was functioning under the authority of the Central Government notwithstanding the fact that CSIR was held not an authority of the Central Government within the meaning of Article 12 of the Constitution. The Court's conclusion was supported by the

notification of the Central Government wherein it has been stated that CSIR is a Society owned and controlled by the Central Government. The award was quashed because the reference was made by the State Government.

According to the interpretation of this provision, no industry carried on by a private person or a limited company can be a business carried on by or under the authority of the Government. ikewise, industries which are carried on by incorporated commercial corporations, which are governed by their own constitutions for their own purposes cannot be described as carried on by or under the authority of the Central Government as these corporations are independent legal entities and run the industries for their own purposes.

The Second part of the Section 2(a) which declares that the State Government is the Appropriate Government in relation to all other industrial disputes, also gave scope for much of litigation in case of concerns having establishments in more than one State. All industrial disputes which are outside the industrial purview of sub-clause (i) are the concerns of the State Government under sub-clause (ii). Thus, the employee would be referred for adjudication by the State Government, except in the cases falling under Section 2 (a) (i) of the Act.

While interpreting the provision, the Courts have generally relied upon the principles governing the jurisdiction of Civil Courts to entertain actions or proceedings. In *Lalbhai Tricumlal Mills Ltd. v. D.M. Vin*, Chagla C.J. observed that "Applying the well known principles of jurisdiction, a court or tribunal would have jurisdiction if the parties reside within its jurisdiction or if the subject matter of the dispute substantially arises within its jurisdiction. And, therefore, the correct approach to the question is to ask ourselves – where did the dispute substantially arise?"

In *Indian Cable Company Ltd. v. Its Workmen*, the Supreme Court echoing the voice of the Chagla C.J. observed that, "As the Act contained no provision bearing on the question, it must consequently be decided on the principles governing the jurisdiction of courts to entertain actions or proceedings. The court extracted the above quoted passage from *Lalbhai Tricumlal Mills* case and held that "these principles are applicable for deciding which of the states has jurisdiction to make a reference under Section 10 of the Act."

The principle established in the above two cases was followed by the Supreme Court in workmen of *Sri Rangavilas Motors (P) Ltd. v. Sri Rangavilas Motors (P) Ltd*., and later in *Hindustan Aeronautics Ltd. v. their workmen*, In *Sri Rangavilas*

Motors case the Court laid down a test "where did the dispute arise?. Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place, there would clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose".

But ambiguity still persist on the question, whether the existence of a separate branch or establishment in State other than the State in which the head quarters of the industry is situate, is necessary to consider the former as the Appropriate Government with respect to disputes concerning the workmen employed in that State. In other words, for the application of the above principle, whether "the existence of a separate branch" is part of the ratio of the above mentioned Supreme Court decisions.

In *Association of Medical Representatives v. Industrial Tribunal*, the M.P. High Court held that, "in respect of a dispute relating to a workman employed in the State of M.P., where there is no separate establishment of the company, the Appropriate Government was the State of Maharashtra in which the head quarters are situated". But in *Paritosh Kumar pal v. State of Bihar*, a full Bench of the Patna High Court considered that, "the existence of a separate establishment is not a necessary part of the ratio and therefore, in respect of dispute relating to a workman employed in Bihar, where there was no separate establishment of the company, the Appropriate Government was the State of Bihar and not the State of West Bengal in whose territories the head quarters of the company situated".

This ambiguity is further confounded by a new principle enunciated by some of the High Courts, according to which there can be two Appropriate Governments for the same dispute and a reference by either of them can be valid. Although most of them are obiter dictums, Delhi High Court in *Gesterner Duplicators (P) Ltd. v. D.P. Gupta*, had specifically taken this view and applied this principle to the facts in this case by validating reference made by the Delhi Administration, where the Appropriate Government was, as per the principle enunciated earlier by the Supreme Court, the Karnataka State Government. The pragmatic approach of these courts deserves to be appreciated. But a separate line of cases exist where some other High Courts had entirely rejected this theory of two Appropriate Government on purely technical and legalistic considerations.

In *J and J Dechane Distributors v. State of Kerala*, Golanan Nambiya J. observed that: "It seems reasonable and fairly clear that there can be only one

Government which can be regarded as the Appropriate Government for the purpose of making a reference of industrial dispute. The consequences of holding that more than one Government can refer the same industrial dispute for adjudication appear to us to be startling."

In spite of various decisions of High Courts, it is really painful that after a lapse of sufficient time spent on adjudication of dispute and the award was rendered, the courts quash the award on jurisdictional grounds because the Government which initially referred the dispute for adjudication was not the Appropriate Government in the opinion of those courts. Until the definition is suitably amended to provide for such situations, it is better that the principle of simultaneous jurisdiction of two Appropriate Governments is recognized, so that awards made by the tribunals shall be quashed on such technical grounds.

Dispute Resolution Machineries:

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

1. Works Committee.
2. Conciliation Officers.
3. Boards of Conciliation.
4. Court of Inquiry.

1. Works Committee

Section 3 of the Act provides that the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months. The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment.

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 [Section 3(2)].

2. Conciliation Officers

With the duty of mediating in and promoting the settlement of industrial disputes, the appropriate Government may, by notification in the Official Gazette, appoint such number of Conciliation Officers as it thinks fit under Sec 4 of the Act. The Conciliation Officer may be appointed for a specified area or for specified industries in a specified area appointing the Conciliation Officers, by the appropriate Government, is to create congenial atmosphere within the establishment where workers and employers can reconcile on their disputes through the mediation of the Conciliation Officers. Thus, they help in promoting the settlement of the disputes.

Sec 12 provides that 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 under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government 5[or an officer authorized in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.

If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about settlement

3. Boards of Conciliation

For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute by a notification in the Official

Gazette, a Board of Conciliation. A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit.

Under sec 13 of the Act it shall be the duty of Board to endeavor to bring about a settlement of the dispute and for such purpose it shall, without delay, investigate into the dispute and all matters affecting the merits and the right settlement. The Board may also do all such things which may be considered fit by it, for including the parties to come for a fair and amicable settlement of the dispute. In case of settlement of the dispute, the Board shall send a report thereof to the appropriate Government together with a memorandum of settlement signed by all the parties to the dispute. In case no settlement is arrived at, the Board shall forward a report to appropriate Government enlisting therein the steps taken by the Board for ascertaining the facts and circumstances related to the dispute and for bringing about a settlement thereof. The Board will also enlist the reasons on account of which in its opinion a settlement could not be arrived at and its recommendations for determining the disputes. (Section 5)

4. Courts of Inquiry

According to Section 6 of the Act, the appropriate Government may as occasion arises, by notification in the Official Gazette constitute a Court of Inquiry 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 Goverment may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman. It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry. The period within which the report is to be submitted is not mandatory and the report may be submitted even beyond the period of six months without affecting the legality of the inquiry.

Voluntary Arbitration under Sec 10A

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.

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, the Choice of suitable arbitrator acceptable to both parties and 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.

Power of Appropriate Government to refer Industrial Dispute

The State sponsored conciliation and adjudication are the hall mark of the law of industrial dispute resolution in India. The Act is the principal Central law which provides the mechanism for and conditions subject to which, the conciliation and adjudication powers are to be exercised. Under the Act, adjudication cannot be demanded by a disputant party as of right; it is the discretion of the "Appropriate Government" to refer or not to refer an industrial dispute collective or individual for adjudication by an adjudicatory body. If the disputants are not able to arrive at a "settlement" or if they are disinclined to refer their disputes to an Arbitrator, then, the ultimate legal remedy for the unresolved dispute is its reference to adjudication by the Appropriate Government.

The Act envisages the exclusive power of the Appropriate Government to refer disputes for adjudication there by rendering the adjudication conditional on its discretion except applications under Sec 33, 33-A, 33(C)(2) all other matters will have to come before the adjudicatory authorities only through an order of reference by the Appropriate Government. But, now in some States like Karnataka, Tamilnadu and Andhra Pradesh in case of individual disputes relating to discharge, dismissal, retrenchment or termination of services, a workman may directly approach a Labour

Court for the adjudication of such disputes under the relevant State amendments to the Act. This power of the Government disables the trade unions or the workmen to make use of the adjudicatory forums for the settlement of disputes and as an effective remedy for their grievances. There has been a constant demand by the trade union to provide them and to the workers direct access to these adjudicatory authorities. Further, the controversy about the Government power arises in the context of misuse of this discretionary power for partisan ends with political motives. How and on what considerations should the reference power of the Government be exercised? Delay in reference of disputes and Government's reluctance to refer disputes to which it is a party.

Scope of Section 10 - Nature of Government Power

To say something with certainty about the powers of the Appropriate Government under Section 10(1) of the Act, to invariably refer a dispute for adjudication is a risky one and the exercise is rather like *skating on the thin ice*. This all has been there in spite of the fact that our Supreme Court is probably the strongest in the world and usually delivers the verdicts which are full of rare jurisprudential vision. It does not mean that there are no black spots and sometimes various decisions of the Supreme Court on the very same subject rather observe a proposition conceptually, nationally and imaginatively. This is on account of the fact that Apex Court has not become an absolute viable instrument. The views of the Supreme Court are changed with the change in the composition of its various benches. This is what had happened as regards the powers of the Appropriate Government in matters of reference of disputes.

Section 10(1) Act states that, where the Appropriate Government is of opinion that any industrial dispute exists or is apprehended it may at anytime; by order in writing refer the dispute to a Board or Court of Inquiry or Labour Court or to an Industrial Tribunal for adjudication. From the above provision, it is evident that the Appropriate Government can only refer a dispute to any adjudicatory body provided if it is satisfied that there exists an industrial dispute or apprehension of such dispute but not otherwise.

It shows that the foremost object of the Act is to provide for economical and expeditious machinery for the decision of all industrial disputes by referring them to adjudication, and avoid industrial conflict resulting from frequent lock-outs and

strikes. It is with that object the reference is contemplated not only in regard to existing industrial disputes but also in respect of disputes which may be apprehended. This section confers wide and even absolute discretion on the Government either to refer or to refuse to refer an industrial dispute as therein provided. Naturally this wide discretion has to be exercised by the Government bona fide and on a consideration of relevant and material facts.

On the construction of this Section the Supreme Court in a number of decisions explained that this power of the Appropriate Government is purely of an 'administrative nature', as the expression is understood in contradiction to quasi judicial or judicial power. This implies that it is a discretionary function of the Appropriate Government to form an opinion about the existence and apprehension of industrial dispute. This decision is based on subjective satisfaction of the Government, only the order of refusal to make a reference needs to be communicated and the order must record the reasons for refusing to make a reference. It is only an administrative order and not a quasi judicial order. There is no need to issue any notice to the employer or to hear the employer before making a reference or refusing to make a reference.

Further, implication of holding it an administrative power is that, when the Government makes a reference of a dispute for adjudication by a Labour Court or a Tribunal it does not decide any question of fact or law. The fact that it has to formed an opinion as to the factual existence of a dispute as a preliminary step to discharge of its function does not make it any the less administrative character. The expression 'at any time' empowers the Appropriate Government to review its earlier decision and refer a dispute which was earlier refused. It can reconsider its earlier decision in the light of new facts and circumstances.

The restriction on the Government is that it should exercise the power *bonafide* after application of its mind to the matter before it. It should take all relevant matters into consideration and leave out all irrelevant consideration. In other words, the discretion must be exercised according to law as established by courts in various cases. The discretionary power should be exercised to promote statutory objects and that a discretionary decision founded upon irrelevant factors or grounds would be subject to judicial considerations.

In *State of Madras v. C.P. Sarathy*, the Apex Court held that "the Government should satisfy itself on the facts and circumstances brought to its notice in its

subjection opinion that an industrial dispute exists or is apprehended. The factual existence of the dispute or its apprehension and the expediency of making a reference are matters entirely for the Government to decide". It was further observed that "the order of reference passed by the Government cannot be closely examined by a writ under Article 226 of the Constitution to see if the Government had material before it to support the conclusion that the dispute existed or was apprehended".

But later, the Supreme Court in *Western India Match Co. v. Western India Match Co. Workers Union* and in *Shambunath Goyal v. Bank of Baroda, Jullundur* insisted that, the Appropriate Government should satisfy itself on the basis of the material available before it that an industrial dispute exists or is apprehended and it was held that such a satisfaction of the Government is a condition precedent to the order of reference. In other words, if there is no material before Government that an industrial dispute exists or is apprehended, the Government has no power to make a reference of cause, the court observed that "the adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of Judicial Scrutiny. Once the Government forms an opinion with respect to the existence of an industrial dispute or its apprehension, the next question of expediency i.e. whether to refer the dispute for adjudication or not is left to the subjective satisfaction of the Government". However, where the Appropriate Government refuses to make a reference on receipt of a failure report of a conciliation officer under Section 12(4), the Government is bound to give reasons for its refusal and communicate the same to the parties concerned.

The exercise of power by the Government or refusal to do so is subject to the well recognized principles regarding the exercise of administrative discretion. The discretionary power must be exercised honestly and not for any corrupt or ulterior purposes and the Appropriate Government must apply its mind to the relevant material before it and decide the question of expediency of referring the dispute in the interests of maintaining industrial peace in the concerned industry. It will be an absurd exercise of discretion, if for example the Government forms the requisite opinion on account of pressure by any political party, within these narrow limits, the Government opinion is not conclusive and can be challenged in a court of law. The well known grounds for challenging the exercise of administrative discretion like *malafide*, irrelevant considerations, not taking relevant considerations into account, improper purpose, acting mechanically or under dictation are also available for challenging the

improper exercise of power by the Appropriate Government under Section 10(1) of the Act.

The Supreme Court of India has pointed out on many occasions that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other.

It is well settled that the use of word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intent a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the Court has to consider various factors, namely the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words a directory significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force.

In *D.A. Koregaonkar v. the State of Bombay*, Chagla, C.J. observed that,"One of the important tests that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and if it does then the Court would say that that provision must be complied with and that it is obligatory in its character".

The adjudication of industrial disputes under the Act, is based on the concept of compulsory adjudication and hence, the Appropriate Government has to refer the industrial dispute and the adjudicator is bound to adjudicate on the referred industrial dispute and thereafter to give its decision in writing in the form of an award.

Power of Courts to direct the Government to make a reference of Industrial Disputes:

In *Pratap Singh v. State of Punjab*, the Supreme Court observed that, "the Court is not an appellate forum where the correctness of the order of the Government could be canvassed. It has no jurisdiction to substitute its own view for entirely of the power, jurisdiction and discretion vested by law in Government the only question which could be considered by the Court is, whether the authority vested with the power has paid attention to or taken into account, circumstances, events or matter wholly extraneous to the purpose which the satisfying a private or personal grudge of the authority".

Power of reference under Section 10 (1) is undoubtedly an administrative function of the 'Appropriate Government' based upon its own opinion with respect to the existence or apprehension of an industrial dispute and its subjective satisfaction as to whether it would be expedient to make a reference or not. Though the earlier thinking was that such an order cannot be interfered with at all by the courts, the recent trend of judicial thinking is that though in a very limited field, the order of reference is amenable to judicial review under certain circumstances.

The question of referring a industrial dispute for adjudication arises after the Government has received the failure report from the Conciliation Officer. According to Section 12(5), if on a consideration of the failure report by a conciliation officer, the Appropriate Government is satisfied that there is a case for reference, it may make such a reference. Where the Appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore. Similar obligation to record reasons for non reference and communicating the same to the parties concerned arises under Sec 13(4) of the Act where the failure report is submitted by a Board of Conciliation only in case of Public Utility Services.

In *State of Bombay v. K.P. Krishnan*, the Appropriate Government on consideration of the failure report refused to refer the dispute and the reason given by the Government was that the workmen resorted to go slow during the year 1952-53 for which year the workmen claimed bonus. The Supreme Court held that the Government had taken into consideration altogether an irrelevant matter in refusing to refer the dispute and therefore a writ of mandamus was issued to the Government directing it to reconsider the matter by ignoring the irrelevant consideration. While

holding so the Court observed, the order passed by the Government under Section 12(5) may be an administrative order and the reasons recorded by it may not be justifiable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; in that sense it would be correct to say that the Court hearing a petition for mandamus is not sitting in appeal over a decision of the Government, nevertheless, if the Court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane then the Court can issue and would be justified in issuing a writ of mandamus even in respect of such administrative order.

The Supreme Court in *Bombay Union of Journalists v. State of Bombay*, further discussed the question. Although it is difficult somewhat to reconcile this decision with that of *K.P. Krishnan*, the Supreme Court clearly pointed out that while the Government is not precluded from considering the prima facie merits of the case before deciding as to whether a reference should be made or not, it cannot take final decisions on questions of law or disputed questions of fact which are within the jurisdiction of the Tribunal. The Supreme Court then reiterated its earlier stand that in entertaining an application for a writ of mandamus against an order made by the Appropriate Government under Section 10(1) read with Section 12(5), the Court is not sitting in an appeal over the order and is not entitled to consider the propriety, adequacy or the satisfactory character of the reasons given by the said Government.

The combined reading of the above two cases, no exhaustive or final criteria emerges as to on what grounds an administrative order is amenable to judicial review. Nor any such exhaustive or final criterion is possible in a growing branch of law like the administrative law. However, some broad heads under which an order of reference may be reviewable are as follows.

(i) When the Government does not act *bonafide*

In any enactment which creates powers, there is a condition implied that the powers shall be used *bonafide* for the purpose for which they are conferred. Exercise of power of reference is said to be *malafide* if it is made for achieving an alien purpose. No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives and any action purporting to be that of the body but proved to be committed in bad faith or from corrupt motives would certainly held to be in operative. However, such bad faith will be a matter to be established by a party propounding bad faith or *malafide*. He should affirm the set of acts and it would not

be sufficient merely to allege the facts but they will have to be proved. In *State of Bihar v. D.N. Ganguli*, while dealing with a case of cancellation of a notification of reference, the Supreme Court reiterated the same view and said that if validity of cancellation of notification making an order of reference is challenged on the ground of *malafide*, it may be relevant and material to inquire into the motive of the Government. Thus, if the Court finds that the Government was actuated by *malafide* motives in making an order of reference, the reference shall be invalid.

(ii) Improper opinion of the Government

With respect to the existence or apprehension of an industrial dispute, the Government is the sole arbitrator and its opinion is final Likewise the determination of the question whether it is expedient to make a reference or not depends upon the discretion of the Appropriate Government and this discretion should be exercised reasonably or else it is reviewable by a High Court in its writ jurisdiction under Article 226 of the Constitution. The opinion of the Government may be assailable for the following reasons:

(a) No material

In *Orient Paper Mills Sramik Congress v. State of Orissa,* the Court opined that the formation of opinion cannot import an arbitrary or irrational state of affairs; the opinion must be grounded on materials which are of rational and probative value. In forming the opinion if the Government had no material before it, the order of reference will be liable to be quashed.

(b) Omitted vital material from consideration

While exercising the power of reference under Section 10 of the Act, the Government did not take into account some vital material which is ought to have considered and refuses to refer the dispute for adjudication then the reference will be liable to be quashed.

(c) Irrelevant Consideration

If, in forming the opinion, the Appropriate Government looks into any extraneous or irrelevant consideration which had no rational connection with the question of making the reference, hence, order would be beyond the scope of the power of the Government under Section 10(1) of the Act. In such a case the order of reference will be bad even if the authority has acted *bonafide* and with the best of intention.

(d) Non-application of mind

The Appropriate Government before forming an opinion to the questions whether there is an industrial dispute existing or apprehended and whether it will be expedient to refer the dispute on the basis of material before it. If the order of reference challenged on the above ground the Government will have to satisfy the Court by filing an affidavit to show that it had material before it and the reference was made after consideration of relevant factors, the absence of such evidence may make the reference vulnerable on the lack of material or non-application of mind.

(iii) The activity carried on is not an 'Industry' and no 'Industrial Dispute'

The term 'industrial' in the definition of 'industrial dispute' relates to the dispute in an 'industry' as defined in Sec 2(j) of the Act. Unless the dispute is related to an industry it will not be an industrial dispute. Therefore, if the reference is made of a dispute which relates to any activity which is not an industry it will not be a valid reference.

In *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor union*, Justice Venkatarama Ayer opines that"The definition of industrial dispute presupposes continued existence of industry and hence the dispute should be in a live industry and not in a closed industry, because closed industry or establishment would not fall within the definition of industry. The reference of an industrial dispute which arises after the establishment becomes dead on account of closure shall therefore be invalid as the provisions of the Act will apply only to an existing or live industry".

The power of the State to make a reference is to be determined with reference not to the date on which it is made but with reference to the date on which the right, which is the subject matter of the dispute arises and the machinery provided under the Act would be available for working out the right which accrued prior to the dissolution of the business. There is thus a clear distinction between the two classes of cases namely:

(i) Those in which the cause of action arose at the time when the business had been closed; and

(ii) Those in which the cause of action arose at the time when the business was being still carried on.

There can be no 'industrial dispute' in respect of the first category of cases because the real subject matter of the dispute had ceased to exist when the dispute

arose. But in regard to the second category, where the dispute actually arises before the closure of the business, it does not cease to be an industrial dispute merely because subsequently the industry is closed. If the dispute related to a period when the industry was in existence the reference even after the closure of the industry can be validity made.

The dispute with respect to the existence or apprehension of which the Appropriate Government is to form its opinion must be an industrial dispute as defined in Section 2 (k) of the Act. According to this, "any dispute or difference between employers and employers and between employers and workmen or between workmen and workmen, connected with the employment or non employment or the terms of employment or with the conditions of labour of any person".

In *Shambhunath v. Bank of Baroda*, Supreme Court held that the term 'industrial dispute' connotes a real and substantial difference having some element of persistency and continuity till resolved and likely, if not adjusted to endanger the industrial peace of the undertaking or the community. The definition of industrial dispute expressly states that not dispute or difference of all sorts but only those which bear upon the relationship of employers and employers, employers and workmen or between workmen and workmen and if it is connected with grounds provided there under are contemplated and the Appropriate Government before exercising its power under Section 10, the industrial dispute must be in existence or apprehended on the date of reference i.e. a demand has been made by the workmen and it has been rejected by the employer before the date of reference, whether directly or through the conciliation officer, it would constitute an industrial dispute. If there is no industrial dispute in existence or apprehended the Appropriate Government lacks power to make any reference.

(iv)Reference Contrary to Law:

The order of reference should be made to the authorities in accordance with the provisions of Section 10(1). If the order is contrary to these provisions in the matter of selecting the appropriate authority, the order shall be invalid. Likewise where an order of reference covering some items of industrial disputes is pending adjudication a further order of reference covering the same subject matter would be invalid. In *Rashtriya Hair Cutting Saloon v. Maharashtra Kamgar Sabha*, held that a reference of dispute the subject matter of which is covered by the provisions of

special enactments like Contract Labour (Regulation and Abolition) Act, 1970, Payment of Gratuity Act, 1972 etc. being a self contained code, cannot be validly referred or be adjudicated upon by the adjudicatory authorities under the Act.

Disputes covered by a Settlement or a previous Award

In *Madras District Automobile and General Employees Union v. State of Madras*, held that reference of an Industrial Dispute the subject matter of which is covered by a Settlement as defined in Section 2 (p) of the Act would be invalid during the period of operation of such a Settlement because when once a dispute is resolved by a Settlement in the course of Conciliation or otherwise no dispute remains to be resolved by Arbitration or Adjudication. The Law is well settled that if there is a binding settlement which has not been terminated in accordance with the procedure laid down in the Act, no industrial dispute can be raised with regard to the items which form the subject matter of the settlement. Such matters cannot be the subject matter of conciliation proceedings under Section 12 or of reference under Section 10 of the Act.

From the analysis of above all cases the approach of the Supreme Court and High Courts in compelling the Appropriate Government to make a reference which may virtually amount to exercising appellate jurisdiction over the discretionary order of the Government is justified or not from a strict administrative law view point, the activists in these decisions is quite welcome from the point of view of labour law.

In justification of the above decision of the Supreme Court, it may be stated First, that the Supreme Court is very much concerned about abnormal delay at the stage of reference by the Government, in many of these cases the delay was more than a decade. Although the Supreme Court was satisfied that case for reference was made out, the Court stand was considered to be patently unreasonable. Secondly, the Court in these cases also took into account the fact that the Appropriate Government had decided for itself the questions of fact and law which ought to be determined by the Tribunal after adjudication. Thirdly, the Court was considering that the adjudication of industrial disputes by the Tribunals should be considered as a quasi judicial remedy provided to the industrial workmen for the resolution of their grievances and demands which lead to disputes. This is of particular importance if it is relating to discharge, dismissal, retrenchment or the termination of services of workmen and therefore the

jurisdiction of Civil Courts is impliedly barred by the Act. Although disputes strictly relating to contract of employment may be taken before the Civil Courts for enforcement of contractual rights the Civil Courts have no power to order reinstatement even in cases of illegal termination of service, not to speak of the delay or expense that go with the Civil Suits.

Under these circumstances the remedy available to workmen is only under the Act and if the Appropriate Government takes the stand that it has discretion whether to refer or not to refer such disputes the workmen who are deprived of their livelihood would be at the many of the Government for justice and this would hindrance the very object of the Act and social justice principle under the Constitution.

Analysis of the term may "at any time" refer under Section 10

Under the Act it is the Appropriate Government which has the power to make the reference for adjudication. The words "at any time" preceded by the word "may" in Section 10(1) indicate the intention of the legislature that the Government has discretion to refer dispute at any time, if it is of opinion that an industrial dispute exists or is apprehended and that it considers expedient to do so in the interests of maintaining industrial peace in the concerned industry. The interpretation of the term "at any time" under Section 10 of the Act gives rise to four questions namely,

(i) Whether the conciliation proceedings are a condition precedent in the making of the order of reference?

The Act casts a duty on Conciliation Officer to hold conciliation proceedings and try to promote settlement between the parties and the procedure for promoting settlement cannot come in the way of the Appropriate Government making reference for adjudication. The significance of the words "at any time" is that the reference can be made at any time even before or during the pendency or after the conciliation proceedings. In other words, though as a matter of practice conciliation proceedings by a conciliation officer are held before the Government decides to refer a dispute for adjudication it is not a condition precedent. In *Western India Match Co. Ltd. v. Western Match Co. Workers Union*, Shelat, J.M. JJ observed that,"Ordinarily the question of making a reference would arise after the conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent

case, it can "at any time" i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression "at any time" thus takes in such cases where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed".

Section 10 not suggests that the Appropriate Government has to wait for the failure report of Conciliation officer. This position is amply made clear by Section 20 of the Act which states that the conciliation proceedings shall be deemed to be concluded, among others, when a reference is made to a Court of Inquiry, Labour Court, Tribunal or National Tribunal.

(ii) Whether during the pendency of the proceedings under Section 33 a reference of the dispute can validly be made for adjudication?

In *ITC Ltd. v. Government of Karnataka*, a question raised before the High Court of Karnataka that during the pendency of proceeding under Section 33(2)(b) of the Act for 'approval' of the imposition of penalty of dismissal from service against a workman. Whether the Appropriate Government is competent to refer the dispute for adjudication relating to dismissal under Section 10(1) of the Act? It was held that any decision under Section 33 is not final and therefore cannot yield to a remedy provided under Section 33(2)(b) proceedings. Therefore, notwithstanding that a proceeding under Section 33 is pending, a dispute can be referred to adjudication under Section 10(1) of the Act.

(iii) Whether once having refused to make a reference the Appropriate Government can subsequently make a reference of the same matter?

Refusal of the Government to refer dispute for adjudication on a previous occasion does not prevent it from reconsidering the matter afresh at a later date and deciding to refer the same under Section 10(1) of the Act. The Supreme Court in *Western India Match Co. v. Western India Match Co. Workers Union* stated that the words "at any time" do not admit any period of limitation and that previous refusal is no bar for a subsequent reference. The Court explained the law on this aspect in the following words: "When the Government refuses to make reference it does not exercise its power, on the other hand it refuses to exercise its power. Consequently,

the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage".

The Court further pointed out that the Government may reconsider the matter either because some new facts had come to light or because it had misunderstood the existing facts or for any other relevant consideration with regard to too old claims or the extraneous consideration like, pressure from unions etc. The Court said, "there is no reason to think that the Government would not consider the matter properly or allow itself to be stampeded into making references in cases of old or stale disputes or reviving such disputes on the pressure of unions".

Later in *Binny Ltd. v. Their workmen*, the Supreme Court upheld the validity of a reference by the Government though the Government refused to refer the same on two earlier occasions. In *Avon Services (production) Agencies Ltd. v. Industrial Tribunal, Haryana*, the Supreme Court clarified the nature of power of the Appropriate Government when it subsequently refers the dispute after initial refusal and about the need for any fresh material before the Government justifying the change on its opinion. It was observed by Desai, J. that, "Merely because the Government rejects a request for reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist, nor could it be said to be review of any judicial or quasi judicial order or determination. The industrial dispute may nevertheless continue to remain in existence and if at a subsequent stage the Appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference the Appropriate Government does not lack power to do so under Section 10(1), nor it is precluded from making a reference on the only ground that on an earlier occasion it had declined to make a reference".

The Supreme Court also held that "A refusal of the Appropriate Government to make a reference is not indicative of an exercise of power under Section 10(1), the exercise of power would be a positive act of making a reference. Refusal to make a reference does not tantamount to saying that the dispute, if at all existed stands resolved. On the contrary, the refusal to make a reference not compelling the parties to come to dispute reasoning authorities would further accentuate the feelings and a

threat to direct action may become imminent and the Government may as well consider the decision and make the reference".

This holding of the Court seems to confer on the Government the power to refer the dispute after a previous refusal and for such a reference the Government need not have any fresh material before it and the only paramount consideration is the maintenance of industrial peace. But such a blanket power may result in some absurd situations or may put the employer in an embarrassing situation when he had already arranged the affairs of his business on the basis of the Government's refusal to make a reference. It is also possible that such unlimited power may be abused or exercised due to some extraneous factors like, political pressure.

In *Mahavir Jute Mills Ltd. v. Shibbanlal Sexena*, the Supreme Court itself noted that between the dismissal of 800 workmen, which was the subject matter of dispute and the hearing of the appeal by special leave nearly twenty years have elapsed and an embarrassing situation had arises for the employer, as the workmen employed in the place of the dismissed workmen had already put in twenty years of service. Despite these facts, the Court upheld the order of reference following the ratio of WIMCO case. In view of such possibilities, O. P. Malhotra suggests, that: "It is therefore desirable that when the Government subsequent to its refusal to make a reference decides to refer the same dispute for adjudication, it must state reasons, showing that new facts had came to light or there was misunderstanding as to the existing facts or there was any other relevant consideration including the threat to peace in the order of reference. Alternatively these reasons may be stated in the counter affidavit in reply to the writ petition challenging the order of reference".

Further, a considerable contention is that in making a reference the Government is performing an administrative function and not a judicial or a quasi judicial function and *audi alterem partem* is not invokable has become untenable in the light of the path breaking decision of the Supreme Court in *State of Orissa v. Binapani Devi*, *kraipak v. UOI*, *Mohinder Singh Gill v. Chief Election Commissioner*. The Supreme Court has observed that, "the dichotomy between administrative and quasi-judicial functions vis-a-vis the doctrine of natural justice is presumably obsolescent after *kraipak case* in India, In *Binapani,* the Supreme Court held that even

an administrative order, which involves civil consequences must be made consistently with the principles of natural justice".

(iv) Whether there is any limitation in making the order of reference?

The power of the Appropriate Government to make a reference to the Labour Courts and Industrial Tribunals are administrative in character. No time limit is prescribed and the power to make a reference can be exercised by it at any time. All that matters is that there should be an industrial dispute existing or even apprehended. The words "at any time" do not admit any such limitation. That is the express intention of the legislature and there should be no such restrictions imposed on the Government's power. The laws of limitation which might bar any Civil Court from giving a remedy in respect of lawful rights cannot be applied by Industrial Tribunals. However, it is only reasonable that the Government shall refer disputes within a reasonable time after the fact of the existence of the dispute is brought to its notice, either through the parties directly or through the failure report of the Conciliation Officer and incase of delay there should be sufficient explanation for it.

The Appropriate Government's power to make a reference is unbridled. But any discretionary power cannot be regarded as absolute because absolute discretion is ground to breed arbitrariness and which shrikes at the roots of Article 14 of the Constitution, which forbids discriminatory actions. The discretionary authority, is therefore, is obliged to act fairly, justly and in good faith. In *Shalimar Work Ltd. v. Its workmen*, the Supreme Court pointed out that though there is no period of limitation prescribed in making a reference of dispute even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when dispute relate to discharge of workmen wholesale. In the case of *Western India Watch Company v. Western India Watch Company workers Union* the Supreme Court even went a step forward and held that while considering the expediency to refer or not to refer an industrial dispute, the Government would consider the question of delay etc. properly and will not allow itself to be tempted into making references in case of old or stale disputes or review such disputes on the pressure of Union.

Authorities to whom Reference can be made by the Appropriate Government

Although a reference under Section 10(1) may be made to a Board of Conciliation to promote settlement or to a Court of Inquiry for inquiring into matter but as the present study is concerned with Adjudication, hence, the detailed provisions pertaining to power of reference to a Labour Court, Industrial Tribunal and National Tribunal for the purpose of investigation and settlement of Industrial disputes are discussed herewith.

(i) Labour Court

The Appropriate Government Under Section 10(1)(c) may refer a dispute, if it relates to any matter specified in the Second Schedule to the Labour Court for adjudication. The Second Schedule matters are all disputes of rights nature or also known as legal disputes when workmen raise disputes with regard to their existing legal rights, the reference of such disputes by the Government should be a matter of routine, unless the claims of workmen are found to be frivolous or vexatious.

Although, as a general rule, the matters enumerated in Third Schedule are referred to Industrial Tribunals, the first proviso to Section 10(1) (d) provides that, where the dispute relates to any matter specified in the Third schedule and is not likely to affect more than one hundred workmen, the Appropriate Government has the discretion to refer such a dispute to a Labour Court for adjudication.

(ii) Industrial Tribunal

The Appropriate Government may refer a dispute Under Section 10(1) (d), whether it relates to any matter specified in the Second or Third Schedule, to a Tribunal for adjudication. The Third schedule matters like wages, allowances, bonus, hours of work etc. are all interest disputes and they can be referred only to Industrial Tribunals. Thus the Tribunals enjoy greater Jurisdiction than the Labour Courts.

(iii) National Tribunal

Sec 10 (1A) provides that Central Government may refer the dispute to a National Tribunal for adjudication, where it is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or

not it is the Appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule.

The only requirement of Section 10(1) is that the order of reference should be in writing. No form is prescribed under the rules for making such order. It is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. Since the Jurisdiction of the Tribunal is confined to the points specified in the order of reference and matters incidental there to as per Section 21 of the Act and it is necessary that the order of reference should be carefully drafted without giving room for unnecessary litigation.

In *Express News Papers Ltd. v. Their workmen*, it was observed that "order of reference hastily drawn or drawn in a casual manner often give rise to unnecessary disputes and they prolong the life of industrial litigation, which must always be availed". Therefore, it is necessary that the Government must bestow great case so as to formulate the points of dispute clearly and should be so worded as to avoid ambiguity.

Appropriate Government power to withdraw, cancel, supersede or amend the order of reference

On the question whether the power of reference under Section 10 of the Act carries with it the power to cancel or supersede the reference, the Supreme Court in *State of Bihar v. D.N. Ganguly*, ruled that the Government has no such express or implied power to either cancel or withdraw a reference after it has made the order of reference. The Court did not approve the contention of the Government that as per the provisions of the General Clauses Act a power to make order includes in it a power to cancel the order.

The Appropriate Government acting under Section 10 will have power to add or amplify or correct any clerical or typographical errors. But the Government under the guise amending or correcting cannot supersede the reference already made. The cardinal principle in determining the question, whether the amendment amounts to a mere correction of a clerical error or introduction of fresh material, whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. If the

same relief can be granted, the mistake may be considered as clerical, which can be corrected by an amendment. But if the same relief cannot be granted, then it means that the original notification has been cancelled and another notification has been issued in its place, which the Appropriate Government is not competent to do.

Constitutional Validity of Section 10(1)

In *Nirmala Textile Finishing Mills Ltd. v. Industrial Tribunal, Punjab*, the Constitutional validity of Section 10(1) of the Act was upheld by the Supreme Court. It held that, "the provisions of Section 10 are not unconstitutional, as there is no infringement of the fundamental rights guaranteed under Articles 14, 19(1)(f) and (g) of the Constitution. It was observed that the discretion conferred on the Government was not unfettered or unguided, because the criteria for the exercise of such discretion are to be found within the terms of Act itself".

In *A. Sundarambal v. Governor of Goa, Daman and Diu*, it was held that "the refusal of the Government to refer a dispute for adjudication would not amount to infringement of Article 14 of the Constitution merely because the Appropriate Government had in an earlier case referred the case of similar employer for adjudication because of the repetition of an error, if there is one, is not needed for complying with the principles of equality before law. If in law the Government justified in refusing a reference, the applicability of Article 14 does not arise at all".

The Circumstances in which the Power of Reference is Mandatory

In order to protect the interest of public and to avoid the dislocation of services by the public utility services in case of sudden strikes or lockouts the Act contains some special provisions in which the Government imperatively has to refer the industrial disputes for adjudication i.e., under Section 20(1), second proviso to Section 10(1) and Section 10(2).

According to Section 20(1) of the Act, Conciliation proceedings shall be deemed to have commenced on the date on which the notice of strike or lockout under Section 22 is received by the Conciliation Officer.

Under second proviso to Section 10(1), "where the dispute relates to a public utility service and notice of strike or lockout under Section 22 is given, the Appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under

this Section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced".

As per the proviso it is mandatory for the Government to make a reference subject to the two exceptions specified in the proviso itself. Since conciliation proceedings are compulsory in case of public utility services on receipt of notice of strike or lockout, practically in all such disputes the Government will have to either refer the dispute or record its reasons for refusing to make a reference and communicate the same to the parties concerned under Section 12(5). Although the word used in this proviso is "shall" instead of "May" used in the main provision, the Government has still the power to consider the question of expediency of making a reference even in case of public utility services and therefore it is difficult to distinguish this proviso with the main provision of the Section. In both cases the Government has to consider the question of expediency before making a reference. But the proviso by using the term 'shall' it has controlled the wide discretion of the Government in case of public utility services as compared to other industries.

Thus, it is clear that in regard to cases falling under this proviso an responsibility is imposed on the Government to refer the dispute unless of course it is satisfied that the notice is frivolous or vexatious or that considerations of expediency required that a reference should not be made. The proviso also makes it clear that reference can be made even if other proceedings under the Act have already commenced in respect of the same dispute. Thus, so far as discretion of the Government to exercise its power of referring an industrial dispute is concerned it is very wide under Section 10(1) but is limited under the second proviso to Section 10(1).

Section 10(2) of the Act provides "where the parties to an industrial disputes apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a board, Labour Court, Tribunal or National Tribunal, the Appropriate Government if satisfied that the persons applying represent the majority of such party, shall make a reference accordingly".

Where the parties apply for a reference the discretion of the Government is divested and it will be under an obligation to refer such dispute for adjudication. In such cases, the Government need not consider the question of existence of an

industrial dispute or its expediency to refer. The only requirement is that Government should satisfy itself that the parties to the application represent the majority of each party. Thus, in dealing with this class of cases the only point on which the Government has to be satisfied is that the persons applying represent the majority of each party; once that test is satisfied the Government has no option but to make a reference as required by the parties.

When on both sides of the dispute there are associations or unions, the requirement of majority on both sides arises. But if the dispute is between a single employer and his workmen, the question of majority with respect to the employer does not arise and the Government will have to be satisfied only with respect to the majority of workmen. In other words the trade union which makes such an application will have to be a representative of majority of the workmen of that establishment. The Appropriate Government before making a reference under this provision may hold such inquiry as it thinks necessary to satisfy itself about the representative character of the union, which is a party to the application.

Central Government Power to refer Industrial Disputes

The following special powers have been conferred on Central Government, for settlement of industrial dispute namely:

(i) Power under third proviso to Section 10(1)

The Third proviso to Section 10(1), "where the dispute in relation to which the Central Government is the Appropriate Government, it shall be competent for that Government to refer a dispute to Labour Court or an Industrial Tribunal, as the case may be constituted by the State Government." According to this proviso, inserted by 1982 Amendment, it is not necessary that the Central Government shall refer disputes only to Labour Courts and Industrial Tribunals constituted by it, Instead, it may refer the disputes to a Labour Court or an Industrial Tribunal constituted by any State Government. This is aimed at facilitating the Central Government not to constitute separate adjudicatory authorities in areas where the dispute are not many in number, but all the same refer them to the authorities constituted by state Governments in those areas.

(ii) Power under Section 10 (1-A)

Under Section 10 (1-A), Central Government may, at any time, refer any industrial dispute, if it is of opinion that the dispute involves questions of national

importance or is of such a nature that industrial establishments situated in more than one state are likely to be interested in, or affected by such dispute and that the dispute should be adjudicated by a National Tribunal, whether or not the Central Government is the Appropriate Government in relation to such dispute and also whether the dispute relates to any matter specified in Second Schedule or Third Schedule. For adjudication of dispute of national importance or dispute in respect of interstate industrial establishments, the Central Government has been empowered to invoke this provision to refer such disputes to a National Tribunal for adjudication. To invoke this provision, the Central Government need not be the Appropriate Government in relation to such disputes.

Under Section 10(6), upon such reference being made by the Central Government no Labour Court or Industrial Tribunal shall have jurisdiction to adjudicate upon any matter contained in the reference to the National Tribunal. In any such matter referred to National Tribunal is pending in any proceedings before a Labour Court or Tribunal, such proceeding before the Labour Court or Tribunal shall be deemed to have been quashed. It shall also not be lawful for the Appropriate Government to refer any matter under adjudication before a National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of proceedings in relation to such matters before the National Tribunal.

The analysis of both Sections 10(1-A) and 10(6) reveals that the Central Government has an overriding power of reference to a National Tribunal, even with respect to disputes which are already pending adjudication by a Labour Court or Tribunal. Once the Central Government shall be divested of its functions under the Act and thereafter the Central Government shall be deemed to be the Appropriate Government in relation to that dispute for all legal purposes.

Process of reference making by the Government under Section 10-Defective?

The following defects have been found in the Act, namely,

1. **No direct access to the Authorities under the Act:**

The Policy of the Government insists, the intervention of the Government in the settlement of industrial disputes through conciliation and adjudication. The Government intervention in the adjudication is extensive because the Government

retains in its hands the ultimate control of deciding which disputes should go for adjudication through its reference under Section 10 of the Act.

Parties to the industrial dispute have no freedom to take their grievances to the adjudication directly, even in case of disputes of legal nature which includes dismissal discharge, termination or retirement of workmen. The discretion vested in the hands of Appropriate Government to refer dispute for adjudication will defeat the very purpose of peaceful settlement of disputes through adjudication there by maintaining industrial peace and harmony, which results in large scale industrial unrest. Over the years it has been experienced that adjudication system is the only effective remedy available to the aggrieved party. Therefore, it is quite objectionable as a matter of policy to deny free access to these authorities for the parties concerned.

The Government in the year 1978 proposed Industrial Relations Bill and Trade Unions and Industrial Disputes (Amendment) Bill for liberalization of Government policy which enable the industrial workmen to approach Labour Courts directly in cases of all individual disputes. But unfortunately the Bills could not be enacted into law and absolute power of the reference in the hands of Government continued. So necessary changes in law with regard to individual disputes under Section 2-A of the Act are imperative as recommended by the Ramanujan Committee, 1990 and the Second National Commission on Labour, 2002 regarding changes in law, on following lines, namely:

(i) Individual workmen should have direct access to Labour Courts in case of all individual disputes, which are by their very nature rights disputes.

(ii) A provision must be made for the recognition of a bargaining agent in each industrial establishment and such agent should be given the option of taking interests disputes directly to Tribunals for adjudication; and

(iii) Compulsory reference of industrial disputes for adjudication if there is no settlement through collective bargaining or voluntary arbitration. With some of these changes the proposed Labour Management Relations Bill was recommended by Second NCC in 2002.

2. Delay in reference results in delayed Justice

The object behind enactment of industrial law and providing separate dispute resolution mechanism is to provide speedy settlement and ensure speedy justice it is contrary to the projected goal of the Act of expeditiousness in industrial justice, the reference decision takes unduly longtime after the submission of the failure report.

Apart from prolonging the dispute resolution process, the delay in reference leads to the exertion of extraneous pressure on the political executive for prejudicial exercise of the reference power. The disputant parties perceive the conciliation officer recommendation as most instrumental in reference decisions, but the actual exercise of these decisions shows an attempt on the part of the Appropriate Government to serve its own objective through its power.

The Government reference involves in it, conciliation of the dispute first by the Conciliation Officer and the time specified under Section 12 (6) for completion of the conciliation proceedings is 14 days but in practice the conciliation proceedings are prolonged beyond a reasonable time; many times lasting up to 6 months or more. The conciliation officer does this without officially commencing the conciliation on his records. In addition to this delay, after receipt of the failure report from the Conciliation Officer, the Appropriate Government very often takes a pretty longtime before a reference is made.

An empirical study conducted in Kolhapur District of Maharastra State and the data collected through opinion survey reveals that the average time taken for reference of disputes is 10 to 12 months, another study by a labour law consultant in the State of U.P. and he found that the time taken by the Government in many cases is more than a year. He mentioned it is an irony that the Appropriate Government invariably takes more than a year in making a reference after the Conciliation Officer submits his report.

Yet in another study conducted by a Trade Union Leader at Dhanabad Coal mines he found that the delay was quite unreasonable on the basis of his empirical investigation he found on verification of 50 references randomly, which were made by the Central Government to the Industrial Tribunal at Dhanabad with respect to coal mines which is a public utility service for adjudication under Section 10 (1) of the Act, it was found that 15 months to 3 year was ordinarily taken for getting the dispute referred from the date of dispute raised by the union before the Conciliation Officer till it was referred to Industrial Tribunals. The Central Government itself took one to two years to make reference from the date of the receipt of the failure report by Conciliation Officers.

Various empirical studies conducted in different States revealed that the Government had taken 6 to 24 months for making a reference after receiving the failure report from Conciliation Officer. A study conducted by researcher in the State

of Jammu and Kashmir, reveals that the average time taken by the Appropriate Government to refer the dispute after receiving failure report from Conciliation Officer was 9 months. Four out of Twenty cases it is between 15 to 20 months and in Faridabad it reveals that out of 26 references 13 took more than 90 days, 6 references took more than 150 days and the reference of one dispute APL (9), took 452 days after the failure report.

It is already discussed in the earlier, where the Supreme Court had directed the Government to refer the dispute for adjudication of the matter which was pending before it for more than a decade.

It is submitted that, if the objective of vesting reference making discretion in the Government was to ensure and facilitate speedy resolution of Labour issues, Parliament has committed a stupendous error as well as miscalculation in this regard because on an average, the time spent by the Labour Department in making reference of an industrial dispute after receipt of the failure report of the Conciliation Officer was highly unreasonable and in some matters the Government does not make a reference at all and the aggrieved workmen are made to continue groping in the dark to hanker after the elusive social justice as envisaged for them under the Act. Hence, recommendations of Second NCL providing for direct approach of parties to the Labour Court, Conciliation, Arbitration or to Labour Relations Commissions in respect of all matters specified in Second Schedule of the I.D. Act is significant one. As such it needs serious considerations by the law making authority.

3. **Discriminatory treatment by Government in exercise of power of reference under Section 10(1) of the Act**

The answer to above question is 'yes' because of the following reasons:

(i) Inexpensive and quick resolving of industrial conflicts and thereby providing speedy justice to the working class is the reason for the creation of special procedure for the settlement of industrial disputes under the Industrial Disputes Act, 1947. The reference making power has been vested in the Government under the Act to ensure speedy settlement of industrial disputes.

It is submitted that if the objective of vesting reference making discretion in the Government was to ensure and facilitate speedy resolution of labour issues, parliament has committed a stupendous error as well as miscalculation in this regard.

because on an average, the time spent by the labour department in making reference of an industrial dispute after receipt of the failure report of the conciliation officer is about 9 to 12 months. While in some others, the Government does not make a reference at all and the aggrieved workmen are made to continue groping in the dark to hanker after the elusive social justice as envisaged for them under the Act.

(ii) The power of the Government of referring industrial disputes for adjudication is prone to be exercised in a discriminatory manner. It is well known that various trade unions in the country have been affiliated with different political parties. In such circumstances, it is quite natural that a trade union affiliated to the political party in power shall get favored treatment from the Government formed by such party in respect of reference of disputes of that trade union for adjudication. On the contrary, a trade union having alliance with a political party opposed to the party in power is apt to get step-motherly treatment from the Government in matters of referring disputes for adjudication. Although outwardly these apprehensions appear to be hollow and banal remarks only, these are real sometimes (if not often) in the world of reality.

(iii) We have adopted the concepts of mixed economy and Social Welfare State, for the economic development of the country as well as social uplift of the people. Under such a dispensation, the State is bound to be a major employer, as most of the development and public undertakings are to be controlled and carried on by the Government. As a result, the state agencies would happen to be party to most of the industrial disputes with their employees which may be adjudicated by the Labour Courts and Industrial Tribunals. In those cases at least where an agency of the state is a party to a dispute, the Government cannot be expected to conduct itself with necessary measure of impartiality and fairness while exercising its discretion whether such dispute is to be referred for adjudication or not.

(iv) Referring of industrial disputes by the Government for adjudication tends to breed corruption and favoritism, allegations of this kind may seem to be mendacious and stale on their face value. But, in the world of reality such things cannot be entirely dismissed as untrue. Particularly there is a real danger of political influence being wielded in some cases installing the

reference of even a genuine dispute for adjudication or at any rate deferring its reference.

Further, our low paid administrative staff is known for its corrupt proclivity. These persons (i.e. those belonging to the lower echelon of administration) do not hesitate as regards accepting a bribe from which ever source it may happen to come to them. A shrewd and affluent employer in contrast to the economically weak employees can easily win their sympathies by offering them a paltry sum of money. They (administrative staff personnel) in their term may go the whole hog in scuttling the reference of a dispute for adjudication. If their tactics work, they can easily dupe and mislead their superiors and thereby succeed in circumventing the reference of a dispute for adjudication.

(v) It is true that final determination of an industrial dispute is made by the Labour Court or Industrial Tribunal to which the dispute is referred for adjudication. But is it to suggest that the Labour Court or Industrial Tribunal can adjudicate upon a dispute without its being referred to it? What would be the fate of the industrial disputes which are not referred by the Government for adjudication? Can a labour Tribunal adjudicate upon such disputes?

On the contrary, the final adjudication of an industrial dispute is defendant on its being referred by the Government for adjudication. Consequently, referring a dispute or refusal to refer it by the Government for adjudication affects as much the rights and interests of the parties to the dispute as the final determination of a dispute made by the Industrial Tribunals or Labour Court. This being so, the Government ought to accord hearing to the aggrieved parties before it decides to exercise or not to exercise its power under Sections 10(1) and 12(5) of the Act.

Again, it would be in the interest of justice and helps in controlling the absolute discretion of the Government, if the Government complies with the principles of natural justice while exercising its power under Section 10(1) and 12(5). It would also make the exercise of this discretion consists with principles of the rule of law; one of its main objective is to control the exercise of unregulated discretionary power. Alternately if adjudication of disputes is to be made really expeditious under

the Act discretion of the Government concerning referring of industrial disputes for adjudication must be ended.

Hence, the First National Commission on Labour observed that, "There have been complaints of political pressure and interference. And this aspect cannot be entirely ignored in framing our recommendations. To get rid against this and to do away with existing exclusive discretionary power of the Government the first NCL recommended for Independent Industrial Relations Commissions which are to be entrusted with the function of deciding to make references of interests disputes for adjudication upon the failure of bipartite negotiations. As regards legal or rights disputes, the NCL favoured the retention of Labour Court, where proceedings instituted by parties asking for the enforcement of rights under the aforesaid categories will be entertained by Labour Courts. Even the Second NCL also has recommended for direct access to parties for adjudication in respect of matters specified in second schedule of the Act and minimizes the role of Government in settlement of disputes.

4. Lack of expatriation

The question of reference is ultimately decided under the present system by the bureaucratic or political administration which lacks expert knowledge on labour problems. By the stretch of any imagination, bureaucrats and politicians cannot be treated as better repertories of expertise in labour matters than well trained and experienced presiding officers of Labour Courts and Tribunals. It is more so in view of the fact that top official positions in the Labour Department, as in other departments of the Government, are manned by different bureaucrats and politicians on different occasions. This process undeniably does not make for the conserving of necessary expertise in industrial and labour matters. This is in stark contrast with the devoted and constant engrossment of labour adjudicators with the study of varies case law and legal enactment in the era labour law. The IRCs consisting of experts in the area as recommended by the first NCL would be more appropriate body to exercise such power and the recommendations of second NCL i.e. aggrieved worker in case of individual disputes and by an recognized union in case of collective disputes within a period of one year from the date of the cause of action arose. These are matters of serious consideration by law making Authority.

5. Un-canalized Discretionary power under Section 10

As already noticed earlier, the discretionary power conferred on the Government is wide and un-canalized. It is true that if an Appropriate Government makes an improper or *malafide* use of this power the aggrieved party can take recourse to writ proceedings under Article 226. But where does all this lead to?. The elusive concepts of social and economic justice would inevitably elude the destitute workers if they are constrained to resort to writ proceedings for every malafide and supercilious act of the Appropriate Government concerning the referring of disputes for adjudication. It is more so in view of the courts repeated pronouncements to the effect that *malafide* is easier to allege than to establish and the onus of proving it is on the person making such allegation.

Therefore, *malafide* being a very tenuous and slippery ground for invoking the jurisdiction of a court, the aggrieved workers will for all practical purposes be left without any remedy for the cause of discretion by the Government. As a result, they would be driven into a position of helplessness, which may result in giving vent to their pent-up anger and spite against the unreasonable callous attitude of their employer as well as that of the Government towards their grievances in the shape of taking recourse to a direct action like strike or sometimes even if an aggrieved party is able to canvass successfully against an improper exercise of reference making power by the Government before a court of law, what would be the outcome of that? On an average a High Court takes 3 to 5 years to dispose of a writ petition. In any case it does not take less than three years for this purpose. If in a particular case, three years are needed to make a reference of dispute for adjudication, how can this be reconciled with the objects of speedy settlement of industrial disputes and dispensation of social justice to the working class as enshrined in the Act.

Right to remedy vis-a-vis discretionary Power

The adjudication machinery has extra-ordinary powers to grant appropriate relief to the workmen, which the ordinary Civil Courts do not have. Further, it is established law that the Civil Courts have no jurisdiction to entertain cases where the enforcement of a right or an obligation relates to those created by the Industrial dispute Act. The Act, in addition to conferring many benefits on workmen in cases of lay off, retrenchment, transfer of ownership or closure of an establishment, now empowers the adjudicators with appellate jurisdiction to interfere with the managerial

discretion to punish a workmen by discharge or dismissal ,which power is considered essential for ensuring the all essential job security of industrial workmen. Therefore, it is absolutely essential that for enforcement of all rights created by the Act and other related laws; the workmen should be able to approach the adjudicatory authorities without the requirement of Government reference.

There is an obvious inconsistency in the policy of the Act, which confers certain crucial rights on workmen and places the enjoyment of these rights at the disposal of the Government which is often the party against whom the rights are sought to be enforced. If the Government refuses to make reference, the aggrieved workmen are left with no remedy except to move the writ Court and very few among the ordinary workmen's can even think of reaching the precincts of High Court for the cost of litigation, which is not within the reach of any common man in this country. It is significant to note that such a situation is not conducive to the maintenance of industrial peace and harmony. There is almost unanimity among researchers, academicians and industrial relations experts that it is high time that this exclusive discretionary power of the Government is done away with.

After an exhaustive analytical study of Section 10 of the Act conducted by wadegaonkar, researcher concluded that, "it is now time to do away with this sole prerogative of the Government to initiate the industrial adjudication. It would be desirable to give a right to move the Labour Courts and Tribunals to the individual parties as regards the items under schedule II of the Act; these are items with which individual workmen are vitally connected. As regards the items under schedule III it would be appropriate to give the right to move the adjudicating authority to the employer and the representative union of the employer as these is items with which the workmen are connected as group".

In the light of another empirical study conducted by professor P.G. Krishnan of Delhi University a suggestion was made to the following effect. It is desirable that, "the reference system as an intermediate stage is done away with and the parties be enabled to take the matters directly before the adjudicatory machinery. In this regard a new Section 10-B is to be enacted it must provide that where the Government fails to make a reference within fifteen days of the submission of the failure report of the conciliation officer the parties are entitled to take the dispute before any of the adjudicating authorities competent to deal with it under the Act. In that case the dispute must be deemed to have been validly referred to that authority".

Finally the recommendations of First, Second NCL and Ramanujan Committee, 1990 for constitution of IRCs and LRCs who shall decide the question of adjudication of interests disputes and for direct reference of rights disputes by the parties to the Labour Court will be taken into consideration.

In view of the above discussion, it may concluded that the exclusive Governmental discretion to refer the industrial disputes for adjudication should be done away and incase of disputes by the workmen be given direct access to Labour Courts and in case of recognized unions also have the option of taking the disputes directly for adjudication, while the Government may continue to have the power to refer disputes for adjudication in public interest for ensuring industrial peace.

Prohibit the Continuance of strikes and lockouts after the order of reference.

The right to strike or cessation of work is not the fundamental right recognized by the constitution and would not come within the ambit article 19 (1) (c) of the Constitution. However, strikes and lockouts are weapons in the armory of labour and the employer in the process of collective bargaining all over the world and regulated by the Act. Compulsory adjudication system is seen as an alternative to strikes and lockout with a view to achieve the purpose of the Act. The rights of the workmen to strike and the right of the employer to lockout have been subjected to restrictions imposed by the Act, namely,

(i) Sections 22 and 23 prohibited the commencement of strike and lockouts in the circumstances stated therein.

(ii) Section 23(b) prohibits any strikes and lockouts in any establishment during the pendency of adjudication proceedings and for a period of two months after the conclusion of such proceedings.

(iii) Once the award of the adjudication comes into operation strikes and lockouts are prohibited by Section 23(1) during the period from which the award is in operation in respect of any of the matters covered by the award; and

(iv) If there is already strike and lockout in existence, the Appropriate Government by referring the concerned disputes for adjudication will acquire power to prohibit the continuance of any such strike or lockout.

Section 10(3) of the Act lays down “where an industrial dispute has been referred to a Board, Labour Court Tribunal or National Tribunal under this Section,

the Appropriate Government may by order prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on date of reference".

The object of Section 10(3) of the Act is to ensure the investigation and settlement of disputes in peaceful atmosphere. Continuance of a strike or lockout even though commenced before the order of reference, during the pendency of adjudication proceedings is not conducive for effective adjudication of dispute. Therefore the power conferred on the Government to prohibit the continuance of any strike or lockout that may have been in existence on the date of reference and Section 24 of the Act declares that the strikes and lockouts continued in contravention of an order made by the Government under Section 10(3) shall become illegal.

The language used in the Sub-Section (3) of Section 10 gave risk to interpretational difficulties. However, the Supreme Court in *Delhi Administration v. Workmen of Edward Keventers*, reversing the decision of the Delhi High Court, held that the Appropriate Government could prohibit Strikes or lockout only in respect of the demands which were referred for adjudication. The strike in respect of those demands, the Government can prohibit the continuance of the strike under this provision only if it had referred all the demands for adjudication. In other words, if the Government does not refer all those demands for adjudication, it cannot prohibit the strike in respect of the demands which were not referred. The words "such disputes which may be in existence on the date of reference" are read together as relating to the disputes referred. It was held that the words "which may be in existence on the date of reference" do not relate to strike or lockout but to the disputes. The Kerala High Court took the view that the power under Section 10(3) is of a quasi-judicial nature and therefore an order there under cannot be passed by the Government without giving the notice and hearing to those who would be affected by the order.

On the other hand the Delhi and A.P., High Courts were of the opinion that this power of the Government was purely administrative and therefore there was no need for the compliance with the principles of Natural Justice. The Supreme Court in *Nirmala Textile Finishing Mills Ltd. v. Industrial Tribunal Punjab*, upheld the Constitutional validity of this provision on the ground that the power is not arbitrary because it provides for the exercise of discretion for attaining the object of the Act Viz., peaceful settlement of industrial disputes.

Power to include similar establishments in a reference

The Appropriate Government under Section 10(5) of the Act, empowered to include in an order of reference, either at the time of reference or thereafter but before submission of award, any industrial establishment, group or class of establishments of a similar nature which are likely to be interested in or affected by such dispute. Whether or not at the time of such inclusion any dispute exists or is apprehended in such establishments.

Compulsory Adjudication:

Constitute the Dispute Resolution Mechanism

In addition to constituting other industrial relations machinery like Conciliation officer, Board of Conciliation and Court of Inquiry, the Appropriate Government has the power to constitute the adjudication machinery i.e. Labour Court and Industrial Tribunal and the Central Government has the power to constitute National Tribunal.

(i) Labour Courts

According to Section 7(1) of the Act, "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 the Act". Sec 7(2) states that "A Labour Court shall consist of one person to be appointed by the Appropriate Government".

Thus, under this provision both the Central and State Governments as Appropriate Government have power to constitute one or more Labour Courts, mainly, for the adjudication of matters prescribed in Second Schedule which are generally rights disputes. If for any reason there occurs a vacancy in the office of the presiding officer of a Labour Court, the Appropriate Government shall appoint another to fill the vacancy.

(ii) Industrial Tribunal

According to Sec 7-A (1) of the Act "The Appropriate Government may, by notification in the official Gazette constitute one or more Industrial Tribunals for the adjudication of industrial dispute relating to any matter, whether specified in the Second Schedule or the Third Schedule and for the forming such other functions as

may be assigned to them under the Act". The Industrial Tribunal like the Labour Court shall consist of only one person to be appointed as the presiding officer of the Tribunal.

The Appropriate Government also has power, if it so thinks fit to appoint two persons as assessors to advise the Tribunal in the proceedings before it. Under this Section the Appropriate Government has the power to constitute Industrial Tribunals for a limited time or for a particular case or number of cases or for particular area. In other words, the Appropriate Government may constitute Tribunals on an ad-hoc basis as and when the disputes arise and the Government decides to refer them to the Tribunal.

(iii) National Tribunal

According to Sec 7-B (1) of the Act, "The Central Government may by notification in the official gazette, constitute one or more National Tribunals for 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. Further, only a person who is or has been a judge of a High Court can be appointed as the presiding officer of a National Tribunal. The Central Government may also appoint, if it so thinks fit, two persons as assessors to advise the National Tribunal in the proceedings before it".

This power of the Central Government to constitute National Tribunal is an overriding power and under Section 10 (1-A) of the Act the Central Government has power to refer such disputes to a National Tribunal whether or not the Central Government is the Appropriate Government in relation to such disputes.

The object of this provision is twofold: namely,

(i) To get the disputes of national importance adjudicated upon by a higher Tribunal, as only a person who is or has been a judge of a High Court can be appointed as the presiding officer; and

(ii) As the Central Government need not be the Appropriate Government in respect of industrial disputes relating to all India establishments, the reference to National Tribunal can avoid reference by different State Governments and it also overcomes the limitations of territorial

jurisdiction of Industrial Tribunals constituted by the respective State Governments.

Awards and Settlement:

The Industrial Dispute Act, 1947 which extends to the whole of India came into operation on the first day of April 1947. As per Preamble of the said Act, it is enacted to make a provision for the investigation and settlement of the dispute and certain other purposes such as recovery of money from the employer in terms of Settlement or Award by making an application to the appropriate government. The purpose and aim of the Industrial Disputes Act 1947 is to minimize the conflict between labour and management and to ensure, as far as possible, Economic and Social Justice. The act has made comprehensive provisions both for this settlement of disputes and prevention of disputes in certain Industries.

Method of settlement of Industrial Dispute:

In the interests of the industry in particular and the national economy in general, cordial relations between the employer and employees should be maintained. To ensure cordial labour management relations and to achieve industrial harmony, the following methods of settlement of industrial disputes are provided under the Act.

1. **Collective Bargaining:**

Collective Bargaining or Negotiation is one of the methods for settlement of an industrial dispute. It plays significant role in promoting labour management relations and in ensuring industrial harmony Collective Bargaining is a process/Method by which problems of wages and conditions of employment are settled amicably, peacefully and voluntarily between labour and management. In collective bargaining, the parties to the dispute I.e., the employer and the employees/workmen settle their disputes by mutual discussions and agreements without the intervention of a third party. Such settlements are called "bipartite settlement". Therefore, settlement of labour disputes by direct Negotiation or settlement through collective bargaining is always preferable as it is the best way for the betterment of labour disputes. Collective Bargaining is recognized as a right of social importance and greater emphasis is placed on it by India's five year plans. The

term 'Collective Bargaining' was coined for the first time by Sidney and Webb in their famous book 'Industrial Democracy' published in 1897.

It means Negotiation between an employer and group of workers to reach agreement on working conditions. N. W. Chamberlain (in his 'Source Book on Labour: 1958 p. 327) described collective bargaining as "the process whereby management and Union agree on the terms under which workers shall perform their duties". In simple word, collective bargaining means "Bargaining between an employer or group of employers and a bonafide Labour Union".

2. Conciliation:

Conciliation is a process, by which a third party persuades the parties to the industrial dispute to come to an amicable settlement. Such third party is called 'Conciliation Officer' of Board of Conciliation. Sections 4 and 5 of the act provide for the appointment of Conciliation Officer and the constitution of the Board of Conciliation respectively.

3. Voluntarily Arbitration:

The expression 'Arbitration' simply means "the settlement or determination of a dispute outside the court". Parties to the dispute, without going to the Court of law, may refer the dispute/Matter to a person in whom they have faith, to suggest an amicable solution. Such person, who acts as a mediator between the disputants to settle the dispute is called "Arbitrator". The decision given by the parties, which is binding on the parties, is called "Award". Therefore Arbitration is a judicial process under which one or more outsiders render a binding decision based on the merits of the dispute. Section 10-A of the industrial dispute act, 1947 confers on parties, power to enter into Arbitration agreement. The agreement must be in prescribed form and must specify the name/names of the arbitrator or arbitrators.

4. Adjudication:

When an industrial dispute could not be settle either through bipartite negotiations or through the Conciliation machinery or through the voluntary Arbitration, the final stage resorted to, for settlement of an industrial dispute is Adjudication or compulsory Adjudication, which envisages Governmental reference

to statutory bodies such as Labour Court or Industrial Tribunal or National Tribunal. Section 7, 7-A and 7-B of the Industrial disputes Act, 1947 provide for the constitution of Labour Court, Industrial Tribunal and Labour Tribunal respectively.

Definition of Award

Section 2(b) of the Industrial Dispute Act, 1947 defines Award as follows - According to Section 2(b) of the Industrial Disputes Act, 1947 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 arbitration award made under section 10A.

Ingredients of Award –

To constitute Award under Section 2(b) of the Industrial Dispute Act, 1947 the following ingredients are to be satisfied-

a) An Award is an interim or final determination of an industrial dispute.
b) It is an Interim or final determination of any question relating to such dispute.
c) Such interim or final determination is made by any Labour Court, Industrial Tribunal or National Industrial Tribunal.
d) Award of Arbitrators under section 10A is an award.

What is Settlement?

According to Section 2 (p) of the Industrial Dispute Act, 1947 Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

Procedure for Settlement of Industrial Disputes The Industrial Disputes Act, 1947 provides procedure for settlement of industrial disputes, which must be followed in all public utility service, has been defined in section 2 (n) of the Act so as to include any railway, postal, telegraph or telephone service that supplies power, water and light to the public, any system of public conservancy or sanitation, any section of an industrial establishment on the working of which the safety of the establishment or

the workmen employed therein depend and any industry which keeping in view the public emergency has been declared as such by the appropriate Government. As laid down in the Act a dispute should first go through the process of conciliation before it could be referred to the appropriate authorities for adjudication33. 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 under Section 22 has been given shall hold conciliation proceedings in prescribed manner.

Conciliation proceedings can be stated in case of dispute that actually exists or when there is reasonable ground to apprehend that an industrial dispute is likely to come into existence unless something is done to prevent or where both parties to dispute approach the Government separately for conciliation. Conciliation proceedings are deemed to have been started from the date on which a notice issued to the parties to appear before the conciliation officer who may meet them jointly or separately. The Conciliation Officer must submit his report to the Government within fourteen days of the starting of conciliation proceedings. During this period he tries to bring about a fair and amicable settlement between the parties to dispute. If a settlement arrived at, the Conciliation Officers will send a report to the Government along with a memorandum of settlement duly signed by both parties. This settlement come into force from the date agreed upon by the parties to dispute or in its absence the date on which it was signed by them and is binding for a period of six months unless agreed upon otherwise, and after the period afore said, until expiry of two months from the date on which a notice in waiting of the intention to terminate the settlement is given by one of the parties to the other party or parities to the settlement. Such a settlement is binding on all parties to the industrial dispute, to the employer, his heirs, successors or assignees and to the workmen employed in the establishment on the date of the dispute and all the persons who subsequently become employed therein. If no settlement is reached by the parties, the conciliation officer will submit his report to the appropriate Government stating the reasons for which he thinks no settlement could be arrived at as well as the facts of the case.

Action by the Government:

On receipt of the report from the Conciliation Officer, the Government will come to a decision on whether the circumstances and the facts of the case as such to

justify a further reference. The Government has to arrive at a prima facie conclusion that the nature of the dispute justifies a further reference. If in the opinion of the Government, there is a scope of arriving at a settlement by further conciliation efforts, it may refer the case to the Board of Conciliation.

Collective Bargaining as a method of Settlement of Industrial Disputes

Collective bargaining as such is one of the most developed in Indian history since independence, and deserves the attention of all who are concerned with the preservation of industrial peace and implement of industrial productivity. In the laissez faire the employers enjoyed unfettered rights to hire and fire. They had much superior bargaining power and were in a position to dominate over the workmen. There are some routine criticism of the adjudicatory Awards and Settlement i.e., delay, and expensive. Therefore the parties to the industrial dispute are coming closure to the idea that direct negotiations provide better approach to resolving key deference over wages and other conditions of employment.

The system of collective bargaining as a method of settlement of industrial dispute has been adopted in industrially advanced countries. The common law emphasis to individual contract of employment is shafted to collective agreement negotiated by and with reprehensive groups. The Industrial Disputes Act, 1947 which provides for the machinery for the settlement of industrial disputes.

On whom Awards and Settlements are binding

According to Section 18 of the Industrial Disputes Act, 1947 Awards and Settlements are binding on the following persons - A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

A settlement arrived at in the course of conciliation proceedings and an award of a Labour Court, Tribunal or National Tribunal shall be binding onAll parties to the industrial dispute; All other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National

Tribunal, as the case may be, records the opinion that they were so summoned without proper cause; Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; All persons who were employed in the establishment or part of the establishment on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Period of operation of Awards and Settlement

Section 19 of the Industrial Disputes Act 1947 provides for the period of operation of Award and Settlement. A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A. Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit: Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of an award does not exceed three years from the date on which it came into operation.

Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if

the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal, for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be on such reference shall be final.

A settlement is an agreement reached among the parties to a workers' compensation claim. This includes you, your employer and the workers' compensation insurer (unless your employer is self-insured). This is a type of contract, and it may bar you from seeking further compensation for your injury.

An award, on the other hand, is granted to you by the workers' compensation court. This may include medical benefits or other types of workers' compensation awards based on the specifics of your injury. For example, a judge can order - or an insurance company can admit for - temporary and permanent disability benefits. This isn't a settlement. You don't have to sign away any rights to get these benefits.

If you need help determining whether you received an award or a settlement, we can help. We can review your situation and help you understand your legal options. We can also advise you before you accept an award or settlement. At every stage of your case, we will work to ensure that you receive the full and fair benefits you need under Colorado's workers' comp laws.

According to Section2 (p) of the Industrial Dispute Act, 1947 Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

UNIT III

STRIKE AND LOCK-OUT

Introduction:

Strike and lock-out are two powerful weapons in the hands of the workers and the employers. Strike signifies the suspension or stoppage of work by the worker while in case of lock-out the employer compels persons employed by him to accept his terms or conditions by shutting down or closing the place of business. Strike is recognized as an ordinary right of social importance to the working class to ventilate their grievances and thereby resolve industrial conflict.

Skillful use of these weapons, whether threatened or actual, may help one party to force the other to accept its demand or at least to concede something to them. But reckless use of them results in the risk of unnecessary stoppage of work hurting both parties badly creating worse tensions, frictions and violations of law and order. From the point of view of the public, they retard the nation's economic development. India cannot tolerate frequent stoppage of work for frivolous reasons that often accompany it.

For these reasons, the Industrial Disputes Act seeks to regulate and restrict strikes and lock-outs so that neither the workmen nor employers may hold the nation to ransom.

Definitions of Strike:

Strike as defined in clause (q) of Section 2 of the Act means:

1. Cessation of work by a body of persons employed in any industry acting in combination; or

2. A concerted refusal of any number of persons who are or have been employed in any industry to continue to work or to accept employment; or

3. A refusal under a common understanding of any number of persons who are or have been employed in any industry to continue to work or to accept employment.

Thus the definition given in the act postulates three main things or ingredients:

(a) Plurity of workmen;

(b) Combination or concerted action;

(c) Cessation of work or refusal to do work.

Historical Background:

Strikes came into existence in the wake of the Industrial Revolution. With the invention of machinery to supplant human labour, unemployment, lowering of wages in a competitive market, supply of labour in excess of demand - became the order of the day.

The first known strike was in the 12th century B.C., in Egypt. Workers under Pharaoh Ramses III stopped working on the Necropolis until they were treated better. The use of the English word 'strike' first appeared in 1768 when sailors in support of demonstrations in London, "struck or removed the topgallant sails of merchant ships at port thus, thus crippling the ships.

As the 19th century progressed, strikes became a fixture of industrial relations across the industrialized world, as workers organized themselves to bargaining for better wages and standards with their employees.

The 1974 railway strike in India was the strike by workers of Indian Railways in 1974. The 20 days strike by 17 lakh workers is the largest known strike in India. The strike was held to demand a raise in pay scale, which had remained stagnant over many years, in spite of the fact that pay scales of other government owned entities had risen over the years.

Strikes became common during the Industrial Revolution, when mass labor became important in factories and mines. In most countries, strike actions were quickly made illegal, as factory owners had far more political power than workers. However, most western countries partially legalized striking in the late 19th or early 20th centuries. Strike means the stoppage of work by a body of workmen acting in concert with a view to bring pressure upon the employer to concede to their demands during an industrial dispute.

Indian Iron & Steel Ltd. v. Its Workmen it was held that mere cessation of work does not come within the preview of strike unless it can be shown that such cessation of work was a concerted action for the enforcement of an industrial demand.

Cessation of work or refusal to work is an essential element of strike. This is the most significant characteristic of the concept of strike. There can be no strike if there is no cessation of work. The cessation of work may take any form. It must

however be temporary and not forever and it must be voluntary. No duration can be fixed for this in fact duration for cessation of work is immaterial. Cessation of work even for half an hour amounts to strike.

Buckingham & Carnatak Co. Ltd. v. Workers of Buckingham& Carnatak Co. Ltd. On the 1st November, 1948 night shift operators of carding ad spinning department of the Carnatak Mill stopped wok some at 4 p.m. some at 4:30 p.m. and some at 5 p.m. The stoppage ended at 8 p.m. in both the departments. By 10 p.m. the strike ended completely. The cause for the strike was that the management of the Mills had expressed inability to comply with the request of the workers to declare 1st November, 1948 as a holiday for solar eclipse. Supreme Court held it strike.

Concerted action is another important ingredient of strike. The workers must act under a common understanding. The cessation of work by a body of persons employed in any industry in combination is a strike. Stoppage of work by workers individually does not amount to strike. In Ram Sarup & Another v. Rex held that Mere absence from work is not enough but there must be concerted refusal to work, to constitute a strike.

The object of an industrial strike is achievement of economic objectives or defence of mutual interests. The objects of strikes must be connected with the employment, non employment, terms of employment or terms and conditions of labour because they are prominent issues on which the workers may go on strikes for pressing their demands and such objects include the demands for codification of proper labour laws in order to abolish unfair labour practices prevalent in a particular area of industrial activity. The strike may also be used as a weapon for betterment of working conditions, for achievement of safeguards, benefits and other protection for themselves, their dependents and for their little ones.

In B. R. Singh v Union of India it was held that the strike is a form of demonstration. Though the right to strike or right to demonstrate is not a fundamental right, it is recognized as a mode of redress for resolving the grievances of the workers. Though this right has been recognized by almost all democratic countries but it is not an absolute right.

In T.K. Rangarajan v Tamil Nadu, the Tamil Nadu government terminated the services of all employees who resorted to strike. The Apex Court held that Government staffs have no statutory, moral or fundamental right to strike. In 2005, the Supreme Court reiterated that lawyers have no right to go on strike or give a call for boycott and not even a token strike to espouse their causes.

In Dharma Singh Rajput v. Bank of India, it was held that right to strike as a mode of redress of the legitimate grievance of the workers is recognized by the Industrial Disputes Act. However, this right is to be exercised after complying with the conditions mentioned in the Act and also after exhausting the intermediate and salutary remedy for conciliation.

Causes of Strikes:-

In the early history of labor troubles the causes of strikes were few. They arose chiefly from differences as to rates of wages, which are still the most fruitful sources of strikes, and from quarrels growing out of the dominant and servient relations of employers and employees. While labor remained in a state of actual or virtual servitude, there was no place for strikes. With its growing freedom "conspiracies of workmen" were formed, and strikes followed. The scarcity of labor in the fourteenth century, and the subsequent attempts to force men to work at wages and under conditions fixed by statute, were sources of constant difficulties, while the efforts to continue the old relation of master and servant with its assumed rights and duties, a relation law recognizes to this day, were, and still are, the causes of some of the most bitter strikes that have ever occurred.

Strikes are caused by differences as to:

1. Rates of wages and demands for advances or reductions i.e. Bonus, profit sharing, provident fund and gratuity.
2. Payment of wages, changes in the method, time or frequency of payment;
3. Hours of labor and rest intervals;
4. Administration and methods of work, for or against changes in the methods of work or rules and methods of administration, including the difficulties regarding labor-saving machinery, piece-work, apprentices and discharged employees;

5. Trade unionism.
6. Retrenchment of workmen and closure of establishment. 7. Wrongful discharge or dismissal of workmen.

Kinds of Strike:

There are mainly three kinds of strike, namely general strike, stay-in-strike and go slow.

1. General Strike:

In General Strike, the workmen join together for common cause and stay away from work, depriving the employer of their labour needed to run his factory. Token Strike is also a kind of General Strike. Token Strike is for a day or a few hours or for a short duration because its main object is to draw the attention of the employer by demonstrating the solidarity and co-operation of the workers. General Strike is for a longer period. It is generally resorted to when employees fail to achieve their object by other means including a token strike which generally proceeds a General Strike. The common forms of such strikes are organized by central trade unions in railways, post and telegraph, etc. Hartals and Bundhs also fall in this category.

2. Stay-in-Strike:

It is also known as 'tools-down-strike' or 'pens-down-strike. It is the form of strike where the workmen report to their duties, occupy the premises but do not work. The employer is thus prevented from employing other labour to carry on his business. In Mysore Machinery Manufacturers v/s State Court held that where dismissed workmen were staying on premises and refused to leave them, did not amount to strike but an offence of criminal trespass. In Punjab National Bank Ltd. v/s their workmen Court held that Refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises of the bank and refused to take their pens in their hands would no doubt be a strike under section 2(q).

3. Go-Slow:

In a 'Go-Slow' strike, the workmen do not stay away from work. They do come to their work and work also, but with a slow speed in order to lower down the production and thereby cause loss to the employer.

In Sasa Musa Sugar Works Pvt. Ltd. v/s Shobrati Khan & Ors held that Go-Slow strike is not a "strike" within the meaning of the term in the Act, but is serious misconduct which is insidious in its nature and cannot be countenanced.

In addition to these three forms of strike which are frequently resorted to by the industrial workers, a few more may be cited although some of them are not strike within the meaning of section 2(q).

i. **Hunger Strike:** In Hunger Strike a group of workmen resort to fasting on or near the place of work or the residence of the employer with a view to coerce the employer to accept their demands. Piparaich Sugar Mills Ltd. v/s Their Workmen Certain employees who held key positions in the mill resorted to hunger strike at the residence of the managing Director, with the result that even those workmen who reported to their duties could not be given work. Held: That concerted action of the workmen who went on Hunger Strike amounted to "strike" within the meaning of this sub-section.

ii. **Sympathetic Strike: A Sympathetic Strike is resorted to in sympathy of other striking workmen.** It is one which is called for the purpose of indirectly aiding others. Its aim is to encourage or to extend moral support to or indirectly to aid the striking workmen. The sympathizers resorting to such strike have no demand or grievance of their own.

iii. **Work to rule:** Here the employees strictly adhere to the rules while performing their duties which ordinarily they do not observe. Thus strict observance of rules results in slowing down the tempo of work causes inconvenience to the public and embarrassment to the employer. It is no strike because there is no stoppage of work at all.

Definition of Lock-Out:

"Lock-Out" has been defined in section 2 (1) to mean the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. India witnessed lock-out twenty-five years after the "lock-out" was known and used in the arena of labour management relations in industrially advanced countries.

Strike is a weapon in the hands of the labour to force the management to accept their demands. Similarly, Lock-Out is a weapon in the hands of the management to coerce the labour to come down in their demands relating to the conditions of employment. Lock-Out is the keeping of labour away from works by an employer with a view to resist their claim.

There are four ingredients of Lock-Out:-

1. Lock out is a
   i. temporary closing of a place of employment by the employer, or
   ii. suspension of work by the employer, or
   iii. refusal by an employer to continue to employ any number of persons employed by him;
2. The above mentioned acts of the employer should be motivated by coercion.
3. An industry as defined in the Act; and
4. A dispute in such industry

Lock-Out has been described by the Supreme Court as the antithesis of strike. Shri. Ramchandra Spinning Mills v. State of Madrasheld that if the employer shuts down his place of business as a means of reprisals or as an instrument of coercion or as a mode of exerting pressure on the employees or generally speaking when his act is what may be called an act of belligerency there would be a lock-out.

In case of Lock-Out the workmen are asked by the employer to keep away from work, and, therefore they are not under any obligation to present themselves for work. So also Lock-Out is due to and during an industrial dispute.

Causes:

A lockout is generally used to enforce terms of employment upon a group of employees during a dispute. A lockout can act to force unionized workers to accept changed conditions such as lower wages. If the union is asking for higher wages, or better benefits, an employer may use the threat of a lockout or an actual lockout to convince the union to back down. Lock-Outs may be caused by internal disturbances, when the factory management goes in to financial crisis or got succumbed into financial debts, disputes between workers and workers, disputes between workers and management or may be caused by ill-treatment of workers by the management. Sometimes lockouts may be caused by external influences, such as unnecessary

political parties involvement in management of workers, union may be provoked for unjustified demands that may be unaffordable by the management, which may ultimately lead to lockout of the factory.

1. Disputes or clashes between workers and the management.
2. Unrest, disputes or clashes in between workers and workers.
3. Illegal strikes, regular strikes or continuous strikes by workers.
4. Continuous or accumulated financial losses of factory or industry.
5. If any company involves in any fraudulent or illegal activities.
6. Failure in maintaining proper industrial relations, industrial peace and harmony.

Prohibition of Strikes and Lock-outs:

Section 22 of the Industrial Disputes Act, 1947, deals with the prohibition of strikes and lock-outs. This section applies to the strikes or lock-outs in industries carrying on public utility service. Strike or lock-out in this section is not absolutely prohibited but certain requirements are to be fulfilled by the workmen before resorting to strike or by the employers before locking out the place of business.

Conditions laid down in section 22(1) are to be fulfilled in case of strike and conditions as laid down in section 22(2) are to be fulfilled in case of any lock-out by the employer. The intention of the legislature in laying down these conditions was to provide sufficient safeguards against a sudden strike or lock-out in public utility services lest it would result in great inconvenience not only to the other party to the dispute but to the general public and the society.

Section 22(1): No person employed in public utility service shall go on strike in breach of contract:

a) Without giving to the employer notice of strike within six weeks before striking; or

b) Within fourteen days of giving such notice; or

c) Before the expiry of the date of strike specified an any such notice as aforesaid; or

d) During the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings.

These provisions do not prohibit the workmen from going on strike but require them to fulfill the conditions before going on strike. These provisions apply to a public utility service only and not to a non- public utility service.

With regards to Notice of Strike, notice within six weeks before striking is not necessary where there is already a lock-out in existence. Secondly, notice may be given by the Trade Union or representatives of the workmen to do so. Thirdly, a notice of strike shall not be effective after six weeks from the date it is given. The strike can take place only when 14 days have passed but before 6 weeks have expired after giving such notice.

Section 22(2): No employer carrying on any public utility service shall lock-out any of his workmen:

a) Without giving them notice of lock-out as herein after provided within six weeks before locking out; or

b) Within fourteen days of giving such notice; or

c) Before the expiry of the date of lock-out specified in any such notice as aforesaid; or

d) During the pendency of any conciliation proceeding before a Conciliation Officer and seven days after the conclusion of such proceedings.

Section 22(3): Notice of strike or lock-out as provided by sub-sections (1) and (2) many in certain cases be dispensed with

(1) No notice of strike shall be necessary where there is already in existence a lock-out in the public utility service concerned.

(2) No notice of lock-out shall be necessary where there is already in existence a strike in the public utility service concerned.

Sub-section (3) is in the nature of an exception of sub-sections (1) and (2) of section 22. In Bhaskaran v Sub-Divisional Officer held that posts and Telegraphs Department, being Public Utility Service, cannot declare lock-out without notice and that the employees of the department cannot go on strike without notice.

Notice of strike shall be given by such number of persons to such person or persons in such manner as may be prescribed by the President or Secretary or office-bearer of a registered Trade Union or federation. Where there is no registered Trade

Union of workmen by at least seven representatives of workmen duly authorized in this behalf at a general meeting specifically held for the purpose.

The object of giving notice of strike is to enable the other party to make amends or to come to terms or redress the grievance or to approach the authorities to intervene and stop, if it is possible the threatened action.

Section 22(5) provides that Notice of lock-out shall be given in such manner as may be prescribed. Section 22(6) deals with intimation of notices given under sub-section (1) or (2) to specified authorities. If on any day an employer receives from any person employed by him any such notice as is referred to in sub-section (1), he shall within five days report to the Appropriate Government or to such authority as that Government may prescribe, the number of notices received on that day. Similarly, if any employer gives any notice as is referred to in subsection (2), to any person employed by him, he shall report this fact within five days to the to the Appropriate Government or to such authority as that Government may prescribe.

General prohibition of Strikes and Lock-outs:

The prohibition against strikes and lock-out contained in Section 23 is general in nature. It applies to both public utility as well as non-public utility establishments. A strike in breach of contract by workmen and lock-out by the employer is prohibited in the following cases:

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

(ii) (During the pendency of conciliation proceedings before a Labour Court, Tribunal or National Tribunal, and two months after the conclusion of such proceedings;

(iii) During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of section 10-A, or

(iv) During any period in which a settlement or award is in operation in respect of the maters covered by such settlement or award.

The object of these provisions seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. This

section because of its general nature of prohibition covers all strikes and lock-outs irrespective of the subject-matters of dispute pending before the authorities. However a conciliation proceeding before a conciliation officer is no bar to a strike or lock-out under this section, it is only a conciliation proceeding before a Board which is mentioned in this Act.

The provisions of section 23 shall apply to all industrial establishments. Section 23 applies to both public utility service as well as non-public utility service, while Section 22 applies to public utility service alone. Section 23 does not prohibit a strike or lock-out during the pendency of conciliation proceeding before a conciliation officer, Section 22 does so.

Illegal Strikes and Lock-outs:

According to Section 24(1) Strike or lock-out shall be illegal if it is:

(1) Commenced or declared in contravention of section 22 in a public utility service;

(2) Commenced in contravention of section 23 in any industrial establishment (including both public utility and non-public utility service);

(3) Continued in contravention of an order made by the appropriate Government under section 10(3) or sub-section (4-A) of section 10-A of the Act.

Strike or lock-out in contravention of the provisions of Section 22 or Section 23 of the Act is declared illegal by Section24 of the Act. A strike or lock-out which commenced as legal under Section 22 & 23 can be continued unless an order under Section 10(3) has been passed prohibiting the continuance of an existing strike or lock-out. Sub-section (2) of Section 24 of the Act lays down that continuance of strike or lock-out is deemed to be illegal only if an order prohibiting it is passed under Section 10(3). Sub-section (3) of Section 24 of the Act provides that a lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Thus Strike and lock-out shall not be deemed to be illegal if:-

(i) At the commencement they are not in contravention of the provisions of this Act;

(ii) Their continuance has not been prohibited by the appropriate Government under section 10(3) of the Act;

(iii) A lock-out is declared in consequence of an illegal strike or vice versa.

In Maharashtra General Kamgar Union v. Balkrishna Pen P. Ltd. Court held that when a strike is commenced before the expiry of 14 days notice, it will be illegal but only for the unexpired notice period and thereafter, the strike would be legal.

Prohibition of financial aid to Illegal Strikes and Lock-outs:

Section 25 of the Act prohibits financial aid to illegal strikes and lock-outs. The provisions of this section are attracted only if the strike or lock-out is illegal and not otherwise. It says that no person shall knowingly spend or apply any money in direct furtherance or support of an illegal strike or lock-out.

This section has the following ingredients:

(i) Spending or applying money;

(ii) Money spent or applied in direct furtherance or support of an illegal strike or lock-out;

(iii) The strike or lock-out must actually be illegal;

(iv) Knowledge on the part of the person expending or applying money that the strike or lock-out is illegal.

Thus for prosecuting a person for the contravention of Section 25, the prosecution must prove:-

(a) That the strike or lock-out was illegal;

(b) That the accused had the knowledge that the strike or lock-out was illegal and that the money spent by him was direct furtherance or support of the same.

(c) That the money was spent by the accused.

It is only spending of money in support of a strike which is prohibited under this section. Therefore, helping the strikers by way of providing clothes or any other sort of help is not punishable under this Act. Section 28 provides penalty for giving financial aid to illegal strikes and lock-outs. Punishment may extend to six months' imprisonment or one thousand rupees fine or both.

Punishment for Illegal Strikes:

If a strike is illegal the party guilty of the illegality is liable to punishment under Section 26 of the Act. Section 26(1) prescribes penalty which can be imposed on any workman who commences, continues or otherwise acts in furtherance of a

strike which is illegal under this act. Thus to penalize a workmen under Section 26(1) two conditions must be fulfilled, namely,

1. A workman must commence, continue or in some other manner act in furtherance of a strike and
2. such strike must be illegal under the act.

Any workman found guilty of participating in an illegal strike shall be punishable with imprisonment of a term which may extend to one month or with a maximum fine of rupees fifty or with both. Section 26(2) provides that an employer shall be punishable with imprisonment extending to one month or with a maximum fine of rupees one thousand or with both if, (1) Such employer commences, continues or otherwise acts in furtherance of a lock-out; and (2) Such lock-out is illegal under the act.

Even though the workers have a right to go a strike but it is not their fundamental right. In case of illegal strike the guilty party has to undergo punishment. A distinction has been tried between illegal but justified strikes and illegal and unjustified strikes. For instance a strike may be illegal but it might have been taken recourse for good reasons and carried on in orderly and peaceful manner.

In Crompton Greaves v The Workers It was held that the workers will be entitled to wages for the strike period when the strike is legal as well as justified. A strike is legal if it does not violate any provisions of the Act. A strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. In a case a question was raised "whether the employer can dismiss a workman for joining a strike which is not illegal but unjustified". It was held that the right to strike is recognized by implication. A strike may be unjustified for many reasons, for example:-

a) demands may be unreasonable,
b) demands may be made with extraneous motives,
c) steps taken by employer to redress the alleged grievances though negotiation or conciliation.

The strike does not put an end to the employer-employee relationship and an employer cannot discharge a workman for a mere participation in a strike which is not illegal.

In Bank of India v/s T. S. Kelewala the supreme Court held that where the contract or standing orders or the service rules/regulations are silent on the issue of workers' entitlement to wages during the strike period, the management has the power to deduct wages for absence of duty when the absence is concerted action on the part of the employees and the absence is not disputed, irrespective of the fact whether the strike was legal or illegal.

If the strike is illegal, the workmen are not entitled to wages or compensation and they are also liable to punishment by way of discharge or dismissal. The Supreme Court in the case of India General Navigation and Railway Co. Ltd., and Anr. v/s Their Workmen held that "It is difficult to understand how a strike in respect of a public utility service, which is clearly illegal, could at the same time be justified. These two conclusions cannot in law exist, the law has not made any distinction between an illegal strike which may be said to be justified and one is not justifiable".

It was further observed by the Supreme Court that in case of an illegal strike the only question of practical importance would be the quantum of punishment. To decide the quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.

Violent strikers are those who obstruct the loyal workmen from carrying on the work or take part in violent demonstrations and act in defiance of law and order; Peaceful strikers are those workmen who are silent participants in the strike.

The first category of strikers is to be dealt with more severely and the punishment of dismissal, discharge or termination has to be imposed upon them. It would neither be in the interest of industry nor the workmen to effect wholesale dismissal of all striking workmen.

In Chandramalai Estate Ernakulam v/s Its Workmen held that Strike is the last weapon. There may, however, be the circumstances where the demand is of such urgent nature that it cannot be reasonably expected from the workmen to wait till after

asking the Government to make a reference; in such a case the strike even before such request has been made will be justified.

In Swadeshi Industries Ltd. v/s Their Workmen held that Strike for securing improvement on matters relating to wages, dearness allowance, bonus, provident fund, gratuity, leave and holiday may prima facie be considered to be justified because it is the primary object of a Trade Union to secure better conditions of employment of the workmen. In Syndicate Bank v/s Umesh Nayak etc., When there is a machinery for settlement of disputes but employees or employers resort to strike or lock-out without having recourse to the prescribed means, strike or lock-out is unjustified and when there is a breach of rules, it would be illegal. Therefore, the strike or lock-out as a weapon has to be used sparingly for redressal of urgent and pressing grievance when either no means are available or the available means have failed. The justness or otherwise of the action of the employer or employees has, therefore, to be examined on the anvil of the interest of the society which action tends to affect.

In Iron and Metal Traders Pvt. Ltd., Bombay v/s M.S. Haskiel & Others, many strikers were instated but the respondents were singled out by the management for drastic treatment. The Tribunal found the action of the employer as discriminatory and therefore ordered reinstatement of three workers and awarded compensation to seven in lieu of reinstatement. The management filed appeal to the Supreme Court and the Supreme Court held the approach of the Tribunal to be fair, just and unreasonable.

It must also be noted that whenever an action of forfeiture is taken against an employee on the ground that he participated in an illegal strike and absented himself from duty it is necessary that he should be given an opportunity of being heard. Without observing the principle of natural justice no action of forfeiture should be taken.

Impact of Illegal Strike & Illegal Lock-out:

1. **Wages during illegal strike:**

The effect of an illegal strike is that the workmen cannot claim wages for the period during which an illegal strike continues. It is pointed out that if the strike is

legal the workmen are entitled to wages. A strike is legal or illegal, justified or unjustified is question of fact which is to be judged in the light of the fact which is to be judged in the light of the facts and circumstances of each case. It has been held by the Supreme Court that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. M/s Crompton Greaves v/s The Workers The Supreme Court has observed that it is well settled that in order to entitle the workmen to wages for the period of the strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. It is also well settled that the use of force or violence or acts of sabotage resorted by the workmen during a strike disentitles them to wages for the strike period. Syndicate Bank v/s Umesh Nayak Whether strike is legal and justified this question is to be determined by the adjudication under the Act. Primarily High Court is not the forum for getting findings on the issues regarding justifiability and legality of strike.

2. Trade Union Immunities and illegal strikes: -

The illegality or unjustifiability or unreasonableness of the strike will not deprive the labour union of its immunities granted by the Trade Union Act as was clearly held in Rohtas Industries Ltd., v. Rohtas Industries Staff Union.

3. Whether workers are entitled to wages during illegal lock-out: -

In Krishna Sugar Mills v. State of U.P., this questioned was discussed. The mill was closed for two days consequent to the alleged assault of officers by some workmen who created a panicky situation. The Tribunal held that the closure was lock-out which was illegal and unjustified and so workers are entitled to wages during the lock-out period. The matter was agitated before the High Court which held that the lock-out may be sometimes not at all connected with economic demands; it may be resorted to as a security measure. In this case such a lock-out was declared without giving notice as was required and that it was unjustified also being a retaliatory measure. So the company was liable to pay wages during the lock-out period.

4. Can the employer dispense with the service of workers consequent to a strike: -

The employer-employee relationship is not terminated by participation in strike or by declaration of lock-out. The purpose of strike is to redress the legitimate grievance of the strikers. This right is recognized by the law and the violation of this right cannot put an end to the contract of employment by any unilateral process.

5. Disciplinary action against striking workmen: -

Normally participation in illegal strike amounts to misconduct on the part of the workmen for which even punishment of dismissal can be given. In Model Mills Ltd., v. Dhermodas, the Supreme Court upheld the right of employer to dismiss from services the workmen participating in illegal strike under the provisions of the standing orders of the company.

Though under the Constitution of India, the right to strike is not a fundamental right as such, it is open to a citizen to go on strike or withhold his labour. It is a legitimate weapon in the matter of industrial relations. In both lock-out and strike, a labour controversy exists which is deemed intolerable by one of the parties, but lock-out indicates that the employers rather than the employees have brought the matter in issue.

Strike may be justified or unjustified, legal or illegal. It depends on the circumstances of each case. It is usually associated with collective bargaining by workers and is permissible under Industrial dispute Act, 1947. Lock-out is a weapon of coercion in the hands of the employer with a motive to coerce the workmen which is due to an industrial dispute and continues during the period of dispute. However strikes and lock-outs are prohibited during the pendency of conciliation adjudication and arbitration proceedings.

Strikes are said to be revolutionary as it seeks to obtain better living conditions for the workers who form the majority in the industrial community. Better wages, better homes and healthy living condition better education these are the healthy objectives for the attainment of which labour resorts to strikes. Hence, strikes may justly be described as contributing towards a revolutionary process in man's progress towards social order. '

Lock-outs', on the contrary, are reactionary by any measures; because their object is to frustrate this progressive tend in human affairs. To hold down wages to a minimum, workers denied of equal opportunities for the education of their children, and no savings to fall back upon in evil times, is surely unjustifiable, and may be rightly called reactionary.

A strike signals the transfer of power from the employer to the union. While the employer has a right to employ and retrench workers, in the case of a strike, the right to not come to the place of work is with the union. This transfer of right also means higher bargaining power for the union. A strike is also used by the union to unite its members and send a strong signal to the management. In this case, strike also becomes an effective tool for the union to regain any lost support among the workers.

A lockout declared because of the poor financial condition of the company has an obvious advantage for the employer because it lets him cut his financial losses. During this period, an employer does not have to pay the labour costs and other variable costs.

However A lockout is the last step an employer would take. This is because a lockout means loss of production, which in turn means financial losses for the company. So except it is a case of financial distress, the employer would like to continue working.

A lockout also means deterioration in the relationship between the employer and the union/workmen. If the workmen decide to contest the reasons on which the employer has declared a lockout, there are chances that the employer might have to end up paying wages for the period of lockout along with other benefits which will have a huge financial implication on the company.

LAY-OFF

The freedom of contract theory, emerged out of the laissez-faire principle, authorised the employer to discharge his workmen due to breakdown of machinery or such other reasons beyond the control of the employer. This invariably exposed the workmen to frequent risk of involuntary unemployment. This absolute power of the employer to discharge his workmen gradually began to disappear with the erosion of the laissez-faire philosophy and the introduction of more State interventions in

industrial relations. Consequently, the employer lost his privilege to sever the contract of service and that he can utmost only lay-off temporarily the workers on the occurrence of such eventualities. This means that there will be only a suspension of employer-employee relationship and does not involve any complete severance of such relationship.

Historical Background of Lay-off Compensation:-

All disputes relating to lay-off prior to the incorporation of its definition in the Act were decided in accordance with the judicial pronouncements as there existed no definition of term "lay-off" formerly in the Act.

After independence , due to modernization in textiles mills, often there was retrenchment and lay-off of Workmen without any compensation payment in majority of the managements, although few of them paid compensation, thus there was no uniformity norms for compensation in such circumstances which resulted in the deteriorating economic conditions of the labour class and the stake of National economic development and social security of the society necessitated for the enactment of the social/beneficial legislation like the present Act.

Originally the Industrial Dispute Act did not provide for lay-off and retrenchment. The explosive situations due to enormous accumulation of stocks, particularly in the textile mills, with the consequence of probable closure, large scale lay-off and retrenchment in many mills provoked to introduce some effective measures to prevent large scale industrial unrest in the country. The ordinance promulgated for this purpose in 1953 was replaced by the Industrial Disputes (Amendment) Act, 1953 which commenced retrospectively from 24th October, 1953. Thus, Chapter VA was introduced into the Act to regulate lay-off, retrenchment, transfer and closure of undertakings. The provisions under this Chapter have much impact on some of the rights and privileges of the employers who are subjected to certain new liabilities and restrictions in the event of lay-off, retrenchment, transfer or closure of undertakings. In 1976, a new Chapter VB, was added to the Industrial Disputes Act incorporating more stringent conditions against lay-off, retrenchment and closure of certain establishments.

Section (kkk) prescribes Lay-off as the failure ,refusal or inability to provide employment to the workmen by the employer on account of shortage of coal ,power or raw material, or the accumulation of stock, or the breakdown of machinery, or natural calamity, or any other connected reasons.

Although the employer is willing to provide employment to the workmen, but is unable to do so because of unavoidable circumstances which are beyond the control of the employer. The section provides that a workman who is so deprived of employment must be such whose name is borne on the muster rolls of his industrial establishment and the workman must not have been retrenched.

Application of Chapter VA.-

Section 25-A makes it clear that the provisions of Sections 25-C to 25-E shall not apply to:

(i) Industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(ii) Industrial establishments which are of a seasonal character or in which work is performed only intermittently.

Hence, the provisions relating to lay-off will not be applicable to industrial establishments with less than 50 workers in the preceding calendar month or in case of seasonal character or with intermittent works, industrial establishment for this purpose is defined to mean:

(i) A factory as defined in the Factories Act, 1948; or

(ii) A "mine" as defined in the Mines Act, 1952; or

(iii) A "plantation" as defined in the Plantation Labour Act, 1951.

Lay-off differs from Lock-outs.-

The Supreme Court in Kairbetta Estate v Rajamanickam, 10 discussed the concept of lay-off and lock-out and observed that both are different. The main points of difference between them are:-

i) That lay-off generally occurs in a continuing business whereas lock-out is a closure of the business even though temporarily.

ii) In case of lay-off the employer is unable to give employment due to the reasons specified such as shortage of coal, power, raw materials, or accumulation of stock or break down of machinery, etc. In lock-out the employer deliberately closes the place of business and lock/-outs the whole body of workmen for reasons which have no relevance to the causes applicable to lay-off

iii) In the case of lay-off employer is liable to pay compensation whereas in lock-out no such liability is imposed upon the employer if the lock-out is justified and legal.

iv) Lock-out is resorted to by the employer as a weapon of collective bargaining whereas lay-off is invariably caused by economic and trade reasons.

v) The Act imposes certain prohibition and penalties against lock-out whereas layoff does not have such thing.

Distinction Between Lay-off and Retrenchment.

Term lay-off has been defined in Section 2(kkk) and the term retrenchment' in Section(oo). In case of lay-off there is failure, refusal or inability of the employer to give employment to a workmen for a temporary period while in retrenchment the workman is deprived of his employment permanently. Lay-off is on account of one or more reasons mentioned in Section2(kkk) while in retrenchment the termination is on the ground of service of labour.

The reasons of lay-off are entirely different as compared to reasons of retrenchment. In lay-off the labour force is not surplus but in retrenchment it is surplus which has to be retrenched. In lay-off the relationship of employment is not terminated while in retrenchment it is terminated. In lay-off relationship of employment is only suspended while in retrenchment it is terminated. Consequences of both are different to each other and are governed by different norms. Lay-off is for trade reasons beyond the control of the employer i.e it is not intentional act while retrenchment is permanent with the intention to dispense with surplus labour. In lay-off there is no severance of relationship of employer and employee while in retrenchment, the relationship of employer and employee is severed at the instance of the employer. The right to receive lay-off compensation is subject to certain more

stringent restrictions while the right to receive compensation is absolute in retrenchment. The right to receive lay-off compensation is subject to certain more stringent restrictions while the right to receive retrenchment compensation is subject to less stringent restrictions.

Right of workmen laid off for compensation.-

Section 25-C of the Industrial Dispute Act lays down the conditions and extent of compensation to workers who are laid off. The provision which was introduced in 1953 underwent a recast in 1956 and in 1965. After the 1965 amendment to Section 25-C the conditions for lay-off compensation are the following:

1. The establishment must have employed fifty or more workmen in an average during the calendar month preceding the lay-off;
2. The industrial establishment in question must not be of a seasonal character or in which work is performed intermittently;
3. The claimant should come within the definition of workman;
4. He should not be badli workman; or casual workman;
5. His name must be borne on the muster roll and he should not have been retrenched;
6. He must have completed not less than one year of continuous service;
7. Each one year continuous service must be under the same employer;
8. Lay-off compensation must be half of basic wages and dearness allowance;
9. Maximum period for entitlement of lay-off compensation is forty-five days during any period of twelve months;
10. No right to lay off compensation for more than forty-five days during 12 months if there is an agreement to that effect;
11. In the absence of a contrary agreement, lay-off compensation is payable for subsequent periods beyond 45 days during the same 12 months; if such subsequent period is/are not less than one week or more at a time;
12. Beyond 45 days the employer can escape liability of resorting to retrenchment after payment of retrenchment compensation; xiii) Finally, the lay off in question should not be by way of mala fide or victimization or with other ulterior motives.

Badli workmen.–

'Badli workmen' as stated in the explanation to Section 25C is a substituted workman. He is employed in the place of another whose name is borne in the muster roll. The badli workman's name should not find a place in the muster roll. Such a workman ceases to be a badli workman for the purpose of section 25-C on his completion of one year's continuous service in the establishment. Consequently, a badli workman who has completed one year continuous service is entitled to get work from the employer. If the employer fails to give him work, the badli workman would be entitled to get lay-off compensation, if he has completed one year's continuous service with that employer.

Continuous service-

A workman who has completed a minimum of one year's continuous service with the same employer alone is entitled to lay-off compensation under Section 25C. In 1964 section 25B was amended to its present form. Section 25C(I) defines continuous service and Section 25B(2) defines 'continuous service of one year' while sub-clause (b) of section28B(2) defines 'continuous service of six months'.

Continuous service means uninterrupted service. However, interruption on account of any of the following reasons will still deem such service to be uninterrupted. Such instances are:

a) Sickness;
b) Authorized leave;
c) Accident;
d) Strike which is not illegal;
e) Lock-out; and
f) Cessation of work which is not due to any fault on the part of the workman.

Participation in illegal strike: A workman taking part in illegal strike ipso facto does not affect his continuity in service, unless that workman is actually dismissed from service on this score.

Continuous service of one year.-

Under Section 25B(2)(a) of the Act a person can be said to be in continuous service for a period of one year if that worker:-

i) Has been in employment for twelve calendar months; and

ii) He has actually worked for not less than: a) 190 days in the case of employment below ground in a mine; b) 240 days in any other case.

Both the conditions in (i) and (ii) must be simultaneously complied with. Hence, employment for 12 calendar months but with less than 190 or 240, as the case may be, actual days of work by a workman will not be satisfying this provision. Similarly, a workman who has put in more than 190 or 240 days actual work but that in less than 12 calendar months will not be in conformity with the provision. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a periods of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where the workman has not at all been employed for a period of 12 calendar months, it becomes unnecessary to examine whether the actual days of work numbered 240 days or more.

Continuous service of six months.

Under Section 25-B(2)(B) a worker must:

i) Have been in employment for a period of six calendar months; and

ii) ii) Have actually worked for not less than 95 days in the case of his employment in underground mine or 120 days in any other case to constitute continuous service for a period of six months.

Right of workmen laid off for compensation where chapter V-A is applicable

A workman with one year's continuous service is entitled to lay-off compensation for all days of lay-off except weekly holidays. The amount of compensation payable to each workman shall be half the total of basic wages and dearness allowance. Lay-off compensation payable under Section 25C is not wages within the meaning of the term 'wages' in the Payment of Wages Act, 1936. This is by way of temporary relief to a workman who is forced to undergo involuntary unemployment, of course for reasons stated in the definition clause of "lay-off". The employer, for reasons beyond his control, is unable to provide work and hence as a social security measure and in the general social interest a duty is imposed upon the employer to give compensation to the workman who is deprived of his opportunity to work and hence forced to lose wages.

Period of lay off compensation

Lay-off compensation is payable for all days of layoff. However, the maximum period for which compensation payable is 45 days during any period of 12 calendar months. In the absence of a contrary agreement, if the layoff exceeds 45 days during a period of 12 months, then the workman is entitled to the same rate of compensation for such period beyond the 45 days, whether in continuation of it or subsequently, on other occasions. However, such period lay-off beyond the 45 days should be for minimum of one week or more to entitle the compensation thereof. But in such situations the employer may either:

i) Go on paying on lay-off compensation for such subsequent periods; or

ii) Retrench the workmen after the expiry of 45 days of lay-off on paying the retrenchment compensation as in Section 25F.

Workmen not entitled to compensation in certain cases

Under Section 25E no compensation shall be paid to a workman who has been laid off-

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii) (ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

Prohibition of lay-off in industries where chapter V-B is applicable-

Sec 25M (1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except 3[with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred

to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion

An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement, of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

Where an application for permission under sub-section (1) or subsection (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

Sub sec (5) provides that Where an application for permission under sub-section (1) or subsection (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

Sub sec (6) provides that An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

Sub sec (7) provides that The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-

section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

Sub sec (8) provides that Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

Sub sec (9) provides that Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

Sub sec (10) provides that the provisions of Section 25-C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation.-

For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

RETRENCHMENT:

Retrenchment is a permanent measure to remove surplus staff because of some basic change in the nature of the business. It results in a complete severance of employeremployee relationship. It is a case of involuntary unemployment to the

workman. Until 1953 there was no statutory provision in India to give immunity or protection from the risk of such involuntary unemployment. In 1953 some provisions were incorporated in the Industrial Disputes Act and in 1976 some more amendments were introduced.

Definition

Section 2(oo) of the Act defines retrenchment as termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action. But it does not include

(a) voluntary retirement of the workman;

(b) retirement on reaching the age of superannuation;

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on the expiry of the contract being terminated under a stipulation contained therein; or

(c) termination of services on ground of continued ill health

"For any reasons whatsoever":

In Sundarmany's case the bank, employed respondent as a temporary employee because the permanent cashier was away. When the permanent cashier joined duty, Sundarmany's services were dispensed with. The High Court held this was nothing but discharge of Sundarmany as surplus employee. The bank appealed before the Supreme Court and Justice Krishna Iyer gave a very wide content to the definition of retrenchment. The words "for any reason whatsoever" was interpreted to mean whatsoever be the reason every termination spells retrenchment. The Court observed that had the bank known the laws, half a month's pay would have concluded the story and the bank was ordered to reinstatement the employee.

In Hindustan Steel case, the workmen were timekeepers for a number of years on the fixed term. Their services have been extended from time to time. Later, consistent with the economic policy, the employer chose not to renew the contract. The Supreme Court held that such termination is retrenchment falling within Sundarmany's case. The Court discussed the impact of a composite order which implied the single order covering an appointment and termination of services. In cases of composite order the absence of an independent order terminating the services will not affect the coverage of retrenchment.

Above decisions were reiterated in Delhi Cloth & General Mills v Sambu Nath, which held that striking off the name of a workman from the rolls amounted to

retrenchment. In Santosh Gupta v State Bank of India 1980, the appointment of an employee of the Bank in 1973 was terminated after a year in 1974 on the ground that she did not pass the test which would have enabled her to be confirmed in the service. The Supreme Court held this as retrenchment under section 25-F. The management contended that the termination was not due to discharge of surplus labour and therefore, section 25-F and section 2(oo) would not attract. Rejecting this argument the court observed that section 2(oo) is so comprehensive to cover termination for any reason whatsoever except those not expressly included in section 25-F or not expressly approved for by other provisions of the Act such as section 25-FFF. The object of the above provisions is to compensate the workman for loss of employment, until he finds alternate employment.

Termination of casual worker's service is not retrenchment-

Termination of casual worker engaged for particular urgent work on completion of such work will not amount to retrenchment. Where the workman was engaged on casual basis without a written service contract or letter of appointment, for doing a particular urgent work, his service automatically came to an end when the work was over and there was no retrenchment. Therefore, the question of complying with the procedure for retrenchment does not arise in such case. Further, in such a case merely because the workman was required repeatedly for doing the urgent work and thus had to work for considerable time, the termination of service would not amount to retrenchment. Unlike in Sundarmany's case or in the Hindustan Steel Ltd case where the contract of employment was for a specific period that came to an end by efflux of time in terms of the agreement between the parties, the context and facts in the instant case are quite different.

Exclusion from the definition of retrenchment

1. **Voluntary retirement-** Being an act of the employee in terminating the services by abandoning or resigning from the service such as voluntary retirement will not be covered by the definition.
2. **Superannuation**-To attract termination of service on superannuation it is necessary that:-
    i. There must be stipulation on the point of retrenchment in the contract of employment between the employer and employee; and
    ii. The stipulation must be with regard to the age of superannuation. Termination of service on satisfaction of these two conditions will not

constitute retrenchment. But if such age of superannuation is not mentioned either in the contract of employment or invalid standing orders, it will not be treated as termination on superannuation under this clause

3. **Termination on non-renewal of service contract or on expiry of fixed term contract-** When the employment was for a stipulated time period under a contract then the non-renewal of the contract of employment on the expiry of the stipulated period would not amount to retrenchment.
4. **Continued ill health-**Termination owing to the continued ill health of the workman is not covered in retrenchment. Ill health contemplated not only physical but mental ill health as well. 'Continued ill health' includes any physical defect or infirmity incapacitating a workman for future work for an indefinite period. The question whether a workman is suffering continued ill health is a question of fact which may be proved or disproved on either side.

Condition for valid retrenchment

i. He is given one month's notice of it with reasons, or one month wages in lieu of such notice. Provided no such notice is necessary if it is under an agreement specifying the date of termination of service;
ii. He is paid compensation equivalent to 15 days average pay for every completed year of company's service or any part of it exceeding six months; and
iii. Notice is served on the appropriate government or on such notified authority.

Retrenchment Compensation –

Under Section 25-F(b), payment of compensation is a mandatory condition precedent for the validity and operative effect of the retrenchment. If the compensation under Section 25-F(b) is not offered within the notice period under Sec 25-F(a), such notice though initially valid would become inoperative and void and no effect could be given to the notice. Notice or wages in lieu of notice under clause (a) of Sec 25-F and payment of retrenchment compensation calculated in the manner set out in clause (b) of Section 25-F are conditions precedent for retrenchment. Hence, these clauses operate as a prohibition against retrenchment until those conditions are fulfilled.

In order to be entitled to the compensation, the workmen should have put in minimum of one year continuous service during a period of twelve calendar months; 190 days work in the underground mine or 240 days work in other cases.

Rate of compensation

Under Section 25-F (b), the workman is entitled to 15 days average pay for every completed year of continuous service, or any part thereof in excess of six months continuous service. Under the second proviso to Section 25-C the employer has right to set off any amount paid to be workman as lay-off compensation during the preceding twelve months as against the compensation payable for retrenchment. In case of death of the workman, his legal heirs are entitled to the retrenchment compensation.

Notice to the appropriate Government

Sec 25-F (c) lays down the third condition namely, to give notice of the retrenchment to the Government. However, previous notice to the government under section 25-F(C) is only directory and not mandatory. In Bombay Union of Journalists v State of Bombay17, the Supreme Court held that sec 27-F(a) and (b) are mandatory whereas under section 25-F(e) previous notice to the government will not render the retrenchment invalid. Notice under Section 25-F(e) was only to give information to the Government so as to keep informed about the conditions of employment of different industries within its region.

Remedy against violation of Section 25-F

As the right or obligation dispute pertaining to Section 25-F cannot be raised straight away in writ proceedings. The Supreme Court laid down that the remedy provided by way of making a reference under Section 10 of the Industrial Disputes Act is the exclusive remedy which should be availed of in respect of rights and obligations which are the creation of the Industrial Disputes Act itself.

The Impact of 1976 and 1984 amendment on Retrenchment

Under Section 25-N inserted by the 1976 amendment the following conditions are required for valid retrenchment, an establishment employing 100 or more workers on an average per working day in the preceding 12 months.

(i) No workman employed in such establishment shall be retrenched who has been in the company's continuous service for not less than one year until:-

(a) The workman has been given three months notice in writing stating reasons for retrenchment and the period of notice has expired or the workman has been paid wages for that notice period;

(b) No such notice is required if the retrenchment is under an agreement which specify the date of termination of service;

(c)The workman has been paid compensation equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months; and

(d) Notice in the prescribed manner has been served on the appropriate Government.

The appropriate Government on receipt of notice should hold an enquiry after which it may grant or refuse in writing the permission for retrenchment. In case the appropriate Government does not communicate the permission or the refusal within three months from the date of service of notice seeking permission, the workman is deemed to be validly retrenched after expiry of three months.

Section 25-N (7) further empowers the appropriate Government to withdraw by order of a dispute involving questions of retrenchment as well in an establishment covered by Chapter VB pending before a Conciliate officer or the Central or State Government, if the appropriate Government is of opinion that such retrenchment is not in the interest of industrial peace or that such retrenchment is by way of victimization. The Government has to transfer such dispute to an authority specified by that Government by notification in the official Gazette. The order passed by such authority is final and binding on the employer and the workman. Sec 25N(b) being mandatory, if the compensation is found to be insufficient, the retrenchment would be void ab initio in the absence of bona fide action of the employer or waiver of the workman.

Penalty:

Sec 25-Q provides punishment of imprisonment to an extent of one month, or fine up to Rs. 1,000/-, or with both for violation of the requirement of giving notice to Government and the permission thereafter under Section 25N (1)(c) or for the violation of sub-section (4) of Section 25-N of the Act.

RETRENCHMENT PROCEDURE

Section 25-G incorporates the well recognized principle of retrenchment in industrial law, namely, the “last come first go” or “first come last go.” The Section

becomes applicable only if all the conditions laid down herein are fully and cumulatively satisfied they are:-

(i) The person claiming protection should be a workman as defined in section 2(s);

(ii) He should be a citizen of India;

(iii) The "industrial establishment" employing such workman must be an "industy" under sec 2(j)

(iv) He should belong to a particular category of workmen in that establishment; and

(v) There should not be an agreement between the employer and the workman contrary to the procedure of "last come first go."

Given all the above conditions, the employer shall "ordinarily" retrench the workman who was the last person in that category. However, the employer can deviate from this procedure on justifiable reasons which should be recorded.

Last come first go

The principle of "last come first go" is statutorily incorporated in Section 25-G. If a case for retrenchment is made out, it would normally be for the employer to decide which of the employees should be retrenched. However, this rule is not intended to deny the freedom of the employer to depart from it for sufficient and valid reasons. The rule "last come first go" is intended to afford a very healthy safeguard discrimination of workmen in regard to retrenchment. The departure from the ordinary industrial rule of retrenchment without any justification, may itself, in a proper case, lead to the inference that the impugned retrenchment is the result of ulterior consideration and hence it is mala fide and may amount to unfair labour practice and victimization. The rule of 'last come first go' has to be complied with for the validity of the retrenchment.

Departure from the rule "last come first go"

The rule is that the employers shall retrench the workman who came last, first, popularly as 'last come first go'. It is not inflexible rule and extraordinary situations may justify variations. For instance, a junior recruit who has a special qualification needed by the employer may be retained even though another who is one up is retrenched. But there must be valid reason for this deviation. The burden is on the management to substantiate the special ground for departure from the rule. Section 25-G insists on the rule "last come first go" being applied category wise. This is to

say, those who fall in the same category shall suffer retrenchment only in accordance with the principle of 'last come first go'. Where the seniority list of particular workmen is the same, there is a telling circumstance to show that they fall in the same category. Grading for purposes of scales of pay and like considerations will not create new categorization. If grades for scales of pay, based on length of service, etc. are evolved, that process amounts to creation of separate categories.

Effect of departure from 'last come first go' rule

A retrenchment violating the 'last come first go' rule will be declared invalid unless such deviation is supported by valid and justifiable reasons. Normally the workman so improperly and illegally detained is entitled to reinstatement and also for payment of remuneration for the period during which the workman remained unemployed.

Re-employment of retrenched workman-Section 25-H

The rule under section 25-H provides that after effecting retrenchment, if the employer proposes to take into his employment any person. i) He shall give an opportunity to the retrenched workmen who offer themselves for re-employment; and
ii) These retrenched workmen have preference over the new applicants. Thus, Section 25-H imposes a statutory obligation on the employer to give preference to retrenched workmen when he subsequently employs any person.

Conditions to apply Section 25-H

The preferential right of employment secured by Section 25-H to a retrenched workman will be available only if the following conditions are satisfied:-

(i) The workman should have been 'retrenched' prior to the re-employment in question. In other words, if that workman's termination of employment was not due to retrenchment, but due to some other eventualities like dismissal, discharge or superannuation, etc., he cannot claim the preferential right of re-employment under this section.

(ii) He should be a citizen of India.

(iii) He should offer himself for re-employment failing which he will forfeit the right. The offer is made in response to the notice given by the employer under Rule 76 of the Industrial Disputes (Central) Rules, 1957 or corresponding State Rules.

(iv) The workman should have been retrenched from the same category of service in the industrial establishment in which the re-employment is proposed.

It is not the designation, but the nature of the work that will decide the category of the post. Thus, a workman who was designated as assistant storekeeper, but who was substantially doing clerical work was retrenched. Subsequently, the management employed three persons as clerks in that establishment. It was held that Section 25-H is violated as the retrenched workman is not given preferential re-employment.

THE LAW RELATING TO CLOSURE OF UNDERTAKING

The law relating to investigation and settlement of industrial disputes namely, the Industrial Disputes Act, 1947, originally does not contain the provisions relating to closure of an industry. The provisions relating to law of closure were inserted in the year 1957 in view of the Supreme Court judgment. Subsequently over a period of years the law relating to closure, has undergone series of amendments from time to time and thus was consolidated to the present position in the year 1982. This particular area in the law relating to investigation and settlement of industrial disputes has undergone a close judicial scrutiny starting from later seventies. It is a unique law in India unlike in any industrialized country in the world.

It is in the fitness of things that the right to security in the event of unemployment has, though late, found legislative recognition in our country. The security of employment is necessary from the point of view of the workmen as well as the industry. If a worker sticks to his job he becomes more efficient by experience and an efficient worker is sure to augment the production in the industry. The protection to workmen in India had been made possible by an amendment of the Industrial Disputes Act, 1947 in the year 1957. T

he impact of the decision of the Supreme Court in Hariprasad Shivshankar Shuka v. A.D. Diwelkar, and Barsi Light Railway Co., Ltd., v. Jogelkar, made the policy makers feel the necessity for this amendment. In Barsi Light case the Supreme Court has held that such industry workers whose services were terminated by an employer, on real and bona fide closure of business or in case of transfer of ownership of undertaking from one employer to another, were not entitled to any relief under the Industrial Disputes Act, 1947, because their case was not covered by retrenchment within the meaning of section 25-F of the Industrial Disputes Act, 1947. Taking

advantage of this judicial dictum a number of employers declared their undertakings as closed on one pretext or the other, throwing thereby a number of workmen out of employment without paying them a single penny as compensation. Therefore section 25-FFF was inserted,9 with a view to provide for involuntary unemployment, to create a sense of security in a worker and to raise the position and status of labour.

Prior to 1953 the only provision of the Act, which in those days, used the word "closure" was section 2(1) of the Industrial Disputes Act, invariably led Tribunal to hold that closure came within the ambit of the definition of "lock-out", particularly because, unlike the 1929 definition, the 1947 - definition had no restrictive qualifying clause. The Labour Appellate Tribunal, the High Courts and the Supreme Court on other hand, (impressed by the Constitutional guarantee of the right to carry on any, trade, profession business or vocation) were at pains to emphasize that lock-out was the" closing of the business itself". Realizing the difficulty of maintaining this distinction in cases of temporary closures, and even independently of such difficulty, there developed a marked tendency to enquire into the reasons for the closure, and decisions-makers entered into detailed investigation of the bona fide of management action.

Definition of Closure

According to Section 2(cc) of the Industrial Disputes Act, Closure of an industry means the permanent closing down of a place of employment or part thereof.

The term closure was used in the Act even prior to the insertion of this definition clause but was not defined as such. This led to divergence in judicial view as to when the closing down of a part of an establishment constituted closure and when it was an act of retrenchment. This controversy is resolved by the express terms of the definition clause itself. It is now made clear that closure arises even if a part of the place of employment is permanently closed down.

No industrialist will like to close down an earning industry, unless there are compelling circumstances to do so. Various kinds of situations, such as labour trouble of unprecedented nature, recurring loss, paucity of adequate number of suitable persons for the purpose of management, non-availability of raw-materials, and insurmountable difficulty in the replacement of damaged or worn-out machinery may arise in any industry, ultimately forcing its closure.

Closure in Case where chapter V-A is Applicable

Sixty days' notice to be given of intention to close down any undertaking.-

Sec 25FFA (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

(a) an undertaking in which –

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

Compensation to workmen in case of closing down of undertaking

Sec 25FFF (1) provides that Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F shall not exceed his average pay for three months.

Explanation.-

An undertaking which is closed down by reason merely of-

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on,

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this subsection. Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of Section 25-F, if-

a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;
b) the service of the workman has not been interrupted by such alternative employment; and
c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

Procedure for closing down an undertaking where Chapter V-B is applicable:

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner: Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and

adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub- section (5) be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation

which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

Penalty for closure.- Sec 25 R

(1) states that any employer who closes down an undertaking without complying with the provisions of sub-section (1) of Section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(2) Any employer who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of Section 25-O or a direction given under Section 25-P shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

Transfer of undertakings: Compensation to workmen in case of transfer of undertakings. Sec 25 FF

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched: Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if-

a) the service of the workman has not been interrupted by such transfer;
b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favorable to the workman than those applicable to him immediately before the transfer; and
c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

Notice of change Sec 9-A

No employer, who purposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

Power of Government to exempt: Sec 9-B

Where the appropriate Government is of opinion that the application of the provisions of Section 9A to any class of industrial establishments or to any class of workmen employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply, or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workmen employed in any industrial establishment.

Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.- Sec 33

During the pendency of any conciliation proceedings before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,

(a) in regard to any matter connected with dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2) no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether by dismissal or otherwise such protected workman, save with the express permission in writing of the authority before which the proceeding is pending. Explanation. For the purposes of this sub-section, a "protected workman" in relation to an establishment, means a workman, who being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five

protected workmen and a maximum number of one hundred protected workmen and for this aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application] such order in relation thereto as it deems fit:

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing extend such period by such further period as it may think fit. Provided further that, no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

Special provision for adjudication as to whether conditions of service etc. changed during pendency of proceeding. Sec 33A

Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing in the prescribed manner,-

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal, or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.

Recovery of money due from an employer: Sec 33C

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the

workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue: Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer : Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The Industrial Employment (Standing Orders) Act, 1946 was enacted to require employers in industrial establishments to define with sufficient precision the conditions of employment under them, and to make the said conditions known to workmen employed by them. The Act not only requires the employers to lay down conditions of service but also requires that the conditions of service must be clearly laid down so that there may not be any confusion or uncertainty in the minds of the workmen, who are required to work in accordance therewith.

Application of the Act:

This Act may be called the Industrial Employment (Standing Orders) Act, 1946. It extends to the whole of India. It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months:

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

Nothing in this Act shall apply to

a) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) apply; or
b) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961) apply:

Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961), the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.

Objective of the Standing Order:

There was no uniformity in the conditions of service of workers until this act was brought, which led to friction between workers and Management. An Industrial worker has the right to know the Terms & condition which he is expected to follow. The Industrial Employment (Standing Orders) Act, 1946, which, inter alia, requires

the employer to define and publish uniform conditions of employment. This is more than the HR Policy / code of conduct / handbook, of an organization. It is basically a terms on employment – Entry & Exit to the premises, Hours of work, Rates of wages, Shift schedules, Leave and Attendance, Misconduct provisions, process of termination or separation, etc.

Provisions of Standing Order regulates the conditions of employment, grievances, misconduct etc. of the workers employed in industrial undertakings. Unsolved grievances may become industrial disputes.

If the classification of employees – Temporary, Casual, Permanent, Badli, Probationary etc, can be mentioned in the draft with conditions, then it will not cause any challenges to the establishment while appointing such types of employees.

The employer of every industrial establishment is required to submit to the Certifying Officer, draft standing orders proposed by him for adoption in his industrial establishment for certification under Section 3 of the Act. The Certifying Officer is empowered to modify or add to the draft as is necessary to render the draft standing orders certifiable under the Act. It is important to note that, draft standing orders submitted to the Certifying Officer are to be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which the workmen belong

As per the provisions of the Act, the Appropriate Government is to set out model standing orders. The draft standing orders framed by an employer should as far as practicable be in conformity with model standing orders. Any industrial establishment can accept the model standing orders; the model standing orders are temporarily applicable to an industrial establishment which comes under the provisions of the Act and whose standing orders are not finally certified.

An employer who fails to submit draft standing orders or an employer who does any act in contravention of the standing orders finally certified under the provisions of the Act shall be punished with fine as specified in Section 13 of the Act.

Definition of Standing Order: Sec 2 (g)

The Industrial Employment Act, 1946 defines the meaning of 'Standing Orders' in section 2 (g). These are the rules which relate to the matters explained in the Schedule. Under this section, the employer has to make a draft of standing orders for submission to the certifying officers regarding the matters prescribed in the Schedule.

According to the Schedule annexed to the ISO, the following matters should be provided for in the standing orders of an industrial establishment:

1. Classification of workmen e.g. whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising there from.
8. Termination of employment, and the notice to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

Definition of Employer: Sec 2(d)

"Employer" means the owner of an industrial establishment to which this Act for the time being applies, and includes-

i. in a factory, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act,1948, as manager of the factory;

ii. in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;

iii. in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;

Definition of Industrial establishment: Sec 2(e)

"Industrial establishment" means

i. an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, or

ii. a factory as defined in clause (m) of Section 2 of the Factories Act, 1948, or

iii. a railway as defined in clause (4) of Section 2 of the Indian Railway Act, 1890, or

iv. the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;

Definition of Workman: Sec 2(i)

"The expression as used in this Act is the same as is used in Section 2 (s) of the Industrial Disputes Act, and includes any person including an apprentice employed in any industry to do any skilled or unskilled, manual, supervisory, technical, operational or clerical work for hire or reward whether the terms of employment are expressed or implied and includes any person who has been dismissed, discharged or retrenched in connection with an industrial dispute or where dismissal, discharge or retrenchment has led to the dispute, but doesn't include any such person:

(i) Who is subject to the Army Act, 1950 or the Air Force Act, 1950 or the Navy Act, or

(ii) Who is employed in the Police Service or as an officer of prison or

(iii) Who is employed mainly in a managerial or administrative capacity or

(iv) Who being employed in supervisory capacity, draws wages exceeding 1100 rupees per mensem.

Certifying Officer: Sec 2 (c)

"Certifying Officer" means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate

Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act.

Procedure for certification of Draft Standing order:

Submission of draft standing orders:

Sec 3 of the states that, within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in this industrial establishment. Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where Model standing orders have been prescribed shall be, so far as is practicable, in conformity with such model. The draft standing orders submitting under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong. Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

In S.K. Sheshadri v H.A.L and others, (1983) Karnataka High Court held that, as long as the Standing Orders fall within the Schedule to the Act, irrespective of the fact that they contain additional provisions which are not accounted for in the MSOs, the Standing Orders would not be deemed to be invalid or ultra vires of the Act. The MSOs only serve as a model for framing the Standing Orders.

In Hindustan Lever v Workmen, (1974) the issue relating to the 'transfer of workmen' was highlighted by concurring that, the Manager is vested with the discretion of transfer of workmen amongst different departments of the same company, so far as the terms of the contract of employment are not affected. Further, if the transfer is found to be valid, the onus of proving it to be invalid lies on the workmen in dispute.

In Management of Continental Construction Ltd. v Workmen of Continental Construction, (2003) the employer's right to terminate the service of a probationer was recognized by declaring that, if a person is an employee on probation, it is an inherent power of the employer to terminate during/ at the end of the probationary period, provided, that even while acting in accordance with the CSO, the employer's action be fair and consistent with the principles of natural justice.

Conditions for certification of standing orders:

Sec 4 provides that, Standing orders shall be certifiable under this Act if--

a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and
b) the standing orders are otherwise in conformity with the provisions of this Act ; and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Different set of Standing Orders:

Once the standing orders are certified, they constitute the conditions of the service binding upon the management and the employees serving already and in employment or who may be employed after certification." This implies that different set of standing orders cannot exist in respect of distinct sections of workmen or the employer(s), for that would frustrate the intent of the legislature by rendering the conditions of employment as indefinite & diversified, just as existed prior to the enactment of the said Act.

Certification of standing orders

The procedure for certification of Standing Order, as prescribed under Section 5 of the Act, is threefold:

1. The Certifying Officer to send a copy of the Draft Standing Order to the workmen or trade union, along with a notice calling for objections, that shall be submitted to him within 15 days of receiving such notice.
2. Upon receipt of such objections, the employer and workmen to be given an opportunity of being heard, after which the Certifying Officer shall decide and pass an order for modification of the Standing Order.
3. Finally, the Certifying Officer shall certify such Standing Order, and thereby, within seven days, send a copy of it annexed with his order for modification passed under Section 5(2).

Appeals:

Any related party aggrieved by the order of the Certifying Officer may, under sec 6, appeal to the 'appellate authority' within 30 days, provided that its decision, of confirming such Standing Order or amending it, shall be final. The appellate authority shall thereafter send copies of the Standing Order, if amended, to the related parties within seven days.

Date of operation of standing orders:

Sec 7 provides that, Standing orders shall, unless an appeal is preferred under Section 6, come into operation on the expiry of 30 days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5 or where an appeal as aforesaid is preferred, on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6.

Register of standing orders:

Sec 8 of the Act states that, a copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy there of to any person applying there for on payment of the prescribed fee.

Posting of standing orders:

Sec 9 of the Act states that, the text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

Modification or Alteration in 'standing orders'

Sec 10 of the Act provides that, Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen be liable to modification until the

expiry of six months from the date on which the standing orders or the last modifications thereof came in to operation.

Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application. The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

In the case of The Management of M/s. Gem Properties Pvt. Ltd. High Court held that "Any Standing Orders finally certified under the Act shall not except on agreement between the employer and the workmen be liable to modification until the expiry of six months from the date on which the standing orders or last modification thereof came into operation."

The object of providing time limit was to give a fair deal. Certain decided cases reveal that an application for alteration may be accepted where there is change of circumstances or the working of the certified standing orders resulted in hardship, anomaly, inconvenience or some fact not given at the time of certification or it is felt by the applicant that the alteration will be more beneficial to the concerned parties or it is found in the interest of industry/employees. The application for alteration in standing orders must be made to the certifying officer.

In the "Industrial Employment (Standing Orders) Act, 1946," only the employer was conferred upon the right to apply for modification. But the amendment in 1956, allowed both the employee and the employer to apply for modification of the standing orders. The word 'workman' in some cases led to doubt whether a trade union can also exercise this right. Therefore, to clarify this doubt, an amendment was made in 1982 which permitted not only the employer and the employees but also the representatives of the employees or the trade unions to apply for alteration of the standing orders. In case of a 'trade union' that must be registered under the Trade

Unions Act. If a minority union applies for modification that can be objected by the majority union.

Judicial Response Regarding Binding Nature and Effect of Standing Orders duly certified:

In the Act, no provision, regarding its binding nature and any effect on standing orders, has been made. Therefore, the decisions of the courts have been varying from time to time. Somewhere, the decisions show that the nature of the standing orders is binding on both the employer and the employee whereas in some cases, the court has decided that these are not binding. In the case of "Guest Keen Williams (Pvt.) the court held that, the standing orders when they were certified became operative and bound the employer and all the employees."

Again in Tata Chemicals,"the High Court held that: "the standing order when finally certified under the Act becomes operative and binds the employer and the workmen by virtue of the provisions of the Act and not by virtue of any contract between the employer and the workmen. The court added further: the rights and obligations created by the standing orders derive their force not form the contract between the parties but from the provisions of the Act. They are statutory rights and obligation and not contractual rights and obligations."

However, in the case of Co-operative Central Bank Ltd., the Supreme Court held that: "There is no specific provision in the Act dealing with the binding nature and effect of standing orders. In the absence of any provision, courts have held that a standing order certified under Industrial Employment (Standing Orders) Act is binding upon the employers and employees of the industry concerned. However, the decided case reveals that even though they are binding, they don't have such force of laws as to be binding on industrial tribunals adjudicating on industrial dispute."

Therefore, the binding nature of the certified standing orders has been a matter of controversy in a number of cases decided by the High Courts and the Supreme Court.

The Supreme Court made a departure to its decision given in the case of Guest Keen Williams (Pvt.) Ltd. v. P J Serling and held in the case of Salem Erode

Electricity Distribution Co.v. Their Employee Union with regard to the age of superannuation: "Once the standing orders are certified and come into operation, they become binding on the employer and all the workmen presently employed as also those employed thereafter in the establishment conducted by that employer. It cannot possibly be that such standing orders would bind only those who are employed after they come into force and not those who were employed previously but are still in employment when they come into force. It further said: if the standing orders were to bind only those who are subsequently employed, the result would be that would be different conditions of employment for different classes of workmen, one set of conditions for those who are previously employed and another for those employed subsequently, and where they are modified, even several sets of conditions of service depending upon whether a workman was employed before the standing orders are certified or after, whether he was employed before or after a modification is made to any one of them and would bind only a few who are recruited after and not the bulk of them, who though in employment, were recruited previously. Such a result could never have been intended by the legislature, for that would render the conditions of service of workmen as indefinite and diversified, as before the enactment of the Act."

The Supreme Court reiterated its aforesaid view in the case of Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union and held that: "Once the standing orders are certified, they constitute the conditions of the service binding upon the management and the employees serving already and in employment or who may be employed after certification."

Payment of subsistence allowance:

Sec 10 A (1) provides that where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-

(a) at the rate of fifty per cent of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary

proceedings against such workman is not directly attributable to the conduct of such workman.

If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947, within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

Certifying Officers and appellate authorities to have powers of Civil Court:

Sec 11 states that, every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths,, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973. Clerical or arithmetical mistakes in any order passed by a Certifying officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such officer or authority, as the case may be.

MISCONDUCT AND DOMESTIC ENQUIRY

According to the Schedule annexed to the Standing Order Act, the standing orders of an industrial establishment must provide for "Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct".

In the matter of: Associated Cement Co. Ltd. V/s The Workmen & Anr., (1964) 3 SCR 652, it was held that:

1) Domestic enquiries need not be conducted in accordance with the technical requirements of criminal trials, but they must be fairly conducted and in holding them, considerations of fair play and natural justice must govern the conduct of the enquiry officer.

2) If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eye-witness of the impugned incident.

3) Domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities.

4) If an officer claims that he had himself seen the misconduct alleged against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

5) It is desirable that the conduct of domestic enquiries should be left to such officers of the employer who are not likely to import their personal knowledge into the proceedings which they are holding as enquiry officers.

6) It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him.

7) It is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him.

8) It is not in right spirit that a workman is called on any day without previous intimation and is put to enquiry straightaway. Such a course should ordinarily be avoided in holding domestic enquiries in industrial matters.

9) The rule that witness should not be disbelieved on the ground of an inconsistency between his statement and another document unless he

is given a chance to explain the said document, cannot be treated as a technical rule of evidence, the principle on which this rule is premised is one of natural justice.

In Tata Oil Mills Co. Ltd. V/s Its Workmen, AIR 1965 SC 155, the Supreme Court held that, findings properly recorded in domestic enquiries which are conducted fairly, cannot be re-examined by industrial adjudication unless the said findings are either perverse, mulish, or are not supported by any evidence. In Kusheshwar Dubey V/s Bharat Coking Coal Ltd & Ors, it was observed that, it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal Court, the employer should stay the domestic enquiry pending the final disposal of the criminal case.

Punishments: Kinds of Punishments:

Following are the different types of punishment may be imposed in case of misconduct committed by the workman, namely

1) Dismissal
2) Discharge
3) With holding increments
4) Demotion to a lower grade
5) Suspension
6) Fine
7) Warning or censure

UNIT - IV

CONCEPT AND IMPORTANCE OF SOCIAL SECURITY

Like other socio-economic concepts, the connotation of the term "social security" varies from country to country with varying political ideologies. For example, social security in the socialist countries implies complete protection to every citizen of this country from the cradle to the grave.

In other countries which are relatively less regimented ones, social security refers to measures of protection afforded to the needy citizens by means of schemes evolved by democratic processes consistent with resources of the State.

In general sense, social security refers to protection provided by the society to its members against providential mishaps over which a person has no control. The underlying philosophy of social security is that the State shall make itself responsible for ensuring a minimum standard of material welfare to all its citizens on a basis wide enough to cover all the main contingencies of life. In other sense, social security is primarily an instrument of social and economic justice.

All the industrial countries of the world have developed measures to promote the economic security and welfare of individual and his family. These measures have come to be called as social security. Social security is dynamic concept and an indispensible chapter of a national programme to strike at the root of poverty, unemployment and diseases. Social security may provide for the welfare of persons who become incapable of working by reason of old age, sickness and invalidity and or unable to earn anything for their livelihood.

Definition of social security:

According to a definition given in the ILO publication', "Social security is the security that society furnishes through appropriate organization against certain risks to which its members are exposed. These risks are essentially contingencies of life which the individual of small means cannot effectively provide by his own ability, or foresight alone or even in private combination with his fellows".

William Beveridge has defined social security as "a means of securing an income to take the place of earnings when they are interrupted by unemployment, sickness or accident to provide for the retirement through old age, to provide against loss of support by death of another person or to meet exceptional expenditure connected with birth, death, or marriage. The purpose of social security is to provide an income up to a minimum and also medical treatment to bring the interruption of earnings to an end as soon as possible."

Social Security: characteristics of the social security program

The main characteristics of the social security program are as follows:

1. Social Security Schemes are providing social assistance and social insurance to employees who have to face challenges of life without regular earning due to some contingencies in their life.
2. These Schemes are implemented by enactments of law of the country.
3. They generally are relief providers to employees who are exposed to the risks of economic and social security. This protection is provided to them by members of the society of which he is a part.
4. These Schemes have a broad perspective. They not only provide immediate relief to the employees who have suffered on account of contingencies, but also provide psychological security to others who may face the same problems in times to come.

Objectives of Social Security:

The objectives of social security can be sub-summed under three, categories:

1. **Compensation:** Compensation ensures security of income. It is based on this consideration that during the period of contingency of risks, the individual and his/her family should not be subjected to a double calamity, i.e., destitution and loss of health, limb, life or work.
2. **Restoration:** It connotates cure of one's sickness, reemployment so as to restore him/her to earlier condition. In a sense, it is an extension of compensation.
3. **Prevention:** These measures imply to avoid the loss of productive capacity due to sickness, unemployment or invalidity to earn income. In other words, these measures are designed with an objective to increase the material,

intellectual and moral well-being of the community by rendering available resources which are used up by avoidable disease and idleness.

Importance of Social Security

Social security is basically related to the high ideals of human dignity and social justice.

The importance of social security for the employee as well as the society is incredibly high:

a) Social Security is the main instrument of bringing about social and economic justice and equality in the society.
b) Social Security is aimed at protecting employees in the event of contingencies. This support makes the employees feel psychologically secured. This enhances their ability to work.
c) Money spent on social security is the best investment which yields good harvest. The workforce maintenance is very essential not only for the organization but also for the country at large.
d) In a welfare state, social security is an important part of public policy. In countries where social security is not given adequate consideration in public policy, the government remains unsuccessful in maintaining equality and justice.

India is a Welfare State as envisaged in her constitution. Article 41 of the Indian Constitution lays down, "The State shall within the limits of its economic capacity and development make effective provision securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, and disablement and other cases of unserved wants."

Thus, social security constitutes an important step towards the goal of Welfare State, by improving living and working conditions and affording people protection against the various kinds of hazards.

Social security benefits are provided in India through legislations. Workmen's Compensation Act, 1923 enforces the employer to provide compensation to a workman for any personal injury caused by an accident, for loss of earnings etc. The Employees' State Insurance Act, 1948 enforces the employers to provide sickness benefits, maternity benefit to women employees, disablement benefit, dependent's benefit, funeral benefit and medical benefits.

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 enforces the employer to provide provident fund, deposit-linked insurance etc. The Maternity Benefit Act, 1961 provides for medical benefits, maternity leave etc. The Payment of Gratuity Act, 1952 provides for the payment of gratuity at the time of retirement.

Social security legislations in India suffer from the defects like duplication. For example. Employees' State Insurance Act and Maternity Benefit Act provide for maternity benefits. In addition, different administrative authorities implement the law, resulting from overlapping. Hence, the Study Group (1957-58) appointed by the Government of India suggested an integrated social security scheme in India.

This integrated social security scheme should provide for medical care, insurance against sickness, maternity benefits unemployment insurance, employment injury, and old age pension. This scheme should be enforced by a single agency in order to avoid overlapping and duplication.

India is a welfare state and social security is an essential component of government policy.

Social security benefits in India are provided in two major way:

1. **Social Insurance:**

In this scheme, a common fund is established with periodical contributions from workers, according to their nominal paying capacity. The employers and state provide the portion of the finance. Provident fund and group insurance are example of this type.

2. **Social Assistance:**

Under this, the cost of benefits provided is financed fully by the government without any contributions from workers and employers. However, benefits are paid after judging the financial position of the beneficiary. Old age pension is an example.

Influence of I.L.O.

United Nation and ILO have made many efforts regarding social security at international level by number of Conventions and Recommendations. ILO takes part in vocational training, women workers conditions and social security for improving the working conditions of workers at international level. A number of recommendations and conventions deal with workmen's compensation, sickness insurance, invalidity, old-age, and survivor's insurance , unemployment provisions,

maternity protection and general aspects of social security.32 ILO deals with following social security areas and activities at international level:

1. **Manpower Organization and Vocational Training:**

The ILO as well as the United Nations made concerted efforts in the post second world war period in the manpower field to stimulate the most effective and productive use of human resources in the whole process of economic and social development. The ILO manpower experts have been made available to developing countries seeking help in assessing their manpower needs and in organizing vocational training programmes for meeting skill shortage.

2. **Women Workers:**

The ILO constitution specifically provides for the protection of women workers. The first Session of the International Labour Conference held in Washington in October 1919, adopted international standards protecting expectant mothers and limiting the amount of night work by women. In 1937, the Conference laid down the ILO's aims in regard to women workers, namely

a) the guarantee of all civil and political rights;
b) full opportunities to improve their education;
c) better conditions for finding employment;
d) equal pay for equal work;
e) legal protection against dangerous working conditions;
f) legal maternity protection; g. the same trade union rights as that of men.

3. **Social Security:**

The ILO has done the pioneering work in the field of social security. One of the most important instruments adopted by the ILO is the Social Security (Minimum Standards) Convention, 1952. Currently, the organization's main object is to extend social security to agriculture and plantation workers.33 ILO also established the International Social Security Association (ISSA). The ILO is the UN's agency with a mandate to improve standards , conditions and social security of workers throughout the world. The ILO's most important function is to adopt Conventions and Recommendations, which set minimum labour standards internationally. The

principles embodied in the conventions, if adopted and ratified, impose a duty to comply on the ratifying states.

International Conventions Relating to the Social Security:

The ILO Conventions have been greatly adored by the working class all over the world for their beneficial, humanitarian and missionary influence. The principal means of action in the ILO is the setting up the International Labour Standards in the form of Conventions and Recommendations. Conventions are international treaties and are instruments, which create legally binding obligations on the countries that ratify them.

ILO has number of Conventions relating to social security of workers Main Conventions are given below—

Workmen's Compensation (Accidents) Convention, 1925:

The ILO adopted Convention relating to workmen's compensation as early as 1921 followed by other conventions on the same subject in the year 1925. It provides for the payment of compensation for employment injury to all employees except those employed in agriculture, ships and fishermen. Each Member of the International Labour Organization which ratifies this Convention undertakes to ensure that workmen who suffer personal injury due to an industrial accident, or their dependants, shall be compensated on terms at least equal to those provided by this Convention.

Workmen's Compensation (occupational diseases) Convention, 1925:

The list of occupational diseases established in the international and national legal system has played important roles in both prevention and compensation for workers' diseases. Since the first establishment of the ILO list of occupational diseases in 1925, the list has played a key role in harmonizing the development of policies on occupational diseases at the international level.

Migration for Employment Convention (Revised), 1949:

This Convention was revision of the Migration for Employment Convention, 1939 and was held on June 8, 1949. Each Member of the International Labour Organization for which this Convention is in force undertakes to make available on

request to the International Labour Office and to other Members information on national policies, laws and regulations relating to emigration and immigration; information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment information concerning general agreements and special arrangements on these questions concluded by the Member. Members are required to establish, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

Equal Remuneration Convention, 1951:

This Convention was held on June 6, 1951 at Geneva and decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value. The purpose of this Convention is that the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment and rates of remuneration established without discrimination based on sex. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

The Social Security (Minimum Standards) Convention, 1952:

It covers all nine branches54 of social security and sets minimum standards for these nine branches. It is considered as a tool for the extension of social security coverage and provides ratifying countries with an incentive for doing so by offering flexibility in its application, depending on their socio-economic level. It came into force on April 27, 1955. By May 2009, 44 countries had ratified the Convention. The

Convention has been ratified by India in 1964. The 1952 ILO Convention on Social Security (Minimum Standard) has divided social security into nine components:

a) Medical care: It covers pregnancy, confinement, and its consequences and any disease which may lead to a morbid condition. The need for pre-natal and post-natal care, in addition to hospitalization, was emphasized. A morbid condition may require general practitioner care, provision of essential pharmaceuticals and hospitalization.

(b) Sickness benefit: It includes incapacity to work following morbid condition resulting in loss of earnings. This calls for periodical payments based on the convention specification. The worker need not be paid for the first three days of suspension of earnings and the payment of benefit may be limited to 26 weeks in a year.

(c) Unemployment benefit: It covers the loss of earning during a worker's unemployment period. When he is capable and available for work but remains unemployed because of lack of suitable employment. This benefit may be limited to 13 weeks payment in a year, excluding the first seven days of the waiting period.

(d) Old-age benefit: This benefit provides for the payment-the quantum depending upon an individual's working capacity during the period before retirement of a certain amount beyond a prescribed age and continues till death.

(e) Employment injury benefit: It covers the following contingencies resulting from accident or disease during employment:

i. Inability to work following a morbid condition, leading to suspension of earning;
ii. Total or partial loss of earning capacity which may become permanent;
iii. Death of the breadwinner in the family, as a result of which family is deprived of financial support. Medical care and periodical payment corresponding to an individual's need should be available.

(f) Family benefit: It means responsibility for the maintenance of children during an entire period of contingency. Periodical payment, provision of food, housing, clothing, holidays or domestic help in respect of children should be provided to a needy family.

(g) Maternity benefit: This benefit includes pregnancy, confinement and their consequences resulting in the suspension of earnings. Provision should be for medical care, including pre-natal confinement, post-natal care and hospitalization if necessary. Periodical payment limited to 12 weeks should be made during the period of suspension of earnings.

(h) Invalidism benefit: This benefit, in the form of periodical payments should cover the needs of workers who suffer from any, disability arising out of sickness or accident and who are unable to engage in any gainful activity. This benefit should continue till invalidism changes into old age, when old age benefits would become payable.

(i) Survivor's benefit: It means periodical payments to the family following the death of its breadwinner and should continue till the entire period of contingency. The role of the International Labour Organization in creating international standards of social insurance and in the promotion of social security has been significant. Through its Conventions and Recommendations, the ILO has exerted its influence to extend the range and classes of persons protected and the contingencies covered, and has improved the efficacy of the benefits assured.

Discrimination (Employment and Occupation) Convention, 1958:

The General Convention of ILO convened this Convention on June 4, 1958 at Geneva. The main objective of this convention is that there shall be no discrimination in the field of employment and occupation, and Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights. Each Member for which this Convention is in force shall undertake and practice the following by methods appropriate to national conditions –

a. to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

b. to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
c. to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
d. to pursue the policy in respect of employment under the direct control of a national authority;
e. (e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
f. to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

The Equality of Treatment (Social Security) Convention, 1962:

It has decided upon the adoption of certain proposals with regard to equality of treatment of nationals and non-nationals in social security. The General Conference of the International Labour Organization, having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-sixth Session on 6 June 1962, and decided upon the adoption of certain proposals with regard to equality of treatment of nationals and non-nationals in social security. By May 2009, 37 countries had ratified the Convention.

The Employment Injury Benefits Convention, 1964:

It applies to employment injury benefits to the workers. This Convention provides for payment of cash and medical benefits in cases of employment injury and at least 75% of expenses involved for all employees. The General Conference of the International Labour Organization, convened at Geneva by the Governing Body of the International Labour Office, had decided upon the adoption of certain proposals with regard to benefits in the case of industrial accidents and occupational diseases, By May 2009, 24 countries had ratified this Convention. A Member State whose economic and medical facilities are insufficiently developed may avail itself by a declaration accompanying its ratification of the temporary exceptions provided for in the Articles.

The Invalidity, Old-Age and Survivors' Benefits Convention, 1967 and the Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967

It covers old-age benefit, invalidity benefit and survivor's benefit. The coverage for payment of compensation in case of invalidity, death or old age is 50% for industrial employees, 25% for all employees including agriculture. This Convention has got parts namely; General provisions, invalidity benefit, old-age benefit, survivals benefit, standards to be complied with by periodical payments, common provisions, miscellaneous and final provisions. It has total 54 Articles. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of one or more of Parts II to IV not already specified in its ratification.

Occupational Safety and Health Convention, 1981

The General Conference of the International Labour Organisation, convened this Convention at Geneva on June 3, 1981 and decided certain proposals with regard to safety and health and the working environment for the workers. This Convention applies to all branches of economic activity. It covers all branches in which workers are employed, including the public service. The term workers covers all employed persons, including public employees.

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983:

The General Conference of the International Labour Organization, convened at Geneva by the Governing Body of the International Labour Office on June 1, 1983, and noting the existing international standards contained in the Vocational Rehabilitation (Disabled) Recommendation, 1955, and the Human Resources Development Recommendation, 1975, and since after the adoption of the Vocational Rehabilitation (Disabled) Recommendation, 1955, significant developments have occurred in the understanding of rehabilitation needs. The scope and organization of rehabilitation services, and the law and practice of many Members on the questions covered that Recommendation. The year 1981 was declared by the United Nations General Assembly, the International Year of Disabled Persons, with the theme "full

participation and equality" and that a comprehensive World Programme of Action concerning Disabled Persons is to provide effective measures at the international and national levels for the realization of the goals of "full participation" of disabled persons in social life and development. These developments made it appropriate to adopt new international standards on the subject which take account, in particular, of the need to ensure equality of opportunity and treatment to all categories of disabled persons, in both rural and urban areas, for employment and integration into the community.

The Employment Promotion and Protection against Unemployment Convention, 1988 and the Employment Promotion and Protection against Unemployment Recommendation, 1988:

It relates to unemployment benefit. It is a revision of the Unemployment Provision Convention of 1934. It provides standards in the field of employment and unemployment protection, notably for the promotion of full, productive and freely chosen employment, the principles of equality of treatment and non-discrimination, the methods of providing unemployment benefit.

Safety and Health in Mines Convention, 1995:

According to this Convention workers have a need for, and a right to, information, training and genuine consultation on and participation in the preparation and implementation of safety and health measures concerning the hazards and risks they face in the mining industry, and recognizing that it is desirable to prevent any fatalities, injuries or ill health affecting workers or members of the public, or damage to the environment arising from mining operations, and the need for co-operation between the International Labour Organization, the World Health Organization, the International Atomic Energy Agency and other relevant institutions and noting the relevant instruments, codes of practice, codes and guidelines issued by these organizations and Having decided upon the adoption of certain proposals with regard to safety and health in mines.

The Maternity Protection Convention, 2000 and the Maternity Protection Recommendation, 2000

This Convention revised a 1952 ILO Convention (C103), which in turn was a revision of the original 1919 ILO Convention (C3). The revision was aimed at gaining more ratification by easing the requirements of the 1952 convention. It covers maternity benefit to women workers. This Convention provides comprehensive protection to pregnant working women in case unemployment is due to child birth. By May 2009, 17 countries had ratified the Convention.

Safety and Health in Agriculture Convention, 2001:

The purpose of this Convention was to wider the term agriculture. According to this Convention agriculture covers agricultural and forestry activities carried out in agricultural undertakings including crop production, forestry activities, animal husbandry and insect raising, the primary processing of agricultural and animal products by or on behalf of the operator of the undertaking as well as the use and maintenance of machinery, equipment, appliances, tools, and agricultural installations, including any process, storage, operation or transportation in an agricultural undertaking, which are directly related to agricultural production. The term agriculture does not cover subsistence farming; industrial processes that use agricultural products as raw material and the related services; and the industrial exploitation of forests.

The Maritime Labour Convention, 2006:

The Maritime Labour Convention, 2006 is an international labour Convention adopted by the International Labour Organization (ILO). It provides international standards for the world's first genuinely global industry. Widely known as the "Seafarers' Bill of Rights," was adopted by government, employer and workers representatives at a special ILO International Labour Conference in February 2006. It is a unique feature of this Convention as it aims both to achieve decent work for seafarers and to secure economic interests through fair competition for quality ship owners.

Work in Fishing Convention, 2007:

This Convention addresses such matters as minimum age for work on a fishing vessel, medical standards, work agreements, occupational safety and health, and social security.

Domestic Workers Convention, 2011:

Recognizing and considering the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries, and considering that domestic work continues to be undervalued and invisible is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights.

EMPLOYEES COMPENSATION ACT, 1923

Every employee needs a secured job and wants to get compensation for the expenses he has incurred. This is a requirement that needs to be fulfilled by the company whether it is small scale or large scale. After all, a company's success depends on its employees. Therefore, the protection of employees' and their safety is a top priority of a company. This article is all about how much compensation is given, under what conditions, who is entitled to claim compensation and a lot more.

Characteristic features of the Act

The "Employees Compensation Act, 1923" is an Act to provide payment in the form of compensation by the employers to the employees for any injuries they have suffered during an accident. Earlier this Act was known as the Workmen Compensation Act, 1923. When the employer is not liable to pay compensation-

1. If the injury does not end in the entire or partial disablement of the employee for a period exceeding three days.

2. If the injury, not leading in death or permanent total disablement, is caused by an accident which is directly attributable to:

- The employee having at the time of the accident is under the influence of drink or drugs;
- The willful disobedience of the employee to an order if the rule is expressly given or expressly framed, for the purpose of securing the safety of employees; or
- The willful removal or disregard by the employee of any safety guard or other device which has been provided for the purpose of securing the safety of employees.

Nature of Liability

Imagine what will happen if an employee who is working putting in great benefits gets to know that he/she will not be getting any benefits. After all, people tend to do something to get something in return. When the principle of vicarious liability is applied, the employer is liable to pay compensation irrespective of his/her negligence. Employer anticipates it as damages payable to the employees but it is actually a relief for them. An Employer becomes liable when employees have sustained injuries by any accident or unavoidable situations during the course of employment. The question arises: Will an employee who is a part-time worker would still be entitled to the benefits of the Act? Yes, the employer will still get the benefits of the Act.

Who may get the compensation? To what extent the employers are liable?

To be eligible for the Employees' Compensation Act's benefits there are some requirements which need to be fulfilled:

1. You must be an employee of the Company or Organization.
2. You must have been injured at the workplace or the job was as such that you have been injured.

Doctrine of added peril

When an employee performs something which is not required in his duty, and which involves extra danger, the employer cannot be held liable to pay compensation for the injuries caused. In Devidayal Ralyaram v. Secretary of State it was ruled that

the doctrine of added peril was used as defense and the employer was not liable for the compensation.

Adjudication of Compensation

The adjudication is done by the commissioner in calculation of the amount of compensation. The quantum of compensation is calculated from the date of the accident.

Self-inflicted Injury

If a worker inflicts an injury to himself or herself it is a self-inflicted injury. The injury may be intentional or accidental but the employer is not liable for such injuries. There are some types of jobs that have a high risk for self-inflicted injuries which include-

- Law enforcement
- Medical employees
- Farmers
- Teachers
- Salespeople

Contributory negligence

Employees owe a duty to their employers to carry out their work with reasonable care so as to avoid accidents and injury. Employers are vicariously liable for the negligence of their employees but are entitled to claim a contribution or indemnity from their negligent employee in appropriate circumstances. So if there is negligence on the part of both employee and the employer then the employer will be liable to pay compensation to the extent of his own negligence, not of the employee. Hence, the compensation amount may reduce as the employer will not be liable for the negligence of the employee.

Employer's liability for Compensation Section 3:

There are certain occupations which expose employees to particular diseases that are inherent-

- Infra-red radiations;
- Skin diseases due to chemical or leather processing units;
- Hearing impairment caused by noise;

- Lung cancer caused by asbestos dust and Diseases due to effect of extreme climatic conditions.

For Example in Miners are at a risk of developing a disease called silicosis. Sometimes miners also develop lung diseases due to exposure to dust. The people who work in agricultural lands, develop diseases through spraying of pesticides. These pesticides are toxic in nature and are health hazards to many farmers.

There are thousands of workplaces where occupation itself is dangerous in nature. Provided that the employer shall not be liable:

a. if any injury does not result in the total or partial disablement of the employee for a period exceeding three days;
b. if any injury does not result in death or permanent total disablement caused by an accident which is directly attributable to-
    i. if the employee is under the influence of drink or drugs at that time,
    ii. the willful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees,
    iii. the willful removal by the employee of any safety guard or other devices which he knew to have been provided for the purpose of securing the safety of employees.

Part A of Schedule III

If an employee contracts any disease that is mentioned in occupational diseases or the employee is employed for a continuous period of six months (this does not include the service period) and not less than that, the employer shall not be liable to pay the compensation as the disease will be deemed to be injury and it shall be considered as out of course of employment.

Part B of Schedule III

1. Diseases caused by phosphorus or the toxic substance present, all include exposure to risk concerned.
2. Diseases caused by mercury or toxic substances found exposure to the risk concerned.

3. Diseases caused by benzene or the toxic substances found which pose risk to the concerned.
4. Diseases caused by nitro and amino toxic substances of benzene involve risk to the concerned.

These diseases are considered occupational diseases, and they are deemed to be out of the course of employment and therefore the employer will not be liable to pay the compensation.

Part C of Schedule III

If an employee contracts a disease that is mentioned as an occupational disease which is specific to that employment, during a continuous period that is less than the period mentioned under this part of Schedule 3 is known as occupational diseases. It will be deemed that the disease has arisen out of and in the course of the employment, the contracting of such disease will be deemed to be an injury by accident within the meaning of this Section:

Pneumoconiosis is a disease caused by sclerogenic mineral dust (silicosis, anthracosilicosis, asbestosis) and silico-tuberculosis if silicosis is an essential factor in causing the resultant incapacity or death, such diseases are considered as occupational diseases.

For instance, an office of KLM Consultant was located in a new place. The new place had large areas, and a new wallpaper was also placed, the area painted, and a new carpet was also laid. Employees worked in cubicles. However, within a month of shifting, one of the employees, Rahul Sharma complained of skin allergy. At the new workplace, there were no windows in the cubicle where Rahul had shifted. A photocopy machine was near to his cubicle. Since his shifting, he started complaining of unpleasant odors, a feeling of excessive tiredness and irritation in eyes, nose, and throat. Also, some paint boxes were kept at the office which was still not removed even after his complaining. He also complained about the increasing noise and distraction there. The rashes which started a week ago with itching and redness now turned more grievous and had spread from the initial location of the hand to surfaces of the wrists. Due to his allergic condition, Rahul had to visit a doctor who advised

him to avoid going out. As Rahul had to incur expenses on visiting the doctor and medicines, he approached his employer for compensation.

The company had bought a workplace compensation insurance policy from the insurance company. The Company KLM Consultant considered it as an occupational disease and approached the employee's compensation insurance company to recover its legal liability and hence pay the compensation to Rahul.

After checking all the documents submitted by Rahul, the insurer considered it as an occupational disease and agreed to settle the claim. The insurer covered medical expenses incurred by Rahul on his treatment.

Under Section 3(3) The Central Government or the State Government gives a notification in the Official Gazette which species the diseases which will be deemed to be occupational diseases under the provisions of sub-section(2) and in the case of notification by the state government, these diseases are declared by the Act. Section 3(4) No compensation will be payable to an employee unless the disease is directly attributable to a specific injury that arises out of or in the course of employment.

Employment

Underemployment, an employee is one who works under the employer and has to work as per the terms of the company or the employer.

Personal injury

A personal injury can be compensated only in some circumstances. Injury sustained by the employee must be a physical injury. In the case of Richmond Adult Community College v McDougall (2008), M has suffered injuries mentally, psychological disorders as he was offered a job as a database assistant in a college. But when it learned about the medical history and the psychological disability M was suffering from, the college withdrew the offer. M brought a disability discrimination claim from the college. The tribunal accepted that m was suffering from mental impairment but she was not disabled within the meaning of Section 1 of the Disability Discrimination Act, 1995.

Accident

The Act provides that compensation is provided to employees and their dependants only if the injuries from the accident includes occupational diseases. The

accident must occur in the course of employment the Act also applies to railway servants and persons employed in any such capacity as specified in Schedule 2 of the Employees Compensation Act. The people employed in factories, mines, plantations, vehicles, construction works, and certain other hazardous occupations come under Schedule II.

A fatal accident is one where there is death or a high risk of loss of life of the employee. In the case of a fatal accident, the employee might die or suffer severe disablements and injuries. On the other hand, non-fatal accidents are those accidents that do not have a high probability of death. In the case of non-fatal accidents, the employee or the workman might suffer disabilities or any type of personal injury.

Both fatal and non-fatal accidents are covered by the Employees Compensation Policy, provided such accidents result in the mentioned contingencies in the act. Fatal accidents are taken as those which result in death, or permanent total disablement, permanent partial disablement or fatal injuries. If any of these contingencies occur, the employees' compensation policy would pay the claim faced by the company. In the case of non-fatal accidents though, the covered contingencies might not occur. The employee or worker might not face any type of disablement or injury from such accidents. If the employee or workman suffers from a type of disablement and the disablement does not last for more than 3 days, the claim would not be paid. As a result, in several employees' compensation policies, non-fatal accidents are usually not covered unless they cause a disablement which lasts for more than 3 days.

In Lister v Romford Ice and Cold Storage Company Limited, House of Lords upheld the decision of the Court of Appeal that an employee owed a duty in contract to his employer to take reasonable care in the use of a vehicle at work. In the event that the employer was liable to pay damages arising from the employee's negligence, the employer could bring a claim to recover that loss from his employee.

Arising out of and in the course of employment

Three factors determine whether the act is arising out of or in the course of employment:

1. When the injury occurred, the employee must have been engaged in the business of the employer. Also, he must not be doing something for his personal benefit.
2. The accident must occur where the employer was performing his duties.
3. The injuries occurred because of the risk incidental to the duties of the work or services or if the nature or condition of employment is inherent.

Notional extension of Employer's Premises

When there is a causal connection between the accident and the place where the employee is working, compensation is payable for the disability or death of the person according to the Employees Compensation Act. This is the Doctrine of Notional Extension of the workplace. The theory of this doctrine was executed in some cases:

Moondra & Co. V/s Mst. Bhawani there was a truck driver who was told by his employer to drive a petrol tanker. The driver found a leak in the tank and sought permission from the employer to look for the source of the leakage. While searching he lit a matchstick and the tank caught fire. The driver received burn injuries and died. It was held by the court that the family members of the deceased would be entitled to compensation since the accident took place at the workplace and in the course of employment.

Willful disobedience of orders or safety devices, etc.

If the employee disobeys the order expressly given or denies to obey any rules. The rules are made for the safety of the workmen but if they disobey the accident might happen. The accident can take place if the employee willfully disregards the safety guards or any other device. If the employee knew that he has been provided safety for the purpose of securing employees and still disregards it is said to be done willfully.

Compensation under Agreement

A compensation agreement ensures that an individual will get paid for the services he or she has provided to a company as an employee. A compensation agreement ensures that an individual will get paid for the services he or she provides to a company as an employee.

The question of compensation and negligence of employee

The question of compensation and negligence of employees is explained above in contributory negligence. When there is negligence on the part of the employer and employee, the employer is liable to pay compensation only to the extent of his negligence. He will not be liable to pay the full amount of compensation. So in the case of negligence of the employee, he will get only a part of compensation.

Alternative Remedy under Section 3(5)

Any right to compensation cannot be conferred by an employee in respect of injuries,if he has instituted a suit for damages in a civil court, in respect of any injury against any employer. No suit for damages shall be maintainable by an employee in any court of law.

Liability of Insurance Company

If any claim is due to the insurance company, the company cannot escape liability arising out of claim simply because notice was not issued to the company. For instance, if a notice is issued to the owner of the vehicle it is sufficient to get insurance from the company. In the case of Ram Karan v. Vijayanand the petition was filed by Ram Karan under section 482 of the code of criminal procedure because he had been illegally deprived of the benefits of the premature release. It was a violation of Articles 14, 19 and 21 of the Constitution of India. It was held that he was entitled to be released as per the rules.

Liability of Insurance Company or owner of vehicle

The question is whether the insurance coverage is available to the insured employer-owners? The owner of motor vehicles, in relation to their liabilities under the Employment Compensation Act on account of motor accident injuries caused to their employees would include additional statutory liability foisted on the insured employers under Section 40 of the Compensation Act.

Amount of compensation Section 4

1. **Where death results from the injury-**In case the employee dies, an amount equal to fifty percent of the monthly wages multiplied by a factor as per given in the Schedule 4 of the act or rupees eighty thousand is given whichever is more.
2. **Where permanent total disablement results from the injury-** In case the employee has total disablement the amount given is sixty percent or rupees ninety thousand whichever is more.
3. **Where permanent partial disablement results from injury-** In the case of permanent partial disablement, the compensation provided is equal to disability as sixty percent or rupees ninety thousand.

Compensation to be paid when due and penalty for default Section 4-A

When the employer does not accept liability for compensation to the extent claimed, he shall be bound to make a payment may be provisional and such payment shall be deposited to the employee or the commissioner. The commissioner can direct the employer to pay interest in addition to the amount at the rate of twelve percent per annum. The rate of interest can also increase which may be specified by the Central Government.

Method of calculating Wages Section 5:

The basis for the calculation of compensation is the monthly wage system. It means the amount of wages deemed to be payable for a month. A case dealing with the method of calculating wages was Zubeda Bano v. Maharashtra Road Transport Corporation, 1990. Batta does not amount to wages for computing compensation. It is

paid to workman per day to cover special expenses incurred by him due to the nature of his work.

Another case was New 'India Assurance Co. Ltd., Hyderabad v. Kotam Appa Rao, 1995, when the employer has been giving service to the employer during a continuous period of not less than twelve months preceding the accident, and when the employer is liable to pay compensation, the employee will be liable one-twelfth of the total wages. The employer is required to pay the compensation which is due for payment to employees in the last twelve months of that period.

Review Section 6:

1. Any half monthly payment can be reviewed by the commissioner under this act if there is an agreement between the parties or if there is an order given by the commissioner. A certificate of a qualified medical practitioner will be accompanied that there is a change in the condition of the employee subject to the rules and regulations under the Act.
2. Any half monthly payment may be reviewed, can be continued, increased, decreased or ended under the act or if the accident is found which resulted in permanent disablement. Such an employee may get less amount because he had already received by way of half monthly payments.

Communication of Payments Section 7:

Commutation of half- monthly payments- Any right to receive half- monthly payment agreement between the parties is commutation of payments. If the parties do not agree and the payment continues for not less than six months then on the application of either party, the Commissioner will redeem the payment of a lump sum amount which was agreed by the parties.

Distribution of Compensation Section 8:

Rights of heirs of dependents

1. Compensation will not be provided to the employee whose injury has resulted in death and lump sum payment will also be not provided who is

under a legal disability. The compensation may be deposited to the commissioner and a direct payment will not be allowed by the employer to the employee.

2. In the case of a deceased employee, an employer can make payment to any dependant advances. The compensation will amount to equal to three months' wages of the employee and the amount shall not exceed the compensation payable to the dependant. If the amount exceeds, it may be deducted by the commissioner from the compensation and repaid to the employer.
3. An amount not less than ten rupees which is payable may be deposited with the commissioner on behalf of that person.
4. The receipt of the commissioner will be sufficient discharge of the amount if any compensation is deposited with him.
5. When any compensation is deposited with the commissioner and he is payable to any person, he may if the person to whom the compensation is to be payable is not a woman or a person with a legal disability then he may pay the money to the person who is entitled to get the compensation.
6. When any lump sum amount is deposited with the commissioner and he is payable to a woman or a person who is legally disabled, such amount can be invested for the benefit of any other woman or a person with a disability. The commissioner may direct the amount in such cases.

Compensation not to be assigned, attached or charged Section 9:

Compensation not to be assigned, attached or charged, save as provided by this Act, no lump sum or half- monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Notice and claims of the accident Section 10:

A claim for compensation cannot be entertained by a commissioner unless the notice of the accident is given in a certain manner.

Power to acquire statements from employers regarding fatal accidents Section 10A:

When a commissioner receives information about the death of an employee, because of an accident that is arising out of or in the course of employment, he can send a registered post or a notice to the employer of the employee, to submit a notice within thirty days of service. The statement or notice shall be in a prescribed form mentioning the circumstances under which the death took place. Also stating that whether the employer is liable or not to deposit compensation on the death of the employee.

Reports of fatal accidents and serious bodily injuries Section 10B:

A notice is required to be given to any authority when any law is in force for the time being, if any accident occurs on the premises of the employer which results in the death of employee or serious bodily injury the person on behalf of employer is required to give a notice within seven days of the death. This person shall send a report to the commissioner giving details of the death or serious bodily injury. It will be done only when it is provided by the state government that instead of sending the report to the commissioner it is sent to another authority to whom a notice can be given. “Serious bodily injury” means injury to a limb or permanent loss of sight or hearing or fracture of limbs or the insured person is absent from work for more than twenty days.

Medical Examination Section 11:

When an employee brings to the notice that he has met with an accident, before the expiry of three days he will be examined free of charge by a qualified medical practitioner. If the employee refuses to submit himself or herself for examination or in any way obstructs the same, his right to compensation shall be suspended. If the employer voluntarily leaves without having been examined in the place where he is employed, his right to compensation shall be suspended until he returns and offers himself for examination.

The incorporation of words "assessment of loss of earning capacity by the qualified medical practitioner" in Section 4(1)(c)(ii) has some purpose and it is not a case of ambiguity.

If there's no provision that the Commissioner to see the compensation and he ignores the medical practitioner's report, there is no question of avoiding it by Commissioner unless he desires a second report from the Medical Board; New Asian nation Assurance Co. Ltd. v. Sreedharan, 1995.

Contracting Section 12:

When a person (principal) is in the course of some business or trade, with any other person (contractor) for the execution of any work, the principal will be liable to pay the amount to the employee who has been employed in the business. The principal is liable because compensation has to be claimed from the principal and the amount of wages will be calculated by the employer.

When the principal will be liable to pay he will be indemnified by the contractor or any other person from whom the employee can claim compensation. The agreement between the principal and the contractor about the right amount and indemnity will be settled by the commissioner.

If the accident occurred at a different place that is either on the premises of the workplace or any other place, the employee will not be able to recover compensation from the employer. Other than this no other constraint is there and employees can recover compensation from the contractor instead of principal.

Remedies of employer against a stranger Section 13:

When an employee recovers compensation as he suffered any injury and creates a legal liability of some other person other than the person by whom the compensation was paid, the other person will be entitled to be indemnified by the person who is liable to pay damages.

Insolvency of employer Section 14:

1. When an employer enters into a contract with any insurer in respect of any liability to an employee, and if the employer becomes insolvent or makes a composition or scheme or arrangement with his creditors in this event the company is insolvent. The employee can recover the amount of compensation if the company is winding up and it is the case of insolvency.
2. If in any case in the case of insolvency, the contract of the employer with the insurer is void or voidable due to any reason such as non compliance on the part of the employer, if the contract is not void or voidable the insurer may be entitled to prove in the proceeding or at the time of liquidation for the amount to be paid to the employee.
3. In case the liability of the insurer to the employee is less than the liability of the employer to the employee, the employee may prove for the balance amount of the compensation in the insolvency proceedings or at the time of liquidation.
4. When the compensation is a half monthly payment, the amount due for the said purpose will be taken in a lump sum amount. The amount payable will be half monthly payment, if it be could be redeemable it will be proof.
5. The insolvency of the employer shall not be applied where a company has wound up voluntarily merely for purposes of reconstruction of the company or amalgamation with another company.

Compensation to be first charge on assets transferred by Employer Section 14-A:

When an employer transfers his assets or property before any amount is due to him in respect of any compensation, and the liability accrued is now before the date in law it is the first charge on that part of the assets or property so transferred as it consists of immovable property.

Special provisions relating to Masters and Seamen Section 15:

When the person injured in the aircraft is the master of the ship and he is the employer, but the accident happened and commenced on the ship, it is not necessary

for the seaman to give any notice of the accident for compensation for the injuries suffered.

In such cases the death of the seaman or the master, the claim for compensation may be made within one year without the notice after the news of death is received by the claimant. Also if the ship is deemed to have been lost, within eighteen months of the date on which the ship was or is deemed to have been lost.

Special provisions relating to captains and other members of the crew of aircrafts Section 15-A:

If the captain of the aircraft is serving and he is the employer but an accident occurs, any crew member or the captain it is not necessary for any crew member to give notice of the accident.

In such cases the death of the seaman or the master, the claim for compensation may be made within one year without the notice after the news of death is received by the claimant. Also if the ship is deemed to have been lost, within eighteen months of the date on which the ship was or is deemed to have been lost.

When an injured captain or any other crew member of the aircraft or the ship is discharged from any depositions or testimony of a witness is taken by a judge or magistrate the central government or any state government may enforce any proceedings on the basis that the evidence is admissible:

i. if the deposition or testimony of witness is authenticated by the signature of the Judge, Magistrate, or consular officer before it is made.
ii. if the person who is accused or he/she is the defendant is having the opportunity by himself or his agent to cross-examine the witness.
iii. if the deposition or the testimony of the witness is or was made in the course of a criminal proceeding and the proceeding was made in the presence of the person who is accused.

Special provisions relating to employees abroad of companies and motor vehicles Section 15-B:

The special provision related to employees abroad and motor vehicles will be applied to the persons or employees who are recruited by the companies registered in India and under the Motor Vehicles Act, 1998.

i. The notice of the accident and the compensation claimed may be served on the agent of the company. Or the notice may be served on the local agent or the owner of the motor vehicle in the country of the accident.
ii. In case the employee dies, the provisions made in this section 15-B shall apply. The claim for compensation may be made within one year after the news of the death of the claimant has been received.
iii. Therefore, in case of any compensation claimed, the commissioner shall entertain the claim. Although as provided in the section is not much preferred in due time.

Returns as to Compensation Section 16:

The state government can direct any person who is employing an employee at a specified class, specified time and authority that is specified in the notification of official gazette. The state government may also direct to specify the number of injuries in respect of compensation and the amount that has been paid by the employer during the previous year as compensation.

Contracting out Section 17:

If an employee has made a contract or agreement before or after the commencement of the act, and if he voluntary ceases the right to compensation from the employer it shall be considered null and void. The employee cannot seek compensation for any personal injury arising out of or in the course of employment and the liability will be reduced of any person who is entitled to pay compensation under this Act.

Penalties Section 18-A:

Penalties Arise when whoever-

- Fails in maintaining a book that is required to maintain under sub Section 3 of Section 10
- The person fails to make a report that is needed to send under section 10B.
- Fails to inform the employee of his rights to claim compensation needed under Section 17A. He or she will be punished with fine which is not less than fifty thousand rupees that can be extended to one lakh rupees.
- No prosecution can take place under this section.

COMMISSIONERS

Section 19: Reference to Commissioner

The question arises about the liability of any person under the act, who will pay the compensation. A question arises about the person who is injured or not or how much amount is to be given or the duration of the compensation. Also about the extent of the disability the person who is suffering and will get compensation. All such issues are to be resolved by the commissioner.

Appointment of Commissioner Section 20:

Commissioner means a commissioner for employee compensation appointed under Section 20. The state government or the central government may appoint any person to be commissioner for workmen's or employees' compensation act in some specified areas. Every commissioner is identified as a public servant in the Indian Penal Code.

1. If the state government appoints more than one commissioner for any area, a specific order may regulate the business.
2. Any commissioner may choose a person or more persons who possess knowledge and assist him in holding the inquiry.

Venue of proceedings and transfer Section 21:

The provisions under the act will be subject to the commissioner as well if there is a matter related to rules and regulations. The rules made under the act before the commissioner for the area where-

1. The accident happened that resulted in the injury.
2. If the employee dies and if the dependent claims compensation it will reside.
3. Employer's office is registered.

No matter should be processed before a commissioner other than the commissioner who has jurisdiction in the area where the accident happened. It shall not happen without giving notice in the manner prescribed. If the employee is the mater of the ship or seaman or a captain or crew member of the aircraft or employee in a motor vehicle, meets with an accident outside India, then such matter shall be done by the commissioner.

Form of Application Section 22:

No other application for any matter of the commissioner for dependants should be made for compensation. Until and unless some question arises between the parties there is no settlement as per agreement.

The power of commissioner is required to further deposit in the cases which talks about fatal accidents- Section 22-A

When any amount is deposited by an employer as compensation payable in respect of an employee whose injuries resulted in his death, and the commissioner thinks that amount or sum was not sufficient, he may state a notice in writing giving reasons, he may call upon the employer to show why he could not make a further deposit within such time as stated in the notice. If the employer fails to satisfy the Commissioner, the Commissioner may make an award determining the total amount to be paid, and requires the employer to deposit the deficient amount.

Powers and Procedure of Commissioners Section 23:

He has the power to award compensation more than what is claimed by the employee if the facts warrant the award. A case dealing with the commissioner was Karnataka State Road Transport Corporation v. B.T. Somashekaraiah, 1994

Appearance of Parties Section 24:

A person may appear or become a witness for the purpose of examination, an application or act is required to be made by a person to a commission. It may be done on behalf of a legal practitioner or an official of the insurance company or registered trade union or an inspector appointed under Section 8 of the Factories Act, 1948, or any other officer which is specified by the state government with the permission of the commissioner or a person who is authorised to do so.

Method of Recording Evidence Section 25:

The commissioner makes a brief written message(memorandum) of the evidence of every witness as the examination process proceeds. The memorandum should be in written form and duly signed by the commissioner. The form so signed by the commissioner must be in his own handwriting and it will be a part of the record.

Time limit for disposal of cases relating to compensation Section 25A:

The Commissioner can dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

Cost Section 26:

All costs, incidental to any proceedings before a Commissioner, shall, subject to rules made under this Act, be in the discretion of the Commissioner.

Power to submit cases Section 27:

A commissioner can submit a Question related to law so that the High Court can decide the compliance with the standards or rules if the High Court wants to do so.

Registration of agreements Section 28:

A memorandum should be sent by the employer to the commissioner when a lump sum amount is payable as compensation due by the agreement either half monthly payment or payment being payable to a woman or a person with a legal disability. The memorandum must be genuine and should be registered in the prescribed manner. However, a memorandum cannot be recorded before seven days after the communication has taken place between the commissioner and the concerned parties.

Effect of failure to register agreement Section 29:

The employer will be liable to pay the full amount of compensation if the registration of the agreement of memorandum is not sent to the commissioner as required under the section. The employer will pay the compensation as he is liable to pay under the provisions of the Act (Section 4) Until the commissioner directs to deduct more than half of the amount to be paid to the employee as compensation.

Appeals Section 30:

An appeal may lie to the High Court by following the orders of the commissioner.

1. A lump sum amount as compensation is awarded as an order, and redemption of half the monthly payment is away.
2. An order may refuse to allow gain of a half monthly compensation.
3. Distribution of compensation by order among the family members of the deceased, or disallowing of any claim of a person.

Substantial Question of Law

If there is difficulty in applying the facts to the law it will not amount to a substantial question of law. Reference case- Asmath Bedi(dead) v. Marimuthu. The period of limitation under section 30 is sixty days if a person makes an appeal. An appeal lies against the order of commissioner who will compensate only when a substantial question of law. The scope in section 30 of the Act for appealing against the order that is passed by the commissioner is very limited. An appeal shall not lie against any order unless a substantial question of law.

Can courts intervene on question of fact?

Yes, the courts can intervene on the question of fact. This was done in the case of Mangala Ben vs Dilip Motwani It was first held that there is no substantial question of law. In the opinion of the Court, the finding of the Commissioner does not prove that the deceased was in the employment of the owner. The learned Commissioner further held that the claimant did not produce any evidence to prove that the deceased was employed for the purposes Dilip Motwani's trade or business. He observed that in the absence of such evidence, the deceased cannot be held to be an employee. In the opinion of the court, the Commissioner committed error of law in holding that the burden lay on the claimant to prove that the deceased was employed for the purposes of the respondent's trade or business. The appellate court has no jurisdiction to entertain an appeal unless the same involves a substantial question of law, Nisan Springs (Pvt) Ltd v. Om Jain, 1990.

Effect of death of claimant

If the injury of the employee results in his death, the employer shall give compensation in addition to the compensation that is deposited with the commissioner. A sum of five thousand rupees and not less than that will be given to the eldest surviving dependant of the employee. Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

Review, Revision, Remand, and Writ

If an employee is not satisfied with the decision of the court regarding the compensation, he can appeal for review by the court. Review can be made only after the decree is passed by the court or an order is made. If there is an error in the decision by the court appeal can be made for revision which can be done only by the High Court. An employee can writ if he has been wrongly remanded. Remand means In custody of the court.

Appeal not accompanied with certificate by the Commissioner under Proviso (3)

If the appeal is not accompanied by a certificate by the commissioner that is payable and deposited with him then no appeal by the employer under clause (a) shall lie against the law. The period of limitation under the section for the appeal will be sixty days.

Condonation of delay

If the appeal by the employee is delayed it is known as condonation of delay. An appeal is filed when the employee is not satisfied by the decision of the court and want to appeal again for the decision. So when the employee gets delayed in appealing the suit it will be condoned.

Withholding of certain payments pending decisions of appeal Section 30-A:

The commissioner may withhold the payment of any amount which is deposited with him when an employer appeals under section 30 and it is directed by the High Court.

Recovery Section 31:

The commissioner can recover any amount payable by any person as arrears of land revenue. The commissioner will be deemed to be a public officer if there is an agreement for the payment of the compensation under the meaning of section 5 of the Revenue Act, 1890.

Power of the State Government to make rules Section 32:

The state government has the power to make rules and regulations for the purpose of this act. These rules provide all the matters without prejudice namely:

1. The state government prescribes certain intervals where an application may be made under Section 6 is subject to conditions when not accompanied by a medical certificate by a qualified practitioner.

2. The state government prescribes some intervals where an employee is required to submit himself to undergo certain medical examination of section 11.
3. The state government prescribes a procedure that needs to be followed by the commissioners. It is required when there is disposal of cases under the act and by the parties.
4. The state government regulates the transfer of matters. It also regulates cases from one commissioner to another and also transfer of money in some cases.

Publication of rules Section 34:

The power to make rules in Section 32 will be subject to the conditions of the rules which are made after previous publication. Rules so published in the Official Gazette will have an effect in the Act.

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation Section 35:

The Central Government may make rules for transfer money to any foreign country which is deposited with a commissioner under the act by a notification. A person who resides in a foreign country or is about to reside may be awarded the money deposited under the law relating to employees. The amount related to fatal accidents shall not be transferred without the consent of the employer under the commissioner.

Rules made by the Central Government to be laid before Parliament Section 36:

Every rule made under the act by the Central government is laid before each house of parliament while it is in session for thirty days. It may be done in one session or in two sessions before the expiry of the session. The houses may make any modifications in the rule or the houses may agree that the rule should not be made.

THE EMPLOYEES' STATE INSURANCE ACT, 1948

The Employees' State Insurance Act incorporates a number of sections, these sections provide for medical benefits and insurance for any employees working under factories registered under the ESI Corporation. This is an exciting prospect from both an employee's and a legal perspective as the beginning of a formal social security program in India.

Application and scope of the Act

The Employees' State Insurance Act, 1948 (ESI), enables the financial backing and support to the working class in times of medical distress such as:

1. Sickness.
2. Maternity Leave.
3. Disorders(mental or physical).
4. Disability.
5. Death.

It is a self-financed initiative, which serves as a type of social security scheme, to prevent the working class from any financial problems arising out of the above medical issues.

Constitutionality of the Act

The ESI Act serves as a constitutional instrument because of its practice of providing insurance and medical insurance. While the ESI Act is mostly executed through the ESI Corporation, the Central Government takes control of most of the proceedings. This control by the Central Government largely contributes to the constitutionality of the Act, because Insurance, be it public or private, is listed in the Seventh Schedule of the Indian Constitution as a Union List subject i.e. it can only be legislated by the Central Government.

Definitions

The Employees State Insurance Act contains several important definitions that explain the meaning of important provisions.

Appropriate Government Section 1

The definition of "appropriate government" divides powers between the Central and State governments effectively. The Central government is appropriate in cases of establishments that the Central government controls. It is the appropriate government for railway administration, major ports, mines, and oil fields as well. In all other cases, the appropriate government is the relevant State government.

Confinement Section 3

Pregnancy which leads to the birth of a living child is called "confinement" under this Act. It can also mean the birth of a child (living or dead) after 26 weeks of pregnancy.

Contribution Section 4

Principal employers under this Act have to pay a sum of money to the Employees State Insurance Act Corporation according to relevant provisions. This money is basically later payable to employees by the ESI Corporation for their benefits. Every employer to whom the Act applies has to make this contribution.

Corporation Section 6

This important definition describes the Employees State Corporation that this Act has set up. This corporation has several important powers and duties.

Dependant Section 6A

In case a worker under the Act dies during employment, the ESI Corporation pays some money to his dependants. In order to understand who must receive this money, we must know who these "dependants" are. According to the Act, dependants are certain relatives of a deceased worker. These include his widow, a son below 25 years of age, an unmarried daughter and his widowed mother. A son/daughter above 25 years can also be a dependant if he/she is wholly dependant on the worker. In certain cases, dependants can also be a minor illegitimate child, minor sibling, a parent other than widowed mother, etc.

Employment Injury Section 8

An employee can receive financial support under this Act for specific injuries that occur in employment only. Hence, the Act refers to them as "employment injuries". These injuries must be a result of an accident or occupational disease arising in the course of employment. It is immaterial whether the workers contract these occupational diseases within India or outside.

Employee Section 9

This is a very important definition because only "employees" under the Act can claim compensation there under. An employee is basically a person who is employed for wages in relevant factories/establishments. Furthermore, there are some additional requirements depending on the nature of the employee's services. For example, an employee may directly work permanently for the principal employer or may work temporarily on contract.

Exempted Employee Section 10

There are certain employees who are not liable to pay a contribution to the ESI Corporation under this Act. These employees are called as exempted employees.

Factory Section 12

A "factory" means any premises (or its precincts) wherein 10 or more employees work or have been working. These workers should be in employment for the preceding twelve months. Furthermore, some manufacturing process must take place on such premises. Mines or railway running sheds, however, cannot come under the definition of factories.

Insured Person Section 14

An insured person under this Act is basically an employee to whom contribution is payable. Furthermore, he can claim all other benefits under the Act.

Principal Employer Section 17

A principal employer is generally the owner or occupier of a factory to which the Act applies. It can also include the owner's managing agent or factory manager and legal representative of a deceased owner/occupier. In the case of departments of the Central government, the principal employer is the department's head. In all other establishments, the person in charge of supervision and control is usually the principal employer.

CORPORATION, STANDING COMMITTEE & MEDICAL COUNCIL

Establishment of Employees' State Insurance Corporation

The ESI Act exercises its function through the Employees' State Insurance Corporation, established via Section 3, a body created to maintain social security. It was established on 24 February, 1952. The corporation is supposed to grant relief to the employees in case of medical emergencies.

Constitution of Corporation

The composition of the ESIC is defined in Section 4, and it is as follows:

1. The Director-General.
2. Chairman, appointed by the Central Government.
3. Vice-Chairman appointed by the Central Government.
4. Not more than 5 persons nominated by the Central Government.
5. 1 person to represent each state.
6. 1 person representing the Union Territories.
7. 10 persons representing employers.
8. 10 persons representing employees.
9. 2 persons representing the medical profession.
10. 3 members of parliament (2: Lok Sabha and 1: Rajya Sabha).

Term of office of members of the Corporation

Section 5 the following members are appointed for up to a 4 year period:

1. Director-General.
2. Chairman.
3. Vice-Chairman.
4. The 5 people nominated by Central Government.
5. The members representing each state.
6. The members representing each Union Territory.

Eligibility for re-appointment or re-election

An outgoing member of ESIC, the Standing Committee of ESIC, or the Medical Benefit Council is automatically eligible for re-appointment or re-election into office as the case may be, at the pleasure of the appointing Central Government.

Authentication of orders, decisions, etc.

The signature of the Director-General of ESIC is the only necessary requirement to authenticate an outgoing order or a decision, there is no other way to authenticate or enforce an order. The Director-General can also temporarily delegate his authority to any other officer. In this case, the signature of the authorised officer will also suffice to authenticate an order.

Constitution of Standing Committee

The composition of the Standing Committee of ESIC is as follows:

1. A chairman appointed by Central Government.
2. 3 members within the corporation representing 3 state governments.
3. 3 members within the corporation representing employers.
4. 3 members within the corporation representing employees.
5. 1 member within the corporation representing the medical profession.
6. One MP belonging to the corporation.
7. The Director-General.

Terms of office of members of Standing Committee

The following members are appointed for a two year period:

1. The Chairman.
2. The 3 members representing the states.

Medical Benefit Council

The Medical Benefit Council is an advisory body on matters related to the administration of medical benefits under the ESI scheme. It consists of:

1. The Director-General of ESIC as Chairman.

2. The Director-General of Health Services as co-Chairman.
3. The Medical Commissioner of ESIC.
4. One member for each state appointed by State Government.
5. Three members representing employers.
6. Three members representing employees.
7. Three members including one woman representing the medical profession.

Tenure of the members of the Medical Benefit council

The following members of the Medical Benefit Council are appointed for a period of 4 years, these are:

1. The Director-General of ESIC as Chairman.
2. The Director-General of Health Services as co-Chairman.
3. The Medical Commissioner of ESIC.
4. One member for each state appointed by State Government.

Resignation of membership

The resignation of a member of the Corporation is complete when a notice for the same, in writing, is delivered to the Central Government, and his seat shall fall vacant upon acceptance of his resignation.

Cessation of Membership

A member of the ESIC shall cease to be a member of his respective body (Corporation, Standing Committee or Medical Council) upon failing to attend three consecutive meetings. However, the same member can be restored by the concerned body via the rules made by the Central Government. If in the opinion of the Central Government, any employer, employee or medical representative fails to represent their qualification, they shall cease to be members of ESIC.

Disqualification

A person can be disqualified as a member of ESIC if:

1. If he is declared to be of unsound mind by a qualified court.
2. If he is an undischarged insolvent.
3. If at any time, he has been convicted of an offence regarding moral turpitude.

Filling of vacancies

Any vacancy in the office of ESIC shall be filled by appointment or election, as the case may be. A member of ESIC can only hold the ex-member's spot in the

respective committee, if the original holder of that position was found to be eligible for the same. Otherwise, the position is void.

Principal Officers

The Principal Officers referred to under this Section are the Director-General and/or Financial Commissioner, to act as the CEO for ESIC. They serve as whole-time officers and are not permitted to undertake any work outside of office jurisdiction without the sanction of the Central Government. The time period for the appointment of any principal officer may not exceed 5 years. The operation of their fees, disqualification, and cessation of seats operate in the same manner as that of their subordinates.

Staff

ESIC has the jurisdiction to employ staff of officers as may be necessary for the optimum running of the corporation, however, according to the prerequisites in Section 17, the sanction for creating any staff position has to be acquired from the Central Government. Their salary shall be prescribed by the Central government within a particular range, which cannot be exceeded. The scale of pay will be determined on the basis of their educational qualifications, method of recruitment, duties, and responsibilities, etc.

Powers of the Standing Committee

The Standing Committee, with its powers defined in Section 18, shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation, while authorised and under the jurisdiction of the corporation. The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf. The Standing Committee also, in its discretion, may submit any other case or matter for the decision of the Corporation.

Corporation's Power to promote measures for the health of insured persons

ESIC, in its jurisdiction, may take initiatives that promote health and welfare amongst its employees, while also promoting rehabilitation and re-employment for past employees who were injured or disabled in the course of employment. The funding and expenditure for such initiatives is at the discretion of the Central Government.

Meetings

ESIC, its Standing Committee, and its Medical Council shall meet periodically to observe rules and procedures in regard to the efficient functioning of the corporation. Such observations can be specified as per the regulations in regard to the meeting.

Supersession of the Corporation and Standing Committee

The supersession of the Corporation and the Standing Committee occurs when there is a persistent failure to perform the duties prescribed to both parties. In such a case, the Central Government, via a notification in the Official Gazette, can take the place of the corporation, or with the consultation of the corporation, can take the place of the Standing Committee. The supersession of the corporation will take place by rendering all of the seats of the corporation, previously occupied by the members, as vacant. In the case of the Standing Committee, a new one shall be constituted immediately as per Section 8 of the ESI Act.

Duties of the Medical Benefit Council

The Medical Council's functions are as follows:

1. Advise the other two ESIC bodies on matters relating to the implementation that would be beneficial in the medical field. It acquires certification for the grant of medical benefits.
2. Investigate against complaints lodged against medical practitioners with relevance to the medical relief offered.

Duties of Director General and the Financial Commissioner

The duties of the Director-General and Financial Commissioner are prescribed by the ESI Act itself in accordance with the Central Government. These tasks may concern various arenas from management to miscellaneous tasks.

Validity of the act of the Corporation

No act of any ESIC body shall be termed as invalid with respect to their own rules and regulations. Invalidity cannot be claimed on the eligibility or ineligibility of a particular member of that office.

Regional Boards, Local Committees, Regional and Local Medical Benefit Council

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them powers and functions.

Finance and Audit

Employees' State Insurance Fund

The Employees' State Insurance Fund is the primary monetary source for the ESIC to perform its functions. All contributions paid under this Act and all other money received on behalf of the Corporation shall be paid into this fund to be held and administered by the Corporation. These could be in the form of grants, donations or gifts by the government.

Expenses of the fund

The ESI Fund is responsible for maintaining the expenses of ESIC, which are as follows:

1. Payment of benefits and provision of medical treatment and attendance to insured persons and their families, if required.
2. Payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils.
3. Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, etc.
4. Establishment and maintenance of hospitals, dispensaries, and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and their families, if required.

5. Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and their families, if required.

Administrative expenses

Administrative expenses are termed so, those expenses which cover the costs of administration of ESIC, prescribed by the Central Government.

Holding of Property

ESIC is subject to conditions prescribed by the Central Government, in terms of acquiring, hold, sell or transfer any property, movable or immovable, vested in or acquired by it, so as to fulfill the purposes of the corporation. The ESIC also has the ability to invest in property as and when required, under the jurisdiction of the Central government. It can also delegate property for the benefit of its staff..

Budget Estimates

Every year, ESIC frames and projects a potential budget showcasing how much expenditure it proposes to incur, and how it will discharge its liabilities during the following year. This is then submitted to the Central Government for approval.

Accounts

The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.

Audit

The Corporation prepares accounts regularly which are audited annually by the comptroller and Auditor-General of India, and any audit which leads to an expenditure will be payable to the above parties. Any person appointed by the Comptroller and Auditor-General to act on their behalf will temporarily have the same powers as the above parties and are authorised to demand the production of books, accounts, connected vouchers, and other documents and papers. They shall also be authorised to inspect any offices of ESIC at any time. The accounts of the Corporation, before being forwarded to the Central Government, have to be verified by the Comptroller and Auditor-General, or any of their representatives. After verification, the accounts can be forwarded to the Central Government along with any comments on the report, given by the above parties.

Annual report

The Corporation shall submit an annual report of its work and activities to the Central Government.

Budget etc. to be placed before Parliament

The annual report, the audited accounts of the Corporation along with the report of the Comptroller and Auditor-General of India, and the comments of the Corporation on such report under section 34 and the budget, as finally adopted by the Corporation, shall be placed before the Parliament.

Valuation of assets and liabilities

The Corporation shall, at intervals of three years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government: Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

Contributions

All employees employed in the factories which meet ESIC prescribed rules (under Section 2) are insured for all the benefits offered by it.

1. The contribution is a determinable amount of money payable by both the employer and the employee, as per the situation, to the corporation.
2. The rates, while usually prescribed by the government, are not set in stone, and are subject to change. Rates defined by the government are mostly set as the unit standard for the contribution payable by the employer.
3. In the case of the employee's contribution, the wage period in relation to the respective employee shall be held as a unit to determine the compensation payable, and are normally due on the last day of the wage period.
4. Failure to pay contributions by the employer will make him liable to pay an interest rate of 12%.

Principal employer to pay contribution in the first instance

1. The primary employer has to collectively pay the contribution, both his own and that of his employees, regardless of whether they are directly employed under him or are working through an immediate employer.

2. If a directly employed employee fails to pay his contributions, then the employer can recover that contribution only by deducting the wages of said employee.
3. The employer bears all the transfer costs of the payment to the Corporation.

Recovery of contribution from the immediate employer

In the case of an employee who is indirectly employed under the principal employer, via an immediate employer, the principal employer shall be entitled to recover the payment made on behalf of an indirect employee, from the immediate employer, as a debt payable to him. The immediate employer also has to prepare a list of all the employees under him and submit the same to the principal employer, before paying his dues.General provisions as to payment of contribution. In case an employee's wage falls below the prescribed wage range prescribed by the Central Government, the employee shall not be liable for his contribution and it shall not be payable.

Method of payment of contributions

The manner for payments which the Act provides regulations for, has been elaborated in the following conditions:

1. The nature and time of contribution being paid.
2. Payment which involves the usage of stamps or other adhesives fixed upon the books of accounts, or any other documents.
3. The evidence of the contributions, which reaches the Corporation, is to be dated.
4. The different entries in the books of accounts along with the details of the insured persons.
5. The replacement of documents which have been lost, destroyed or defaced.

Employers to furnish returns and maintain registers in certain cases

According to the provisions given as per the ESI Act, the principal and immediate employers are to submit all the investment profits, as well as any and all details relating to their employees in any factory under their jurisdiction. In case of failure to submit a return, that the corporation had reasonable cause to believe, should have been submitted, the corporation can require the employers to present all the details.

Social Security Officers and their functions

1. ESIC has the power to appoint persons as Social Security Officers. Their functions are mostly to serve a role in inspecting the function of the corporation.
2. If required, he can acquire any information from any employer as he sees fit.
3. He can enter any corporation at any time and can get all the accounts, books and other employment documents presented to him without any due notice. This can include information like wages, expenses, etc.
4. He can inspect and look into any matter regarding the employers and employees as and when required under the jurisdiction of the court.
5. He can make copies or take extracts from any register or account back as per his discretion.

Determination of Contribution in certain cases

A Social Security offer is restricted from exercising his functions and discharging his duties, if the accounting statements of the factory/establishment are not submitted, or not maintained in accordance with Section 44 of the ESI Act. As such, the Corporation may, with the available information, determine the contribution(defined under Section 39) amount payable to employees. However, this procedure will not take place until after the person in charge has been given a reasonable opportunity to be heard regarding the absence of such records.

Appellate Authority

In the scenario specified in Section 45A, once the employer in charge is heard, and he is not satisfied with the verdict given by the corporation, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of the verdict. He must also pay a sum of 25% of his calculated contribution, in order to file the appeal. In case he is successful, the corporation will also refund the contribution paid by him.

Recovery of contributions

Any and all contributions which are payable under the provisions of ESI Act, can be recovered, termed as ‘arrears of land revenue’.

Issue of certificate to the Recovery Officer

In lieu of Section 45B, where the contribution is to be recovered, an authorised officer of the corporation issues a certificate bearing his signature and the amount to be recovered, to a Recovery Officer, who then proceeds to recover the amount specified from the factory where the default took place. He does this via:

1. Attachment or sale of the property of the factory, or the employer, as per the situation.
2. The arrest of the employer and getting him detained in prison.
3. Appointing a receiver for the management of the property acquired, be it from the factory or the employer.

Recovery Officer to whom the certificate is to be forwarded

For the contribution certificate to be forwarded to the Recovery Officer, the factory employer must be under the jurisdiction of the Officer in the following ways:

1. The location where the employer carries on his business and where the factory is located.
2. The location where the employer resides or he has any personal property situated within the Officer’s jurisdiction.
3. The inability to recover the amount solely through the sale of property alone.

The inability to recover the amount solely through the sale of property alone

The analysis of the recovery amount, as per the certificate issued to the Recovery Officer, operates on his word only. The factory or any authority related to it cannot question the Officer on the correctness of the mount, and no objection shall be entertained. However, with a prior intimation, an arithmetical mistake can be corrected by an authorised officer, along with any orders about withdrawal or cancellation of a certificate.

Stay of proceedings under certificate and amendment or withdrawal thereof

It is at the discretion of the Recovery Officer, within the boundaries of the ESI Act, to halt legal proceedings if the time he has allocated for the recovery of an amount, has expired. The Recovery Officer is also entitled to receive constant updates about the status of payment of any due amount. If, as a result of an appeal, the amount due is decreased, then the Recovery Officer temporarily halts the recovery of the now decreased amount.

Other modes of recovery

Some of the other modes of recovery are elaborated within Section 45G. These are rarer modes of recovery, due to the primary modes of recovery often being preferred:

1. The defaulting employer may be required to pay a sum which was deducted from the arrears after the sale of the property.
2. There might not be any penalty issued but the defaulting employer would be required to pay the entire outstanding amount directly to the Director-General of the Corporation.
3. Any joint shareholders who held money with the defaulting employer might be forced to give up their shares to the Corporation until they are equal to the defaulting employer's shares, as compensation.

Application of certain provisions of the Income-tax Act

The arrears of the amount of contributors, which are to be sold to cover the remaining costs, can be affected by decisions from the Assessing Tax Officer or Tax Recovery Officer. They can make changes which shall apply to all the interests and damages.

Benefits Available Under the Act:

Section 46 of the ESI Act grants benefits to employees as social security in case of injury, which can be availed during the course of employment. There are 6 types of benefits that can be availed:

1. Medical benefit.
2. Sickness benefit.
3. Maternity benefit.
4. Dependants' benefits.
5. Disablement benefits.
6. Other benefits.

Medical Benefits

These benefits are guaranteed to the employee as soon as he/she is hired, with the benefits extending to their family members as well. This benefit covers the payment of all treatment expenses in lieu of medical issues faced by the employee

Sickness Benefits

The employees covered by the ESI Act can avail periodical payments in case of sickness as per Section 46(1)(a), as long as the medical condition is verified by the appointed medical practitioner. The compensation is approximately 70% of their wages, with the upper limit for availing compensation being 91 days in a year. In a period of 6 months of employment, the employee must have been working for a minimum of 78 days, else the benefit cannot be claimed.

Maternity Benefits

As per Section 46(1)(b) of the ESI Act, an insured woman can claim periodical payments in case of occurrence of any of the following situations:

1. confinement (labour leading to birth or birth after 26 weeks)
2. miscarriage
3. sickness arising out of pregnancy
4. premature birth of child

The benefit is payable for three months, with an extension of one month, if required. The minimum work duration must be 70 days in the year preceding the year of pregnancy.

Dependants' Benefits

Section 46(1)(d) prescribes periodical payments(often made monthly) to the dependants/family members of the person who dies during the course of employment, with the cause of death being an employment injury or an occupational hazard. Compensation is generally 90% of the employee's wages.

Disablement Benefits

In case an employee suffers an injury during the course of employment which results in their disablement. The nature of the disablement may be temporary or permanent. Unlike the other benefits, there is no minimum work contribution required to avail the disablement benefit, although eligibility for the same will be determined by the Medical Board. This determination also affects the amount of compensation granted, if any, with the general percentage of wages granted being around 90%.

Other Benefits

'Other benefits' refer to the miscellaneous benefits apart from the five major benefits that can be availed by the employees. These are as follows:

1. Funeral Expenses: Compensation of Rs. 10,000 is granted to the eldest surviving member of an employee's family to perform his last rites.
2. Vocational Rehabilitation: The benefit is payable to disabled employees undergoing rehabilitation.
3. Old age medical care: This benefit is available for retired employees, or those who eft employment after suffering an injury, with general compensation being Rs. 120 p/m.

Scheme for other beneficiaries

Section 53 of the ESI Act acts as a deterrent for employees, in order to prevent them or their families from claiming benefits provided under the Act, so long as they are still insured under the reliefs offered by the ESI Act. Section 61 acts like an extension to Section 53, in the sense that while Section 53 only bars employees from receiving compensation under the Employees Compensation Act, Section 61 bars employees from receiving compensation from any other enactment so long as they are still insured under the ESI Act.

Power to frame scheme

The Central Government holds the power to frame schemes for other beneficiaries and their family members, mostly for providing medical facilities in ESI hospitals. However, this must be within the framework of the ESI Act and must be notified in the Official Gazette.

Scheme for other beneficiaries

Schemes implemented for beneficiaries may cover for a number of matters such as:

a) The time and nature of the usage of medical facilities.
b) The presentation of particulars and details about the beneficiary and his family as per the needs of the Corporation.
c) Miscellaneous matters which may be necessary to fully implement the scheme.

Power to amend schemes

Via a notification in the Official Gazette, the Central Government may add to, amend, introduce variations, or rescind the scheme.

Adjudication of Disputes and Claims

Constitution of Employees' Insurance Court

Via a notification in the Official Gazette, an Employees' Insurance Court will be constituted by the State Government, with a set amount of judges as per the decision of the State Government. The same court may be appointed for two or more local areas, or two courts or more courts may be appointed for the same local area.

Power of Employees' Insurance Court

The Employees' Insurance Court will function with the same powers as that of a Civil Court, in which, to enforce the provisions of the ESI Act, it can enforce witness attendance, compel document and material evidence to be presented, it can administer an oath and can record evidence. All expenses incurred before a proceeding are subject to the discretion and liability of the court itself.

Reference to High Court

An Employees' Insurance Court, according to Section 81 may submit any question of law for the decision of the High Court and if it does so, the answer to the question shall hold precedence before any judgment.

Appeal

Section 82 defines that no appeal can be laid down as against an order from the Employees' Insurance Court. However, appeals from the High Court can stand if they involve a substantial question of law.

Penalties and Punishments

Sections 84, 85, and 85A cover all the punishments for default listed within the ESI Act.

1. False Statement: Any person caught increasing the payment or benefit to avoid payment by himself is known to make a false statement. Punishable with up to six months and/or with fine not greater than Rs. 2000. Insured persons convicted of this will not be entitled to cash benefits.
2. Failure to pay contribution: Persons failing to pay the contribution, unlawfully deducts wages or benefits, unfairly punishes an employee, obstructs inspector's duties, etc. can be punishable for up to three years, no less than one year with a fine up to Rs. 10000.
3. Subsequent Punishment: If a person is found committing the same offence twice, he shall be punished with imprisonment for a term extending up to two years with a fine of Rs. 5000 for each subsequent offence.

Power to recover damages

If an employer fails to pay the contributions due in any aspect, whether it be from his side or his employee's side, the Corporation can recover the deficit from him by way of penalty. However, this recovery of contribution will not take place until after the person in charge has been given a reasonable opportunity to be heard regarding the failure to pay the contribution.

Power of Court to make orders

Along with the power of the court to recover damages, it also has provisions to enforce judicial orders. If the defaulting employer fails to meet the time conditions for payments that have been stated by the Court, the employer will be deemed to have committed another offence, which can be punishable with imprisonment and/or fines.

Prosecution

Section 86 dictates that any sort of prosecution cannot take place under the provisions of ESI Act unless it has previously obtained the sanction of the Insurance

Commissioner or any other authorized authority such as the Director-General of the Corporation. No court lower than a First Class Magistrate can try an offence under the ESI Act, and no Court will take cognizance of any offence reported under this Act.

Offences by companies

Taking inference from the concept of business entity, where every company is its own individual i.e. it is a separate legal entity of its own and can sue or be sued in a court of law accordingly. As such, when an offence is said to have been committed by a company, all of its managerial employees, who were responsible for the company at the time, will be tried along with the company, deemed to be guilty of the same offence. They are liable for punishment accordingly.

Comparative Analysis

The ESI is a later Act and has a wider coverage. It is more comprehensive. It also provides for more compensation than what a workman would get under the Workmen's Compensation Act. The benefits which an employee can get under the ESI Act are more substantial than the benefits which he can get under the Employees Compensation Act. The only disadvantage, if at all it can be called a disadvantage, is that he will get compensation under the ESI Act by way of periodical payments and not in a lump sum as under the Workmen's Compensation Act. If the Legislature in its wisdom thought it better to provide for periodical payments rather than lump sum compensation its wisdom cannot be doubted. Even if it is assured that the workmen had a better right under the Employees Compensation Act in this behalf it was open to the Legislature to take away or modify that right. While enacting the ESI Act the intention of the Legislature could not have been to create another remedy and a forum for claiming compensation for an injury received by the employee by accident arising out of and in the course of his employment."

ESI Act, 1948	Employees Compensation Act, 1923
Objectives of the Act : To provide benefits to the employees in case of sickness, maternity and employment injury caused by accident or occupational disease.	Objectives of the Act: To provide compensation to workmen for injury caused by accident or occupational disease.
Act Covers: Employment injury or death caused by accident or occupational disease, sickness and maternity.	Act Covers: Employment injury or death caused by accident or occupational disease.
Wage limit under the Act: Rs. 15,000 p.m.	Wage limit under the Act at present: No wage limit.
Nature of Scheme Offered: Contributory wherein both the employer and the employee contribute 4.75% and 1.75% of wages, respectively.	Nature of Scheme Offered: Non contributory and the employer has to pay the entire compensation.
Benefits covered under the Act: Covers six benefits sickness benefit, medical benefit, maternity, benefit, disablement benefit, death benefit and other benefits	Benefits covered under the Act: Covers disablement benefit and dependent's benefit only.
Who is responsible for making payment: ESIC.	Who is responsible for making payment: Employer
Compensation is paid periodically.	Compensation is paid as one time lump sum payment in cash
Rehabilitation and re-employment: Provision for rehabilitation and re-employment of insured persons who have been disabled.	Rehabilitation and re-employment: No such provision under the Act.
Nature of claim process: Easy and convenient.	Nature of claim process: Complex and time consuming.
Act administered through: ESI Corporation, Standing. Committee, Medical Benefit Council and Court.	Act administered through: Commissioners.

UNIT-V:

THE PAYMENT OF WAGES ACT, 19936

Object of the Act:

The Payment of Wages Act regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated. The Act guarantees payment of wages on time and without any deductions except those authorized under the Act. The Act provides for the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be imposed by him and also sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims. The Act does not apply to persons whose wage is Rs. 24,000/- or more per month. The Act also provides to the effect that a worker cannot contract out of any right conferred upon him under the Act.

Application of the Act:

It extends to the whole of India. It applies in the first instance to the payment of wages to persons employed in any factory to persons employed (otherwise than in a factory) upon any railway by a railway administration or either directly or through a sub-contractor by a person fulfilling a contract with a railway administration and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2.

The State Government may after giving three months' notice of its intention of so doing by notification in the Official Gazette extend the provisions of this Act or any of them to the payment of wages to any class of persons employed in any establishment of class of establishments specified by the Central Government or a State Government under sub-clause (h) of clause (ii) of section 2.

Definitions:

Some of the important definitions under the Act

Employed person sec 2 (i) includes the legal representative of a deceased employed person

Employer sec 2 (ia) includes the legal representative of a deceased employer

Industrial or other establishments Sec 2 (i1) means any -

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

Wages Sec 2 (vi)

wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a

person employed in respect of his employment or of work done in such employment, and includes-

a) any remuneration payable under any award or settlement between the parties or order of a Court;
b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;
e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

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

Responsibility for payment of wages [Section 3]

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid.

1. In the case of the factory, manager of that factory shall be liable to pay the wages to employees employed by him.
2. In the case of industrial or other establishments, persons responsibility of supervision shall be liable for the payment of the wage to employees employed by him.
3. In the case of railways, a person nominated by the railway administration for specified area shall be liable for the payment of the wage to the employees.
4. In the case of contractor, a person designated by such contractor who is directly under his charge shall be liable for the payment of the wage to the employees. If he fails to pay wages to employees, person who employed the employees shall be liable for the payment of the wages.

Fixation of wage-periods:

Sec 4 provides that, every person responsible for the payment of wages under section 3 shall fix periods in respect of which such wages shall be payable. No wage-period shall exceed one month. That means wage can be paid on daily, weekly, fortnightly (for every 15 days) and monthly only. Wage period for payment of wages to employees by employer should not exceed 30 days i.e. one month according to this act. But wages cannot be paid for quarterly, half yearly or once in a year.

Time of payment of wages:

Sec 5 provides that, the wages of every person employed

1. In railway factory or industrial or other establishment, if there are less than 1000 employees, wages of employees should be paid before the expiry of the 7^{th} day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 7 days i.e. before 7^{th} date if wage is paid on 1st in previous month)

2. In other railway factory or industrial or other establishment, if there are more than 1000 employees, wages of employees should be paid before the expiry of the 10th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 10 days i.e. before 10^{th} date if wage is paid on 1st in previous month)
3. For employees of port area, mines, wharf or jetty, wages of employees should be paid before the expiry of the 7^{th} day after the last day of the wage period.

If the employee is terminated or removed for the employment by the employer the wage of that employee should be paid within 2 days from the day on which he was removed or terminated. Except the payment of wage of the terminated employee, all the wages of the employees should be paid by their employer on the working day only.

Wages to be paid in current coin or currency notes:

Sec 6 of the act states that, all wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Deductions which may be made from wages:

At the time of payment of the wage to employees, employer should make deductions according to this act only. Employer should not make deductions as he like. Every amount paid by the employee to his employer is called as deductions.

The following are not called as the deduction

1. Stoppage of the increment of employee.
2. Stoppage of the promotion of the employee.
3. Stoppage of the incentive lack of performance by employee.
4. Demotion of the employee
5. Suspension of the employee

The above said actions taken by the employer should have good and sufficient cause.

Deduction made by the employer should be made in accordance with this act only. The following are said to be the deductions and which are acceptable according to Sec 7(2) of the Act, namely

1. Fines,
2. Deductions for absence from duty,
3. Deductions for damage to or loss of goods made by the employee due to his negligence,
4. Deductions for house-accommodation supplied by the employer or by government or any housing board,
5. Deductions for such amenities and services supplied by the employer as the State Government or any officer,
6. Deductions for recovery of advances connected with the excess payments or advance payments of wages,
7. Deductions for recovery of loans made from welfare labour fund,
8. Deductions for recovery of loans granted for house-building or other purposes,
9. Deductions of income-tax payable by the employed person,
10. Deductions by order of a court,
11. Deduction for payment of provident fund,
12. Deductions for payments to co-operative societies approved by the State Government,
13. Deductions for payments to a scheme of insurance maintained by the Indian Post Office
14. Deductions made if any payment of any premium on his life insurance policy to the Life Insurance Corporation with the acceptance of employee,
15. Deduction made if any contribution made as fund to trade union with the acceptance of employee,
16. Deductions, for payment of insurance premia on Fidelity Guarantee Bonds with the acceptance of employee,
17. Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employee of fake currency,
18. Deductions for recovery of losses sustained by a railway administration on account of failure by the employee in collections of fares and charges,

19. Deduction made if any contribution to the Prime Minister's National Relief Fund with the acceptance of employee,
20. Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees with the acceptance of employee.

The total amount of deductions from wages of employees should not exceed 50%, but only in case of payments to co-operative societies, deduction from wages of employee can be made up to 75%.

In Align Components Pvt. Ltd., and another Vs. Union of India and others (WRIT PETITION STAMP NO.10569 OF 2020) it is contended that though the Managements are willing to offer work to the workers and though the workers would be willing to perform the work, restrictions have been imposed on the continuance of the manufacturing activities so as to restrict the spread of Covid-19and as a consequence of which, the Managements have been mandated to reduce/shut down their manufacturing activities. In this backdrop, though these petitioners pray for exemption from paying monthly wages for the period of restriction of manufacturing activities, the learned Advocate for the petitioners submits on instructions that these petitioners are willing to pay 50% of the gross wages or the minimum rates of wages prescribed under the Minimum Wages Act, whichever is higher.

Court held that Apex Court is dealing with a similar cause of action, I would not be inclined to interfere with the impugned order and would expect the petitioners to pay the gross monthly wages to the employees, save and except conveyance allowance and food allowance, if being paid on month to month basis in the cases of those workers who are not required to report for duties."

"It is clarified that since the State of Maharashtra has partially lifted the lock down recently in certain industrial areas in the State of Maharashtra, the workers would be expected to report for duties as per the shift schedules subject to adequate protection, from Corona Virus infections, by the employer. In the event such workers voluntarily remain absent, the Management would be at liberty to deduct their wages for their absence subject to the procedure laid down in Law while initiating such action. This would apply even to areas where there may not have been a lock down."

Fines: Sec 8

Fine should be imposed by the employer on employee with the approval of the state government or prescribed authority. Employer should follow the rules mentioned below for and before imposing of fine on the employee.

1. Notice board of fines on employee should be displayed in the work premises and it should contain activities that should not be made by employee.
2. Fine should not be imposed on the employee until he gives the explanation and cause for the act or omission he made.
3. Total amount of fine should not exceed 3% of his wage.
4. Fine should not be imposed on any employee who is under the age of 15 years.
5. Fine should be imposed for one time only on the wage of the employee for the act or omission he made.
6. Fines should not be recovered in the way of installments from the employee.
7. Fine should be recovered within 60 days from the date on which fine were imposed.
8. Fine should be imposed on day act or omission made by the employee.
9. All fines collected from the employee should be credited to common fund and utilize for the benefit of the employees.

Deductions for absence from duty (Sec 9)

1. Deductions can be made by the employer for the absence of duty by the employee for one day or for any period.
2. The amount deducted for absence from the duty should not exceed a sum which bears the same relationship to the wage payable in respect of the wage-period as this period of absence does to such wage-period. (Example: if the salary of an employee is 6000/- per month and he was absent for duty for one month. Deduction from the salary for absence of duty should not exceed 6000/-)
3. Employee present for the work place and refuses to work without proper reason shall be deemed to be absent from duty.

4. If 10 or more persons together absent for the duty without any notice and without reasonable cause, employer can make 8 day of wages as deduction from their wage.

Deductions for damage or loss (Sec 10)

Employer should give an opportunity to the employee to explain the reason and cause for the damage or loss happened and deductions made by employer from the employee wage should not exceed the value or amount of damage or loss made by the employee.

All such deduction and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

Deductions for services rendered (Sec 11)

House-accommodation amenity or service provided by the employer should be accepted by the employee, than only the employer can make deduction from the wage of the employee. Deduction should not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied.

Deductions for recovery of advances (Sec 12)

In case of advance paid to the employees by the employer before employment began, such advance should be recovered by the employer from the first payment of the wages /salary to the employee. But employer should not recover the advance given for the travelling expense for the employee.

Deductions for recovery of loans (Sec 12A)

Deductions for recovery of loans granted for house-building or other purposes shall be subject to any rules made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.

Deductions for payments to co-operative societies and insurance schemes (Sec 13)

Deductions for payments to co-operative societies or deductions for payments to scheme of insurance maintained by the Indian Post Office or with employee acceptance deductions made for payment of any premium on his life insurance policy

to the Life Insurance Corporation shall be subject to such conditions as the State Government may impose.

Maintenance of registers and records (Sec 13A)

Every employer should maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

Every register and record required to be maintained and preserved for a period of three years after the date of the last entry made therein. It means for every transaction made within employer and employee should have 3 years of record.

Inspectors (Sec 14)

The state government may appoint an inspector for purpose of this act. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860. The inspector of this act is having powers mentioned below

1. Inspector can make enquiry and examination whether the employers are properly obeying the rules mentioned under this act.
2. Inspector with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act.
3. Inspector can supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment.
4. Seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer.

Sec 14A provides that, every employer shall afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.

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

To hear and decide all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid, including all matters, incidental to such claims, there will be a officer mentioned below appointed by the appropriate government.

a) any Commissioner for Workmen's Compensation; or
b) any officer of the Central Government exercising functions as
    i. Regional Labour Commissioner; or
    ii. Assistant Labour Commissioner with at least two years' experience; or
c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

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

If any employer does opposite to the provisions of this act, any unreasonable deduction has been made from the wages of an employed person, or any payment of wages has been delayed, in such case any lawyer or any Inspector under this Act or official of a registered trade union authorized to write an application to the authority appointed by government for direction of payment of wages according to this act. Every such application shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made. Time of making an application can be accepted if there is reasonable cause.

After receiving of the application the authority shall give an opportunity to hear the applicant and the employer or other person responsible for the payment of wages and conducts the enquiry if necessary. It is found that there is mistake with employer; authority shall order the employer for payment of the wage or refund to the employee of the amount deducted unreasonably or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit. There will not be any compensation payable by employer if there is a reasonable and genuine cause in delay in the payment of wages.

Powers of authorities appointed under Section 15 (Sec 18)

Every authority appointed under sub-section (1) of Section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973.

Appeal (Sec 17)

In the following situation the parties who ever dissatisfied can appeal to the district court

a. If the application dismissed by above authorities
b. Employer imposed with compensation exceeding 300/- rupees by the authorities.
c. If the amount exceeding 25/- rupees withheld by the employer to single unpaid employee. 50/- in case of many unpaid employees

Reasons for penalty

1. Delay in payment of wages
2. Un reasonable deductions
3. Excess deduction for absence of duty
4. Excess deduction for damage or loss to employer
5. Excess deduction for house-accommodation amenity or service

Punishable with fine which shall not be less than 1000/- rupees but which may extend to 7500/- rupees

1. If Wage period exceed one month.
2. Failure in payments of wages on a working day.
3. Wages not paid in form of current coin or currency notes or in both.
4. Failure to maintain record for collected fines from employee.
5. Improper usage of fine collected from employees.
6. Failure of employee to display notice containing such abstracts of this Act and of the rules made.

Punishable with fine which may extend 3000/- rupees

1. Whoever obstructs an Inspector in the discharge of his duties under this Act
2. Whoever willfully refuses to produce on the demand of an Inspector any register or other document
3. Whoever refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act

Whoever repeats the same offence committed before. Imprisonment for a term which shall not be less than one month but which may extend to 6 months and fine which shall not be less than 3750/- rupees but which may extend 22500/-rupees.

THE FACTORIES ACT, 1948

Introduction:

Factories Act is one of the earliest labour welfare legislations. The object of the act is to secure health, safely, welfare, proper working hours, and other benefits to workers. The Act requires that workers should work in healthy and sanitary conditions and for that purposes. It provides that precaution should be taken for safety of workers and prevention of accidents.

Definition of Factory:

Secton 2(m) defines the term "factory" means any premises, including the precincts thereof, in any part of which manufacturing process is carried on with or without the aid of power, provided that at least 10 or 20 persons respectively are employed or were employed on any day of the preceding 12 months.

Meaning of occupier of factory

Section 2(n) defines the term "occupier of factory" means a person who has ultimate control over affairs of factory. It includes a partner in case of a firm and director in case of a company, that if a factory is run by a company, then only the director of the company can be treated as occupier. The occupier shall ensure, as far as possible health, safety, and welfare of workers while they are working in a factory. The name of the occupier of the factory is required to be informed to the Chief Inspector of Factories. The occupier will be held responsible if the provisions of the Factories Act, 1948 are not complied with.

Definition of Worker

Section 2(l) defines "worker" means a person employed, directly or by or through any agency with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process.

Definition of Manufacturing Process:

Section 2(k) defines "manufacturing process" means any process for-

i. making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

ii. pumping oil, water, sewage, or any other substance; or

iii. generating, transforming or transmitting power; or

iv. composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or

v. constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

vi. preserving or storing any article in cold storage.

Hazardous Process:

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

(i) cause material impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution of the general environment:

PROVISIONS REGARDING THE HEALTH OF WORKERS

Sections 11 to 20 of the Act contain certain provisions intended to ensure that the conditions under .which work is carried on in factories do not affect the health of the workers injuriously. The summary of the provisions are explained below

1. **Cleanliness :Sec 11**

Every factory shall be kept clean and free from dirt, and the outflow of drains etc. The floors must be cleaned. Drainage shall be provided. Inside walls, partitions and ceilings must be repainted at least once in five years. When washable water paint

is used they must be painted once every three years and washed at least every period of six months.

2. **Disposal of wastes and effluents :Sec 12**

The waste materials produced from the manufacturing process must be effectively disposed off.

3. **Ventilation and Temperature :Sec 13**

There must be provision for adequate ventilation by the circulation of fresh air: The temperature must be kept at a comfortable level. Hot parts of machines must be separated and insulated.

4. **Dust and Fume :Sec 14**

If the manufacturing process used gives off injurious or offensive dust and fume steps must be taken so that they are not inhaled or accumulated. The exhaust fumes of internal combustion engines must be conducted outside the factory.

5. **Artificial humidification :Sec 15**

The water used for this purpose must be pure. It must be taken from some source of drinking water supply. The State Government can frame rules regarding the process of humidification etc.

6. **Over Crowding :Sec 16**

There must be no overcrowding in a factory. In factories existing before the commencement of the Act there must be at least 350 c.ft of space per worker. For factories built afterwards, there must be at least 500 c.ft of space. In calculating the space, an account is to be taken of space above14 ft. (or 5 metres) from the floor

7. **Lighting :Sec 17**

Factories must be well lighted. Effective measures must be adopted to prevent glare or formation of shadows which might cause eyestrain.

8. **Drinking water: Sec 18**

Arrangements must be made to provide a sufficient supply of whole some drinking water. All supply' points of such water must be marked "drinking water". No such points shall be within 20 ft. (or 7.5 metres) of any latrine, washing place etc. Factories employing more than 250 workers must cool the water during the hot weather.

9. **Latrines and Urinals: Sec 19**

Every factory must provide' sufficient number of latrines and urinals. There must be separate provision for male and female workers. Latrine and urinals must be

kept in a clean and sanitary condition in factories. Employing more than250 workers, they shall be of prescribed sanitary types.

PROVISIONS REGARDING THE SAFETY OF WORKERS

Sections 21 to 40A, 40B and 41 of the Act lay down rules for the purpose of securing the safety of workers. Summary of the provisions of the Factories Act regarding the safety of the workers are stated below: (Sections 2l to 41).

1. **Fencing to machinery**

All dangerous machinery must be securely fenced e.g., moving parts- of prime movers and flywheels connected to every prime mover electric generators etc. (Sec 2l) Work on or near machinery in motion. Work on or near machinery in motion must be carried out only by specially trained adult male workers wearing tightly fitting c1othes.-Sec.22.

2. **Employment of young person's on dangerous machines**

No young person shall work at any dangerous machine' unless he has been specially instructed as to the dangers and the precautions to be observed has received sufficient training about the work and is under the supervision of some person having thorough knowledge and experience of the machine. (Sec. 23)

3. **Striking gear and devices for cutting off power**

In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom. (Sec. 24)

4. **Self-acting machines**

Moving parts of a self-acting machine must not be allowed to come within 45 cms. of any fixed structure which is not part of the machine. (Sec. 25)

5. **Casing of new machinery**

In all machinery installed after the commencement of theAct. certain parts must be sunk, encased or otherwise effectively guarded e.g.. set screw bolt toothed gearing etc. (sec. 26)

6. **Women and children near cotton Openers**

Women and children must not be allowed to work near cotton openers, except in certain cases. (Sec. 27)

7. Hoists, lifts, chains etc

Every hoist and lift must be so constructed as to be safe. There are detailed rules as to how such safety is to be secured. There are similar provisions regarding lifting machines. Chains, ropes and lifting tackle. (Sec. 28and) 29.

8. Revolving machinery

Where grinding is carried on the maximum safe working speed of revolving machinery connected therewith must be notified. Steps must be taken to see that the safe speed is not exceeded. (Sec. 30)

9. Pressure plant

Where any operation is carried on at a pressure higher than the atmospheric pressure, steps must be taken to ensure that the safe working pressure is not exceed. (sec. 31)

10. Floors, stairs and means of access

All floors, steps, stairs, passage and gangways shall be of sound construction and properly maintained. Handrails shall be provided where necessary. Safe means of access shall be provided to the place where the worker wills carry on any work. (Sec. 32)

11. Pits, sumps openings in floors etc

In every factory fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reasons of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.(sec 33)

12. Excessive weights

No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury. (2) The Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process. (sec 34)

13. Protection of eyes

In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves- (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or (b) risk to the eyes by reason of exposure to excessive light, the Government may by rules require that

effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of the process. (sec 35)

14. Precautions against dangerous fumes

No person shall be allowed to enter any chamber tank etc. where dangerous fumes are likely to be present unless it is equipped with a manhole or other means of going out. In such space no portable electric light of more than 24 volts shall be used. Only a lamp or light of flame proof construction can be used in such space. For people entering such space suitable breathing apparatus, reviving apparatus etc. shall be provided. Such places shall be cooled by ventilation before any person is allowed to enter.(secs. 36 and 36A)

15. Explosive or inflammable gas etc

Where a manufacturing process produces inflammable gas, dust, fume etc. steps must be taken to enclose the machine concerned, prevent the accumulation of substances and exclude all possible sources of ignition. Extra precautionary measures are to be taken where such substances are worked at greater than the atmospheric pressure. (Sec. 37)

16. Precaution in case of fire

Fire escapes shall be provided. Windows and doors shall be constructed to open outwards. The means of exit in case of the fire shall be clearly marked in red letters. Arrangements must be made to give warning in case or fire -sec. 38

17. Specifications of defectives etc. and safety of buildings and machinery

If any building or machine is in a defective or dangerous condition, the inspector of factories can ask for the holding of tests to determine how they can be made safe. He can also direct the adoption of the measure necessary to make them safe. In case of immediate danger, the use of the building or machine can be prohibited. (Secs. 39 and 40)

18. Maintenance of Buildings

If the Inspector of Factories thinks that any building in a factory, or any part of it is in such a state of disrepair that it is likely to affect the health and welfare of the workers he may serve on the occupier or manager or both in writing specifying the measures to be done before the specified date. (Sec. 4OA)

Safety Officers:

The State Government may notify to the occupier to employ a number of Safety Officers in a factory

i. where in one thousand or more workers are ordinarily employed or
ii. where in any manufacturing process or operation which involves the risk of bodily injury, poisoning disease or any other hazard to health of the persons employed in the factory .-Sec. 40B.

PROVISIONS REGARDING THE WELFARE OF WORKERS

1. **Washing facilities**

In every factory adequate and suitable facilities for washing shall be provided and maintained for the 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 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. (Sec 42)

2. **Facilities for storing and drying of wet clothing**

The State Government may in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing. (sec 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, 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. (Sec 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 cupboard to be provided and

maintained shall not be less than one for every one hundred and fifty workers ordinarily employed in the factory.(sec 45).

5. Canteens

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. (Sec. 46)

6. Shelters

In every factory where more than 150 workers are employed there must be provided adequate and suitable shelters or rest rooms and a lunch room (with drinking water supply) where workers may eat meals brought by them. Such rooms must be sufficiently lighted and ventilated and must be maintained in a cool and clean condition~. The standards may be fixed by the State Government. (Sec. 47)

7. Creches

In every factory where more than 30 women a employed, a room shall be provided for the use of the children (below 6 years) of such women. The room shall be adequate size well lighted and ventilated, maintained in a clean and sanitary condition and shall be in charge of a woman trained in the care of children and infants. The standards shall be laid down by the State Government. (Sec. 48)

Welfare officers

Welfare officers must be appointed in every factory where 500 or more workers are employed. The State Government may prescribe the duties, qualifications etc. of such officers. (Sec. 49)

WORKING HOURS OF ADULTS

Weekly hours Sec: 51

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

Weekly holidays: Sec 52

No adult worker shall be required or allowed to work in a factory on the first day of the week, (hereinafter referred to as the said day), unless he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and the manager of the factory has, before the said day or the substituted day.

Whichever is earlier delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and displayed a notice to that effect in the factory. Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

Notices may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

Where any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Compensatory holidays: Sec 53

Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost. (2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

Daily hours

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day: Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this section may be exceeded in order to facilitate the change of shifts.(sec 54)

Intervals for rest

The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at half an hour(sec 55).

Spread over

The periods of work of an adult worker in a factory shall be arranged that inclusive of his intervals for rest under section they shall not spread-over more than ten and half hours in any day. The Chief Inspector may for specified reasons increase the spread over up to twelve hours. (Sec. 56)

RULES REGARDING EMPLOYMENT OF ADULTS NIGHT SHIFTS

Where a worker in a factory works on a. shift which extends beyond midnight his weekly holiday and compensatory holiday means a period of holiday for 24 consecutive hours beginning when his shift ends, and

--the following day for him shall be deemed to be the period. of 24 hours beginning when such shift ends and the hours he has worked after midnight shall be counted in his previous day.(sec. 57)

Overlapping Shifts

Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time. The State Government or the Chief Inspector may grant exemption from this rule. (See. 58).

Double Employment

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.(Sec. 60)

Notice of Periods of Work

There must be displayed in every factory a notice showing periods of work of adults, classification of workers in groups according to nature of their work, shifts and relays etc. Change made in the system of work must be notified to the Inspector before change. The manager of every factory must maintain a Register of Adult Workers showing the name of each worker, the nature of his work, the group in which he is included, the relay in which he is allotted etc. The hours of work of an adult worker- must correspond with the notice referred to above and the Register.- Sections 61, 62, 63.

No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered' in the register of adult workers.-Sec. 62 (1A) added by the Factories (Amendment) Act, 1976.

Exemptions

By sections 64 and 65, the State Government has been given power to exempt for limited periods certain factories from compliance with some of the provisions relating to hours of work and employment. Such exemptions are necessary in special cases, for example in the case of workers engaged in urgent repairs or in preparatory and complementary work.

In some industries work if of an intermittent character and the enforcement of all the rules stated above will create hardship. The nature of the work in certain industries requires exceptional treatment, e.g., workers engaged in engine rooms and boilers or in the printing of newspapers.

EMPLOYMENT OF YOUNG PERSONS

Prohibition of employment of young children (sec 67-68)

No child who has not completed his fourteenth year shall be required or allowed to work in any factory. Non-adult workers to carry tokens.- A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless- (a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

Certificates of fitness (sec 69)

A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by a manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work; a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year, and is fit for full day's work in a factory:

Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

A certificate of fitness granted or renewed shall be valid only for a period of twelve months from the date thereof; may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

A certifying surgeon shall revoke any certificate granted or renewed under sub-section if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory. Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate, or the renewal thereof, state his reasons in writing for so doing. Where a certificate under this section, with reference to any young person is granted or renewed subject to such conditions. The young person shall not be required or allowed to work in any factory except in accordance with those conditions. Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Effect of certificate of fitness granted to adolescent (sec 70)

An adolescent who has been granted a certificate of fitness to work in a factory as an adult who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes.

No female adolescent or male adolescent who has attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 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,-

i. vary the limits laid down in this sub-section so, however, that no such section shall authorise the employment of any female adolescent between 10 p.m. and 5 a.m.;

ii. grant exemption from the provisions of this sub- section in case of serious emergency where national interest is involved.

iii. An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

Working hours for children: Sec 71

No child shall be employed or permitted to work,

i. in any factory for more than four and a half hours in any day; during of at least twelve consecutive hours which shall include the interval between 10 p.m. and 6 a.m.

ii. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and

iii. each child shall be employed in only one of the relays which shall not except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

iv. The provisions of section 52 shall apply also to child workers, and no exemption from the provisions of that section may be granted in respect of any child.

v. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

vi. No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

Notice of periods of work for children: Sec 72

There shall be displayed and correctly maintained in every factory in which children are employed in accordance with the provisions of sub- section (2) of section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

The periods shown in the notice required by sub-section it shall be fixed beforehand in accordance with the methods laid down for adult workers in section 61, and shall be such that children working for those periods would not be in contravention of the provisions. The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

Register of child workers: Sec 73

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

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

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. No child shall be employed in any factory otherwise than in accordance with the notice of periods of work of children displayed in the factory and the entries made before hand against his name in the register of child workers of the factory. (sec 74).

Power to require medical examination: Sec 75

Where an Inspector is of the opinion that any person working in a factory without a certificate of fitness is a young person, or that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be, examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

Labour Law Reforms

- The central government proposes to replace 29 existing labour laws with four Codes. The objective is to simplify and modernize labour regulation.

- The major challenge in labour reforms is to facilitate employment growth while protecting workers' rights. Key debates relate to the coverage of small firms, deciding thresholds for prior permission for retrenchment, strengthening labour enforcement, allowing flexible forms of labour, and promoting collective bargaining.

- Further, with the passage of time, labour laws need an overhaul to ensure simplification and updation, along with provisions which can capture the needs of emerging forms of labour (e.g., gig work). This note discusses these challenges and the approaches taken by the four Codes.

- **Coverage:** Most labour laws apply to establishments over a certain size (typically 10 or above). Size-based thresholds may help firms in reducing compliance burden. However, one could argue that basic protections related to wages, social security, and working conditions should apply to all establishments. Certain Codes retain such size-based thresholds.

- **Retrenchment:** Establishments hiring 100 or more workers need government permission for closure, layoffs or retrenchments. It has been argued that this has created an exit barrier for firms and affected their ability to adjust workforce to production demands. The Industrial Relations Code raises this to 300, and allows the government to further increase this limit by notification.

- **Labour enforcement:** Multiplicity of labour laws has resulted in distinct compliances, increasing the compliance burden on firms. On the other hand, the labour enforcement machinery has been ineffective because of poor enforcement, inadequate penalties and rent-seeking behaviour of inspectors. The Codes address some of these aspects.

- **Contract labour:** Labour compliances and economic considerations have resulted in increased use of contract labour. However, contract labour have been denied basic protections such as assured wages. The Codes do not address these concerns fully.

However, the Industrial Relations Code introduces a new form of short-term labour – fixed term employment.

- **Trade Unions:** There are several registered trade unions but no criteria to 'recognise' unions which can formally negotiate with employers. The Industrial Relations Code creates provisions for recognition of unions.

- **Simplification and updation:** The Codes simplify labour laws to a large extent but fall short in some respects. Further, the Code on Social Security creates enabling provisions to notify schemes for 'gig' and 'platform' workers; however, there is a lack of clarity in these definitions.

- **Delegated Legislation:** The Codes leave several key aspects, such as the applicability of social security schemes, and health and safety standards, to rule-making. The question is whether these questions should be determined by the legislature or be delegated to the government.

Labour falls under the Concurrent List of the Constitution. Therefore, both Parliament and state legislatures can make laws regulating labour. The central government has stated that there are over 100 state and 40 central laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security and wages.[1] The Second National Commission on Labour (2002) (NCL) found existing legislation to be complex, with archaic provisions and inconsistent definitions.[2] To improve ease of compliance and ensure uniformity in labour laws, the NCL recommended the consolidation of central labour laws into broader groups such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.

In 2019, the Ministry of Labour and Employment introduced four Bills on labour codes to consolidate 29 central laws. These Codes regulate: (i) Wages, (ii) Industrial Relations, (iii) Social Security, and (iv) Occupational Safety, Health and Working Conditions. While the Code on Wages, 2019 has been passed by Parliament, Bills on the other three areas were referred to the Standing Committee on Labour. The Standing Committee submitted its reports on all three Bills.[3] The government has replaced these Bills with new ones in September 2020. This note discusses some of the key issues related to labour laws and the provisions in the four new Codes. This note should be

read in conjunction with our Legislative Briefs on the four Codes, and the note on the three new Bills.