



KLE LAW ACADEMY BELAGAVI

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STUDY MATERIAL

for

LABOUR LAW II

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

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LABOUR LAW-II

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UNIT-I

CONSTITUTIONAL DIMENSIONS OF INDUSTRIAL RELATIONS AND LABOUR

CHAPTER-1

LABOUR WELFARE AND INDIAN CONSTITUTION

SYNOPSIS

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1. Concept of Labour Welfare in India

The concept of labour welfare is a broad concept. It connotes a condition of well-being, happiness, satisfaction, conservation and development of human resources. Labour welfare

activities arose in colonial India in reply to the need for cheap labours. The British government passed legislations which led to the development of the concept of labour welfare in colonial India. The Fatal Accidents Act of 1853 aimed at providing compensation to the families of workmen who lost their lives as a result of an “actionable wrong.

2. PREAMBLE

“The founding fathers of the Constitution cognizant of the reality of life-wisely engrafted the Foundational Rights and Directive Principles... by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life and to minimise the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas and engaged in different vocations.”

The preamble of the Constitution, inter alia, seeks to provide:

- Justice, Social, Economic and Political
- Liberty of thought, expression, belief, faith and worship
- Equality of status and of opportunity
- Fraternity, assuring the dignity of the individual and unity and integrity of nation

The above principles enshrined in the preamble of our Constitution provide the bedrock for framing all labour and social legislation and their progressive and creative interpretation in favour of working classes. These principles run through our labour legislations like invisible golden threads and provide them strength and stamina to meet the aspirations of working classes; whether it is protective legislations, social security legislations, welfare legislations or even industrial relations legislations, they all heavily lean towards working classes due to the philosophy provided in the preamble.'

3. FUNDAMENTAL RIGHTS

The fundamental rights, which are contained in Part III of the Constitution, limit and control legislative competency. Any law including labour legislation contravening any fundamental right is void. Any citizen affected by such a law has a right of access to the courts under articles 32 and 226; whereunder it is the duty of the Supreme Court, or a high court, respectively, to enforce fundamental rights by issuing writs or suitable orders or directions.

a. Article 14

Art 14 of the Indian Constitution explains the concept of Equality before law. The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying the absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. As Dr Jennings puts it: "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence" It only means that all persons similarly circumstance shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards the subject-matter of the legislation their position is the same. Thus, the rule is that the like should be treated alike and not that unlike should be treated alike.

In *Randhir Singh v. Union of India* the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39 (c) of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational

classification. The decision in Randhir Singh's case has been followed in a number of cases by the Supreme Court.

b. Article 19 (1) (c)

Art 19 (1) (c) speaks about the Fundamental right of a citizen to form associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization. It is an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union, and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

In *Damayanti v. Union of India* The Supreme Court held that "The right to form an association", the Court said, "necessarily 'implies that the person forming the association has also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association".

c. Article 23

Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour. The second part of this article declares that any contravention of this provision shall be an offence punishable in accordance with the law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes. Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'.

Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article, Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and beggar and other similar forms of forced labour wherever they are found. Article 23 prohibits the system of 'bonded labour' because it is a form of forced labour within the meaning of this Article. "Beggar" means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause, therefore, does not prohibit forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to "other forms of forced labour". It means to compel a person to work against his will.

In *Peoples Union for Democratic Rights v. Union of India*, the Supreme Court considered the scope and ambit of Article 23 in detail. The Court held that the scope of Article 23 is wide and unlimited and strikes at "traffic in human beings" and "beggar and other forms of forced labour" wherever they are found. It is not merely "beggar" which is prohibited by Article 23 but also all other forms of forced labour, "Beggar is a form of forced labour under which a person is compelled to work without receiving any remuneration. This Article strikes at forced labour in whatever form it may manifest itself because it is violative of human dignity and contrary to basic human values. The practise of forced labour is condemned in almost every international instrument dealing with human rights. Every form of forced labour "beggar" or other forms, is prohibited by Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is paid remuneration or not. Even if remuneration is paid, labour or services supplied by a person would be hit By this Article, if it is forced labour, e.g., labour supplied not willingly but as a result of force or compulsion, this Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service. If a person has contracted with another to perform service and there is a consideration for such service. In the shape of liquidation of the debt or even

remuneration he cannot be forced by compulsion of law, or otherwise to continue to perform such service as it would be forced labour within the meaning of Article 23. No one shall be forced to provide labour or service against his will even though it be under a contract of service. The word "force" was interpreted by the court very widely. Bhagwati, J. said, 'The word 'force' must, therefore, be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

d. Article 24

Article 24 of the Constitution prohibits the employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children. Children are assets of the nation. That is why Article 39 of the Constitution imposes upon the State an obligation to ensure that the health and strength of workers, men and women, and the tender age of the children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

In *People's Union for Democratic Rights v. Union of India*, it was contended that the Employment of Children Act, 1938 was not applicable in case of employment of children in the construction work of Asiad Projects in Delhi since the construction industry was not a process specified in the schedule to the Children Act. The Court rejected this contention and held that the construction work is hazardous employment and therefore under Art. 24. No child below the age of 14 years can be employed in the construction work even if the construction industry is not specified in the schedule to the Employment of Children Act, 1938. Expressing concern about the 'sad and deplorable omission', Bhagwati, J., advised the State Government to take immediate steps for inclusion of construction work in the schedule to the Act, and to ensure that the constitutional mandate of Article 24 is not violated in any part of the country. In yet another case the Court has reiterated the principle that the construction work is a hazardous employment and children below 14 cannot be employed in this work.

The rights of freedom of speech, freedom of assembly, and freedom of association, the prohibition of forced labour, employment of children in factories and protection of life and personal liberty, protect some of the vital interests of the workers, Strengthening their hands in forming trade unions, staging demonstrations, and carrying on collective bargaining. The freedom of trade and occupation may presumably be of help principally to the employers. The right to equality, however, protects both capital and labour, though in different ways.

4. DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution contains the Directive Principles of State Policy. The provisions contained in this part even though not judicially enforceable but nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Some of these specify the goals and values to be secured by labour legislation for workmen. They are: (i) an adequate means to livelihood; (ii) prevention of the concentration of wealth and means of production; (iii) equal pay for equal work for both men and women; (iv) protection and preservation of the workers' health; (v) the right to work, the right to education, and the right to public assistance in cases of old age, sickness disablement and in other cases of undeserved want; (vi) just and humane conditions of work and maternity relief; (vii) a living wage, (viii) participation of workers in management and (ix) a decent standard of life.

A. Article 39 specifically requires the State to direct its policy towards securing the following principles :

- (a) Equal right of men and women to adequate means of livelihood.
- (b) Distribution of ownership and control of the material resources of the community to the common good,
- (c) To ensure that the economic system should not result in the concentration of wealth and means of production to the common detriment.
- (d) Equal pay for equal work for both men and women.

(e) To protect the health and strength of workers and the tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

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

Pursuant to **Article 39 (d)**, Parliament has enacted the Equal Remuneration Act, 1976. The directive contained in Article 39 (d) and the Act passed thereto can be judicially enforceable by the court. *Randhir .Singh v. Union of India*, the Supreme Court has held that the principle of "Equal pay for equal work though not a fundamental right" is certainly a constitutional goal and, therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do identical work. However, the doctrine of 'equal pay for equal

work' .cannot be put in a strait jacket. This right, although finds a place in Article 39, is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution. Reasonable classification, based on intelligible criteria having -nexus with the object sought to be achieved is permissible. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is a difference in the nature of work done and as regards reliability and responsibility. In-State of *A.P. v. V. G. Sreenivasa Rao*, it has been held that giving higher pay to a junior in the same cadre is not illegal and violative of Articles 14, 16 and 39 (d) if there is a rational basis for it.

Article 41 provides that within the limits of its economic capacity the State shall secure for the Right to work and education.

Article 42 instructs the State to make provisions for securing just and humane conditions of work and for maternity relief.

Article 43 refers to a "living wage" and not "minimum wage". The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provisions for the education of children and insurance etc.

Article 45 required the State to make provision within 10 years for free and compulsory education for all children until they complete the age of 14 years. The object was to abolish illiteracy from the country. In a landmark judgment in *Unni Krishnan v. State of A.P.* the Supreme Court has held that the "Right to education" upto the age of 14 years is a fundamental right within the meaning of Article 21 of the Constitution, but thereafter the obligation of the State to provide education is subject to the limits of its economic capacity. "The right to education flows directly from right to life", the Court declared.

Article 47 imposes a duty upon the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. In particular, the State should bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 46 enjoins the States to promote with special care the education and economic interest of the weaker sections of the people, and in particular of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and of all forms of exploitation.

Article 39-A directs the State to ensure that the operation of the legal system promotes justice, on a basis of equal opportunities and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This article was added to the Constitution pursuant to the new policy of the Government to give legal aid to economically backward classes of people.

By and large, industrial legislation has been directed towards the implementation of these directives. The Factories Act, 1948, the Employees' State Insurance Act, 1948, the Workmen's Compensation Act, 1948, the Child and Adolescent Labour (Regulation and Abolition) Act and several other labour legislation seek to regulate the employment of women and children in factories and other industrial establishments; the provision of just and humane conditions of work; the protection of health; and compensation for injuries received during work. The Minimum Wages Act provides for the fixation of minimum wages; the Payment of Wages Act regulates wage payment, and the Payment of Bonus Act seeks to bridge the gap between the minimum wage and a living wage. But the directives relating to the distribution of wealth, living wages, and even the equal remuneration and public assistance in cases of undeserved want have not been generally implemented as yet.

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2. Industrial Relations and Labour Laws- S.C. Srivastava (Sixth Edition 2015)

CHAPTER-2

BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Synopsis

- 1. Background**
- 2. Aims and objectives**
- 3. Bonded labour under Indian Constitution**
- 4. Features of the Act**
- 5. Definitions**
- 6. Abolition of bonded labour system**
 - a. Abolition**
 - b. Customs etc are void**
- 7. Extinguishment of repayment of debt**
- 8. Administration/ implementing Authorities**
 - a. District Magistrate**
 - b. Vigilance Committee**
- 9. Offences and Procedures**

Background

The phenomenon of bonded labour is a vicious circle where each factor is responsible for further subjugation and apathy of the bonded labourers. The system of bonded labour is an outcome of certain categories of indebtedness which have been prevailing for a long time involving certain economically, exploited, helpless and weaker sections of the society. The bonded or forced labour system was known by different names in different parts of the country like Begar, Sagri or Hali, Jeetham etc. The issue of 'bonded labour' came to the forefront as a national issue when it was included in the old 20-Point Programme in 1975.

Aims and objectives of the Act

The Bonded labour system abolition act 1976 has been passed to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith for incidental thereto. It was stated in the objects and reasons of the Act that there still exists in different parts of the country a

system of usury under which the debtor or his descendants or dependents have to work for the creditor without reasonable wages or with no wages in order to extinguish the debt. At times several generations work under bondage for the repayment of a paltry sum which has been taken by some remote ancestor.

The interest rates are exorbitant and such bondage cannot be interpreted as the result of any legitimate contract or agreement. The system implies the infringement of the basic human rights and destruction of the dignity of human labour.

Bonded Labour under Indian Constitution.

The Constitution of India guarantees all its citizens-justice, social, economic and political; freedom of thought, expression, belief, faith and worship; equity of status and opportunity and fraternity, the dignity of individual and unity of the Nation.

Under Article 23. Prohibition of traffic in human beings and forced labour - Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 35 (a) (ii) of the constitution not only confers the power on Parliament to provide for punishment for contravention of the said provisions. Article 23 (1) expressly takes away the power of the state legislature to make any regulation with regard to bonded labour. Accordingly, the bonded labour System Abolition ordinance 1975 was promulgated by the president in 1975. By the said ordinance the bonded labour system was abolished and the bonded labourers were freed and discharged from any obligation to render any bonded labour and their bonded debt were also extinguished.

People's Union of Democratic Rights V. Union of India

The court held that, "The Union of India, the Delhi Administration and the Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of the provisions of various labour law by its contractors and for non-compliance with the laws by the contractors, the workmen would clearly have a cause of actions against them as principal employers."

The Hon'ble Supreme Court of India dealt with the expression "other similar form of forced bonded labour" envisaged in Article 23 of The Constitution of India. The court gave the

expression a wide interpretation to meet the objectives of Article 23. The court held that a person who has been forced to work as a bonded labour and a person who is forced to work at a rate lesser than the minimum wage due to his economic compulsion shall be dealt equally.

Under Article 42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief.

Under Article 43. A living wage, etc. for workers - The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work and living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industrial on an individual or co-operative basis in rural areas.

Supreme Court in *Public Union for Civil liberties V. state of Tamil Nadu*, the question regarding rehabilitation of bonded labour. Going through the reports of the National Human Rights Commission and expert group, the supreme court pointed out that the major issue in regard to bonded labour was their rehabilitation. Therefore the court issued directions to the state governments and union territories towards achieving such rehabilitation.

Main Features of the Act

1. The Act prohibits bonded labour system
2. The Act provides that if there is any agreement or instrument for the custom which requires such bonded labour, it shall stand inoperative after the commencement of the act.
3. Any liability to repay bonded debt shall stand extinguished.
4. The property of the bonded labour shall stand freed and discharged from mortgage, charge, lien or other encumbrances and shall be restored to the possession of the bonded labour.
5. For the compliance of the provisions of the act, it makes provision for the constitution of vigilance committee in each district and each Sub District.

This Act is a social welfare legislation providing for socio-economic justice to the weaker section of the society.

Definitions

“Advance” means an advance, whether in cash or in kind or partly in cash or partly in kind, made by one person (the creditor) to another person the debtor)

“Agreement” means

- a. an agreement (whether written or oral or partly written and partly oral)
- b. between a debtor and creditor, and
- c. includes an agreement providing for forced labour, the existence of which is presumed under any social custom prevailing in the concerned locality.

Explanation.—The existence of an agreement between the debtor and creditor is ordinarily presumed, under the social custom, in relation to the systems mentioned under the Act.

“Bonded debt” means an advance obtained or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system;

“Bonded labour” means any labour or service rendered under the bonded labour system;

“Bonded labourer” means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt;

“Bonded labour system” means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,—

1. in consideration of an advance obtained by him or by any of his lineal ascendants or descendants and in consideration of the interest, if any, due on such advance, or
2. in pursuance of any customary or social obligation, or
3. in pursuance of an obligation devolving on him by succession, or
4. for any economic consideration received by him or by any of his lineal ascendants or descendants, or
5. by reason of his birth in any particular caste or community,

He would—

1. render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
2. forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
3. forfeit the right to move freely throughout the territory of India, or
4. forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him,

and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.

Sannasomannavara Somashekarappa V. Gorappa Rudraswamy

One Mr somashekarappa approached the parents of four children and paid some advance, in return the children had to render service (grazing cattle) for a period of one year. Food and clothing were provided to the children. Later the children were afraid and admitted to the school. a case was registered under the bonded labour abolition act. The court observed that

1. there was no creditor-debtor relationship between the parents at the employer
2. It was child labour not bonded labour system
3. parents of the children were not compelled obliged to send children
4. The requirement of section 2 (g) was not fulfilled.

ABOLITION OF BONDED LABOUR SYSTEM

Abolition of bonded labour system.—

1. On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.
2. After the commencement of this Act, no person shall—

- (a) make any advance under, or in pursuance of, the bonded labour system, or
- (b) compel any person to render any bonded labour or other forms of forced labour.

On the commencement of the Act, the system of bonded labour is completely abolished and all the bonded labours became free from the obligation to render bonded labour. It also prohibited making advance in pursuance of bonded labour system.

The agreement, custom, etc., to be void.—

On the commencement of this Act, any custom or tradition or any contract, agreement or other instrument, by virtue of which any person, or any member of the family or dependant of such person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative

EXTINGUISHMENT OF LIABILITY TO REPAY BONDED DEBT

Liability to repay the bonded debt to stand extinguished.—

All bonded debts are deemed to be extinguished

1. On the commencement of this Act, every obligation of a bonded labourer to repay any bonded debt, or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished.

No suit shall be filed for recovery of bonded debt

2. After the commencement of this Act, no suit or other proceeding shall lie in any civil court or before any other authority for the recovery of any bonded debt or any part thereof.

Decree or order deemed to be fully satisfied

3. Every decree or order for the recovery of bonded debt, passed before the commencement of this Act and not fully satisfied before such commencement, shall be deemed, to have been fully satisfied.

Attachment and recovery stand vacated

4. Every attachment made before the commencement of this Act, for the recovery of any bonded debt, shall, on such commencement, stand vacated; and, where, in pursuance of such attachment, any movable property of the bonded labourer was seized and removed from his custody and kept in the custody of any court or other authority pending sale thereof, such movable property shall be restored, as soon as may be practicable after such commencement, to the possession of the bonded labourer.

Property should be restored

5. Where, before the commencement of this Act, possession of any property belonging to a bonded labourer or a member of his family or other dependant was forcibly taken over by any creditor for the recovery of any bonded debt, such property shall be restored, as soon as may be practicable after such commencement, to the possession of the person from whom it was seized.

Application if the property is not restored

6. If restoration of the possession of any property is not made within thirty days from the commencement of this Act, the aggrieved person may, within such time as may be prescribed, apply to the prescribed authority for the restoration of the possession of such property and the prescribed authority may, after giving the creditor a reasonable opportunity of being heard, direct the creditor to restore to the applicant the possession of the concerned property within such time.
7. An order made by any prescribed authority, under sub-section (6), shall be deemed to be an order made by a civil court and may be executed by the court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction the creditor voluntarily resides or carries on business or personally works for gain.

Sale of the attached property before the Act will not get affected

8. For the avoidance of doubts, it is hereby declared that, where any attached property was sold before the commencement of this Act, in execution of a decree or order for the recovery of a bonded debt, such sale shall not be affected by any provision of this Act:

Provided that the bonded labourer, or an agent authorised by him in this behalf, may, at any time within five years from such commencement, apply to have the sale set aside on his depositing in court, for payment to the decree-holder, the amount specified in the proclamation of sale, for the recovery of which the sale was ordered, less any amount, as well as mesne profits, which may, since the date of such proclamation of sale, have been received by the decree-holder.

Pending suit shall stand dismissed

9. Where any suit or proceeding, for the enforcement of any obligation under the bonded labour system, including a suit or proceeding for the recovery of any advance made to a bonded labourer, is pending at the commencement of this Act, such suit or other proceedings shall, on such commencement, stand dismissed.

- 10 On the commencement of this Act, every bonded labourer who has been detained in civil prison, whether before or after judgment, shall be released from detention forthwith.

Property of bonded labourer to be freed from mortgage, etc.—

1. All property vested in a bonded labourer which was, immediately before the commencement of this Act under any mortgage, charge, lien or other incumbrances in connection with any bonded debt shall stand freed and discharged from such mortgage, charge, lien or other incumbrances, and where any such property was, immediately before the commencement of this Act, in the possession of the mortgagee or the holder of the charge, lien or incumbrance, such property shall on such commencement, be restored to the possession of the bonded labourer.
2. If any delay is made in restoring any property, to the possession of the bonded labourer, such labourer shall be entitled, to recover from the mortgagee or holder of the lien, charge or incumbrance, such mesne profits as may be determined by the civil court of the

lowest pecuniary jurisdiction within the local limits of whose jurisdiction such property is situated.

Freed bonded labourer not to be evicted from homestead, etc.—

1. No person who has been freed and discharged under this Act from any obligation to render any bonded labour, shall be evicted from any homestead or other residential premises which he was occupying immediately before the commencement of this Act as part of the consideration for the bonded labour.
2. If, after the commencement of this Act, any such person is evicted by the creditor from any homestead or other residential premises, the Executive Magistrate in charge of the Sub-Division within which such homestead or residential premises is situated shall, as early as practicable, restore the bonded labourer to the possession of such homestead or other residential premises.

Creditor not to accept payment against extinguished debt.—

1. No creditor shall accept any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.
2. Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years and also with fine.
3. The court, convicting any person, in addition to the penalties which may be imposed, direct the person to deposit the amount accepted, in the court, in the order for being refunded to the bonded labourer.

IMPLEMENTING AUTHORITIES

Authorities who may be specified for implementing the provisions of this Act.Sec10

The State Government may confer such powers and impose such duties on a District Magistrate to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer so specified.

Duty of District Magistrate and other officers to ensure credit. Sec 11

The District Magistrate authorised and the officer specified by the District Magistrate shall, as far as practicable, try to promote the welfare of the freed bonded labourer by securing and protecting the economic interests of such bonded labourer so that he may not have any occasion or reason to contract any further bonded debt.

Duty of District Magistrate and officers authorised by him. Sec12

It shall be the duty of every District Magistrate and every officer specified by him to inquire whether, after the commencement of this Act, any bonded labour system or any other form of forced labour is being enforced by, or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such inquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour, he shall forthwith take such action as may be necessary to eradicate the enforcement of such forced labour.

Jai Singh v. State of Punjab

Where family members of petitioners were made to work in obligation of loan advanced, it was held that it is a clear violation of mandate given under Article 23 of the Constitution and Bonded Labour System (Abolition) Act, 1976. Hence, District Magistrate was directed to take immediate action under Section 12 of the Act,

BADHUA MUKTI MORCHA V. UNION OF INDIA,

The Public Interest Litigation was filed before the Supreme Court under Article 32 of The Constitution of India to issue appropriate directions for the prohibition of Bonded Labour. The petitioner conducted a survey in stone quarries situated in Faridabad district. It was found by the petitioner that they were living in substandard conditions. There were a lot of middlemen who extracted the money from the workmen as commission.

The court directed the Central Government and the State of Haryana to construct washrooms, suitable drinking facilities, provide medical kits so as to raise the living standards of the workmen. The court directed the Central Government to conduct inspection every fortnight and

in case, any workman is found in a distressed condition, he should be provided medical and legal assistance.

The court went on to observe that, the right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

VIGILANCE COMMITTEES

Vigilance Committees Sec 13.

Every State Government shall constitute Vigilance Committees in each district and each Sub-Division as it may think fit.

Each Vigilance Committee constituted for a district, shall consist of the following members, namely:—

- a. the District Magistrate, or a person nominated by him, who shall be the Chairman;
- b. three persons belonging to the Scheduled Castes or Scheduled Tribes and residing in the district, to be nominated by the District Magistrate.
- c. two social workers, resident in the district, to be nominated by the District Magistrate;
- d. not more than three persons to represent the official or non-official agencies in the district connected with rural development, to be nominated by the State Government;
- e. one person to represent the financial and credit institutions in the district, to be nominated by the District Magistrate.

Constitution of Vigikance Committee

Each Vigilance Committee constituted for a Sub-Division, shall consist of the following members, namely:—

1. the Sub-Divisional Magistrate, or a person nominated by him, who shall be the Chairman;
2. three persons belonging to the Scheduled Castes or Scheduled Tribes and residing in the Sub-Division, to be nominated by the Sub-Divisional Magistrate.
3. two social workers, resident in the Sub-Division, to be nominated by the Sub-Divisional Magistrate;
4. not more than three persons to represent the official or non-official agencies in the Sub-Division connected with rural development to be nominated by the District Magistrate;
5. one person to represent the financial and credit institutions in the Sub-Division, to be nominated by the Sub-Divisional Magistrate;
6. one officer specified under section 10 and functioning in the Sub-Division

Functions of Vigilance Committees.ec14

The functions of each Vigilance Committee shall be,—

- a. to advise the District Magistrate or any officer authorised by him as to the efforts made, and action is taken, to ensure that the provisions of this Act or of any rule made thereunder are properly implemented;
- b. to provide for the economic and social rehabilitation of the freed bonded labourers;
- c. to co-ordinate the functions of rural banks and co-operative societies with a view to canalising adequate credit to the freed bonded labourer;
- d. to keep an eye on the number of offences of which cognizance has been taken under this Act;
- e. to make a survey as to whether there is any offence of which cognizance ought to be taken under this Act;

- f. to defend any suit instituted against a freed bonded labourer or a member of his family or any other person dependent on him for the recovery of the whole or part of any bonded debt or any other debt which is claimed by such person to be bonded debt.

Any member authorized by the vigilante committee will defend the suit against the freed bonded labourers. They will be deemed as authorized agent of the freed bonded labourer.

The burden of proof.—Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.

OFFENCES AND PROCEDURE FOR TRIAL

Punishment for enforcement of bonded labour.

Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

Punishment for advancement of bonded debt.

Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

Punishment for extracting bonded labour under the bonded labour system.—

Whoever enforces, after the commencement of this Act, any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependant of such person is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him.

The Act also has provision of punishment for omission or failure to restore possession of property to bonded labourers

Abetment to be an offence.

Whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted.

Offences to be tried by Executive Magistrates.

The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act; and, on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974), to be a Judicial Magistrate of the first class, or of the second class, as the case may be.

Jurisdiction of civil courts barred.

No civil court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under this Act.

Neeraja Choudhary V. State of Madhya Pradesh

It was alleged by the petitioner that in spite of the fact that a long time has elapsed, quite a number of labourers rescued from Faridabad quarries have not been rehabilitated. It was contended by the petitioner that the State Government was obligated to overlook the rehabilitation of rescued labourers and rehabilitation of labourers is necessary so as to ensure Right to Life guaranteed to them under The Constitution of India, 1950.

The Hon'ble court held that as per the requirements of Article 21 and 23, the bonded labourers need to be identified, rescued and also rehabilitated. The court highlighted the importance of rehabilitation observing that in absence of any concrete measures for rehabilitation of rescued

labourers, they would be driven into the state of poverty and substandard conditions again and it might lead them to the bonded labour system again.

Recommendations of the Second National Commission on Labour

Bonded Labour System (Abolition) Act, 1976 is not a labour law but only welfare legislation. While all the other labour laws relate to situations where there is an employer-employee nexus, this is about the only law where the reverse takes place i.e., even the existing relation of master-servant is snapped, the affected person released from bondage and provision sought to be made for his/her rehabilitation. The Commission regards the implementation of this law by the Ministry of Labour as appropriate, as it emanates from Article 23 of the Constitution and deals with working people.

In spite of constitutional and legal provisions to abolish the bonded labour system, the implementation of the law has been very difficult at the administrative level. There are many difficult problems involved in eradicating such system. That are -

1. Identifying the bonded labourer
2. The problem of rehabilitation after releasing them from the bondage

A big problem faced in India is the beneficial legislation passed for the welfare of poor and downtrodden, won't be implemented properly. We always have an administrative resistance against the implementation of such legislation

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CHAPTER-3

EQUAL REMUNERATION ACT 1976

Synopsis

1. Background
2. Object
3. Features
4. Definitions
5. Payment of remuneration at equal rate
 - a. No discrimination while recruiting
6. Advisory Committee
 - a. Constitution and functions
7. Adjudication of disputes
8. Appeal
9. Inspectors
10. Penalties

The principle of equal pay for equal work is contained in clause (d) of Article 39 of the Indian Constitution. This principle implies that where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments.

Indian Constitution

Equal pay for equal work finds its place in the Directive Principles of State Policy and it is an accompaniment of equality clause enshrined in Article 14 and 16 of the Constitution of India. Nevertheless, the abstract doctrine of equal pay for equal work cannot be read in Article 14. Article 39 (d) envisages that the state shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women.

In *Randhir Singh V. Union of India*, The supreme court held that the principle of equal pay for equal work though not a fundamental right is certainly a constitutional goal and therefore capable of enforcement through constitutional remedies under article 32 of the Indian Constitution. It is not an abstract Doctrine but one of its substance. it can be deduced from Article 14 and 16. The word socialist in the Preamble must at least mean equal pay for equal work

State of A.P V. Sreenivasa Rao

Equal pay for equal work does not mean that all the members of a cadre must receive the same pay, irrespective of their seniority, source of recruitment, educational qualifications. Higher pay to junior would be arbitrary on its face but equality Doctrine cannot be invoked where there is a justifiable grounds in doing so.

With a view to give effect to the goal of equal pay for equal work set-out in the Indian constitution, the President of India promulgated the equal remuneration Ordinance in the year 1975 so that the directive principle could be implemented.

The object of the Act

1. Equal remuneration act, 1976 provides for the payment of equal remuneration to men and women workers and
2. For prevention of discrimination, on the basis of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

Features of the Act

1. The Act ensures against discrimination in recruitment and promotion of men and women
2. Remuneration for equal work or work of similar nature for men and women
3. Prevents discrimination on the basis of sex.
4. No discrimination for recruitment of women
5. The advisory committee to promote employment opportunities for women.
6. Appointment of officers for hearing the complaints.
7. Appointment of inspector for investigation and administration of the Act.

The main objective of the act is gender equality, but by deciding different cases Supreme Court has extended its applicability generally to Article 14 and 16 of Indian Constitution

Dharwad District P.W.D Literate Daily Wage Employees Association V. State of Karnataka and another

Equal Remuneration Act was enacted for providing Equality of pay for equal work between men and women which is the part of the principal equal pay for equal work. the daily rated and monthly rated employees state of Karnataka is entitled to pay like regular employees. therefore the government must pay salary to such workmen at the rate equivalent to the minimum pay in the pay scale of the regularly employed workers.

Definitions

Sec 2 (g)“Remuneration” means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in-kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;

Sec2 (h) “same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment;

Essential conditions

1. work in respect of which the skill, effort and responsibility required are the same,
2. when performed under similar working conditions,
3. by a man or a woman
4. If differences any
5. between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment

Equal remuneration act lays stress upon the similarity of the skill effort and responsibility when performed under similar conditions.

State of MP V. Pramod Bhartiya

Conditions of service of lecturer working in Higher Secondary School in the state of Madhya Pradesh were governed by a set of rules. In the state of Madhya Pradesh, there is another set of schools called technical schools. These are also Higher Secondary Schools and in these lecturers are categorized as technical lecturers non-technical lecturers. The service of lecturer in the school is governed by another set of rules.

It was held that it is not enough to say that the qualifications are the same, nor is not enough to say the schools are of the same status. It is also not sufficient to say that the service conditions are similar. What is more important is whether they discharge similar duties, functions and responsibilities. Though The Equal Remuneration Act is mainly directed against discrimination against workmen and is not applicable to teachers or establishments to which they belong, yet the relevance of the said definition cannot be denied. This is an enactment made to give statutory shape to the rule of equal pay for equal work both for men and women

M.P. Rural Agricultural Extension Officers Association V. State of M.P. and Another

Rural agricultural extension officers who only matriculated. They complained that they were not paid the same as was paid to those who were graduates under the rules. Supreme Court observed that a policy decision has been adopted by the state that the Post of Extension officers should be filled up only by graduates. The different scale was provided by the state for the non-graduates with a view to avoiding any discrimination among new recruits and the serving employees who possessed the graduate qualification, the state granted a higher scale of pay also for the existing degree holders. In making such a grant, the state was not acting illegally.

Act to have overriding effect. Sec 3—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.

It states that it will not affect the terms and conditions of any law which provides special treatment to women. The statement in Section 3 itself suggests that it will have an effect under all circumstances.

However, it also provides that any special treatment accorded to women in connection with the birth or expected birth of a child, or the terms and conditions relating to retirement, marriage or death or any of them will not be affected by the present Act.

In M/s Mackinon Mackenzie & Co Ltd V. andrey D'Costa

It was urged on behalf of the management that difference between the remuneration of male stenographers and confidential lady stenographers was on account of a settlement arrived at after proper negotiation. It was that in view of section 3 of the act the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law in the terms of any award, agreement for a contract of service whether made before or after the commencement of the act, or in any instrument having effect under any law for the time being in force. Therefore the settlement must yield to the provisions of the act.

Payment of Remuneration at Equal Rates to men and women workers

Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.— No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

No employer shall, for the purpose of paying equal wages to both men and women, reduce the rate of remuneration of any worker.

Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of similar nature are different only on the ground of sex, then the highest of such rates shall be the rate at

which remuneration shall be payable, on and from such commencement, to such men and women workers:

The employer must not discriminate on grounds of sex when it comes to remuneration provided for the same amount and nature of work. This Act was placed because there were numerous cases of women getting paid at a lower rate than their male counterparts.

In M/s Mackinon Mackenzie & Co Ltd V. andrey D'Costa

A female confidential stenographer after the termination of her service filed a petition under equal remuneration act complaining that during the period of the service she was paid remuneration at lesser rates than those of male stenographers who were also performing same or similar work. It was held that in order to get relief under Section 4 of the act the employee should establish that -

- a. The remuneration paid by the employer whether payable in cash or kind.
- b. Discrimination on the basis of sex for payment of wages.
- c. for performing same work or work of a similar nature.

Whether the work is similar in nature as another work can be determined on three considerations

1. The authority should take a broad view as also a broad approach should be adopted in ascertaining whether any differences are of a practical nature.
2. Actual duties performed should be looked at and not those theoretically possible
3. Where both men and women work at inconvenient times there is no requirement that all those who work at night shall be paid the same basic rate as those who work during normal day shifts.

It was also held that the Act does not permit the management to pay to a Section of it employees doing the same work or work of a similar nature lesser pay because of its financial position which does not permit payment of equal remuneration to all. The applicability of the Act does not depend upon the financial ability of Management to pay equal remuneration as provided by the Act.

No discrimination to be made while recruiting men and women workers Sec5

The Act suggests that there must not be discrimination in the recruitment of personnel on the basis of a ground of sex. The section states that there must be no discrimination in remuneration from the commencement of the Act and provides an exception regarding the employment of women is prohibited. There are certain places which are hazardous for the employment of women and children, the section provides immunity from employment at those places.

Provided that the provisions of this section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

Advisory Committee

Section 6(1) of the Act states that an Advisory committee must be created by the appropriate Government which will aid the purposes increasing employment opportunities. The government is taking all possible steps in making a change in the remuneration policies of the employers in India.

The advisory committee must consist of at least 10 people, which will be nominated by the appropriate government. Women must consist of one-half of this committee because that will help in formulation of policies with the help of people who are the real stakeholders.

Section 6(3) states that for tendering advice the Advisory Committee should consider-

Number of women at work

Nature of work

Hours of work

Suitability of women

Need to provide opportunities

After consideration of all these factors, the committee must decide in bringing the appropriate norms in effect. The advisory committee will work towards bringing reforms by understanding

the requirements of the employees. The committee is free to regulate its own procedures. The appropriate government may implement the policy as suggested by the committee.

Authorities for Hearing and Deciding Claims and Complaints

Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints- Section 7 of the Act states that the complaints and claims regarding the infringement of this Act shall be addressed to the appointed officer for the purpose of hearing and deciding—

1. complaints with regard to the contravention of any provision of this Act;
2. claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature;

and may, by the same or subsequent notification, define the local limits within which each such authority shall exercise its jurisdiction.

If any question arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under the Act.

If any claim or complaint made to the authority, a due inquiry must be made by the appointed officer, wherein both the parties in the matter must be given an opportunity to be heard and after such inquiry, as it may consider necessary, direct-

1. In the case of a claim arising out of non-payment of wage at equal rates to men and women workers for the same work or work of a similar nature, the balance amount should be paid.
2. In the case of a complaint, that adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.

Appeal

The situation where any of the parties is dissatisfied with the decision given by the authority. The aggrieved party must prefer an appeal before such an authority which is specified by the appropriate government, within thirty days from the date of the order.

Section 33C of the Industrial Disputes Act shall apply for the recovery of monies due from an employer arising out of the decision of an authority appointed under this section.

Duty of employers to maintain registers

Section 8 of the Act specifies a duty of Employers to maintain a record of the employees, which must contain detailed information regarding the remuneration.

Administration of the Act

Inspectors.

The appropriate Government may appoint Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

The inspectors have the following powers while the investigation

- a. enter, at any reasonable time, with such assistance as he thinks fit, any building, factory, premises or vessel;
- b. require any employer to produce any register, muster-roll or other documents relating to the employment of workers, and examine such documents.
- c. take the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with
- d. examining the employer, his agent or servant or any other person found in charge of the establishment or any premises.
- e. make copies, or take extracts from, any register or other document maintained in relation to the establishment under this Act.

Penalties

Penalties are charged in case, any employer fails to comply with the norms provided in the Act. Section 10 of the Act specifies that if an employer fails to:

- a. Fails to maintain a register;
- b. Fails to produce the register when required;
- c. Refuses or omits to give evidence as per requisitions;
- d. Refuses to give any information;
- e. Makes any recruitment in contravention of the provisions of this Act;
- f. Makes payments at unequal rates;
- g. Makes any discrimination on the basis of sex;
- h. Fails to carry out any direction as mentioned in the Act;

shall be punishable with at least a fine of 10,000, which may extend till 20,000 or imprisonment, not less than 3 months, which may extend to one year. In case of more than one offence, the punishment will increase, accordingly.

Exclusion of certain cases

Section 15 of the Act was amended by Equal Remuneration (Amendment) Act, 1987 which states,

“Nothing in this Act shall apply-

- a. to cases affecting the terms and conditions of a woman’s employment in complying with the requirements of any law giving special treatment to women, or
- b. to any special treatment accorded to women in connection with-
 - i. the birth or expected birth of a child, or
 - ii. the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.”

The Act provided for all possible exclusions, which helps with the protection of interests of women who require special treatment. This emanates the idea of equity and the spirit of protection of all kinds of rights.

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CHAPTER-4

INTER-STATE MIGRANT WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

Synopsis

1. Background
2. Objects
3. Features of the Act
4. Applicability
5. Definitions
 - a. Contractor
 - b. Inter-state migrant workman
 - c. Principal employer
 - d. Workman
6. Registration of Establishments
 - a. Appointment of officers
 - b. Registration of establishments
 - c. Revocation and cancellation of Registration
7. Licensing of Contractors
 - a. Licensing officers

- b. Issuance of license
 - c. Revocation or suspension of license
- 8. Duties and Obligations of Contractors
- 9. Wages and other facilities.
- 10. Administration of the Act- Inspecting Staff
 - a. Appointment
 - b. Powers and functions
- 11. Adjudication of Disputes
- 12. Penalties

Background

The system of employment of inter-state Migrant workmen is an exploitative system prevalent in many states. The contractors (Sardars) recruit labours from different states and employ them in some other states, without having basic conditions of work. This system lends itself to various abuses. Though the Sardars promise at the time of recruitment that wages calculated on a piece-rate basis would be settled every month, the promise is not usually kept. Once the worker comes under the clutches of the contractor, he takes him to a far-off place on payment of railway fare only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various malpractices.

The Twenty-eighth Session of the Labour Ministers' Conference in 1976, considered the question of protection and welfare of Dadas Labour recommended the setting up of a small Compact Committee to go into the whole question and to suggest measures for eliminating the abuses prevalent in this system. The inter-State migrant workmen are generally illiterate, unorganised and have normally to work under extremely adverse conditions and in view of these hardships, some administrative and legislative arrangements both in the State from where they are recruited and also in the State where they are engaged for work are necessary to secure effective protection against their exploitation. The Compact Committee which was constituted in 1977, therefore, recommended the enactment of a separate Central legislation to regulate the

employment of inter-State migrant workmen as it was felt that the provisions of the Contract Labour (Regulation and Abolition) Act.

The recommendations of the Compact Committee have been examined in consultation with the State Government and the Ministries of the Government of India and the suggestions made by them have been taken into account in formulating the proposals for legislation. The main features of the Bill are as follows:—

(i) The proposed legislation will apply to every establishment in which five or more inter-State migrant workmen are employed or were employed on any day of the preceding twelve months. It will also apply to every contractor who employs or employed five or more inter-State migrant workmen on any day of the preceding twelve months.

(ii) The establishment proposing to employ inter-State migrant workmen will be required to be registered with registering officers appointed under the Central Government or the State Governments. Likewise, every contractor who proposes to recruit or employ inter-State migrant workmen will be required to obtain a licence from the specified authority both of the State to which the workman belongs (home State) and the State in which he is proposed to be employed (host State).

(iii) The contractor will be required to furnish particulars regarding the workmen in the form to be prescribed by rules to the specified authority of both the home State and the host State. The contractor will also be required to issue to every workman employed by him, a passbook containing the details of the employment.

(iv) Specific guidelines have been indicated regarding the wages payable to the inter-State migrant workman and he is required to be paid wages from the date of his recruitment.

(v) The inter-State migrant workmen will be entitled to a displacement allowance and a journey allowance in addition to his wages.

(vi) The amenities that are required to be provided to the workmen would include the provision of suitable residential accommodation, adequate medical facilities, protective clothing to suit

varying climatic conditions and suitable conditions of work taking into account that they have migrated from another State.

(vii) Inspectors will be appointed by the appropriate Government to see that the provisions of the legislation are being complied with. Also, power has been given to the State Government of the home State to appoint, after consultation with the Government of the host State, inspectors for visiting the establishments wherein workmen from the former State are employed to see whether the provisions of the legislation are being complied within the case of such workmen.

The object of the Act

An Act to regulate the employment of inter-State migrant workmen and to provide for their conditions of service and matters connected therewith

THE MAIN FEATURES OF THE ACT

A key piece of legislation governing inter-state migrants in India is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The Act was enacted to prevent the exploitation of inter-state migrant workmen by contractors and to ensure fair and decent conditions of employment. The law requires all establishments hiring inter-state migrants to be registered, and contractors who recruit such workmen be licensed. Contractors are obligated to provide details of all workmen to the relevant authority. Migrant workmen are entitled to wages similar to other workmen, displacement allowance, journey allowance, and payment of wages during the period of the journey. Contractors are also required to ensure regular payment, non-discrimination, provisioning of suitable accommodation, free medical facilities and protective clothing for the workmen.

Extension of the Act

It extends to the whole of India.

Provided that if the Central Government considers it necessary or expedient so to do in the public interest, it may postpone or relax the operation of all or any of the provisions of this Act in any State or States not extending beyond one year from the date on which this Act comes into force.

Applicability

- a. It applies to every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months;
- b. To every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.

“Contractor”, in relation to an establishment, means

1. a person who undertakes (whether as an independent contractor, agent, employee or otherwise)
2. to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment,
3. by the employment of workmen or to supply workmen to the establishment, and
4. includes a subcontractor, Khatadar, Sardar, agent or any other person, by whatever name called, who recruits or employs workmen;

“Inter-State migrant workman” means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment;

Principal employer” means,

(i) in relation to any office or department of the Government or a local authority, the head of that office, department or authority or such other officer as the Government or the local authority, as the case may be, specify in this behalf;

(ii) in relation to a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, the person so named;

(iii) in relation to a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named;

(iv) in relation to any other establishment, any person responsible for the supervision and control of the establishment.

“Workman”

1. any person employed in or in connection with the work of any establishment
2. to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work
3. for hire or reward,
4. whether the terms of employment be expressed or implied,

but does not include any such person

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem, or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Salal Hydro Project v. State of J&K

Workers recruited by khatadars and brought from other States for work in the construction project carried on by Central Government or contractors or sub-contractors acting under the authority of Central Government are ‘, inter-State migrant workmen’. Labourers,

Bandhua Mukti Morcha v. Union of India

Thekedars or Jamadars engaged to recruit labourers or workers for mine lessees or owners from other States directly or through labourers or workers already working are contractors and the persons so recruited are inter-State migrant workmen and are, hence, entitled to all the benefits of the Act,

REGISTRATION OF ESTABLISHMENTS EMPLOYING INTER-STATE MIGRANT WORKMEN.

Appointment of registering officers. The appropriate Government may,

(a) appoint such persons, being officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter;

Registration of certain establishments.

Every principal employer of an establishment to which this Act applies shall make an application to the registering officer, in such form and on payment of such fees as may be prescribed, for the registration of the establishment.

Provided that the registering officer may entertain any such application for registration after the expiry of the period fixed in that behalf if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

Within one month after the receipt of an application for registration the registering officer shall,

(a) if the application is complete in all respects, register the establishment and issue to the principal employer of the establishment a certificate of registration; and

(b) if the application is not so complete, return the application to the principal employer of the establishment.

(3) Where within a period of one month after the receipt of an application for registration of an establishment the registering officer does not grant the certificate of registration applied for and does not return the application the registering officer shall, within fifteen days of the receipt of an application in this behalf, from the principal employer, register the establishment and issue to the principal employer a certificate of registration in the prescribed form.

This provision makes it compulsory for the registering officer if he did not issue a certificate of registration or return the application upon an application of the establishment issue a certificate of registration.

Revocation of registration in certain cases.

Grounds of revocation

The registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that for any other reason, the registration has become useless or ineffective and, therefore, requires to be revoked,

Procedure

Registering officer may, after allowing the principal employer of the establishment to be heard with the previous approval of the appropriate Government, revoke by order in writing the registration and communicate the order to the principal employer:

Registering officer is also empowered to suspend the operation of the certificate, such an order should accompany the statement of the reasons and serve to the principal employer

Prohibition against the employment of inter-State migrant workmen without registration.

No principal employer of an establishment to which this Act applies shall employ inter-State migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force:

LICENSING OF CONTRACTORS

Appointment of licensing officers Sec 7

The appropriate Government may appoint such persons as licensing officers to issue a license to the contractors to whom the Act is applicable and also define the limits, within which a licensing officer shall exercise the jurisdiction and powers conferred on licensing officers.

Licensing of contractors Sec 8

No contractor to whom this Act applies shall,

(a) **Recruit any person in a State** to employ him in any establishment situated in another State, except under and in accordance with a licence issued in that behalf

(i) If the appropriate Govt for such establishment is Central Govt by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the recruitment is made;

(ii) If the appropriate Govt for such establishment is State Govt by the licensing officer appointed by the State Government who has jurisdiction in relation to the area wherein the recruitment is made;

(b) **Employ as workmen for the execution of any work** in any establishment in any State, persons from another State (whether or not in addition to other workmen) except under and in accordance with a licence issued in that behalf,—

(i) If the appropriate Govt for such establishment is Central Govt by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the establishment is situated;

(ii) If the appropriate Govt for such establishment is State Govt, by the licensing officer appointed by the State Government who has jurisdiction in relation to the area wherein the establishment is situated.

(2) A licence may contain such conditions including, in particular,

- a. the terms and conditions of the agreement or other arrangement under which the workmen will be recruited,
- b. the remuneration payable,
- c. hours of work,
- d. fixation of wages and other essential amenities in respect of the inter-State migrant workmen,

- e. as the appropriate Government may deem fit to impose in accordance with the rules if any,

The license shall be issued on payment of such fees as may be prescribed:

Provided that if for any special reasons, the licensing officer may require the person who applied for a license to furnish any security for the due performance of the conditions of the licence, he may, after communicating such reasons to such person and allowing him to represent his case, determine the security which shall be furnished by such person for obtaining or, for continuing to hold the licence.

Grant of Licences. Sec. 9

Every application for the grant of a licence shall be made in the prescribed form and shall contain the particulars regarding

- a. the location of the establishment,
- b. the nature of process, operation or work for which inter-State migrant workmen are to be employed

The licensing officer may make such investigation in respect of the application received. A licence granted shall be valid for the period specified therein and may be renewed from time to time.

Revocation, suspension and amendment of licences. Sec 10

If the licensing officer is satisfied, that

- 1. a licence has been obtained by misrepresentation or suppression of any material fact,
- 2. the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or
- 3. has contravened any of the provisions of this Act

the licensing officer may, after giving the holder of the licence an opportunity to be heard, by order in writing, revoke the licence or forfeit the security furnished by him or any part thereof and communicate the order to the holder of the licence:

Provided that where the licensing officer considers it necessary so to do for any special reasons, he may, pending such revocation or forfeiture, by order, suspend the operation of the licence for such period as may be specified in the order and serve it to the contractor.

Appeal.

Any person aggrieved by an order made either by the registering officer or licensing officer, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:

The Appellate Authority can condone the delay if satisfied. On receipt of an appeal, the appellate officer shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

DUTIES AND OBLIGATIONS OF CONTRACTORS

Duties of contractors. Sec12

It shall be the duty of every contractor

(a) to furnish such particulars to the specified authority in the State from which an inter-State migrant workman is recruited and in the State in which such workman is employed, within fifteen days from the date of recruitment, the date of employment, and where any change occurs in any of the particulars so furnished, such change shall be notified to the specified authorities of both the States;

(b) to issue to every inter-State migrant workman, a passbook affixed with a passport size photograph of the workman and indicating in Hindi and English languages, and where the language of the workman is not Hindi or English, also in the language of the workman,—

- (i) the name and place of the establishment wherein the workman is employed;
 - (ii) the period of employment;
 - (iii) the proposed rates and modes of payment of wages;
 - (iv) the displacement allowance payable;
 - (v) the return fare payable to the workman on the expiry of the period of his employment and in such contingencies as may be prescribed
 - (vi) deductions made; and
 - (vii) such other particulars as may be prescribed;
- (c) The contractor has to furnish a return in respect of an inter-state migrant workman who ceases to be employed to the specified authority in the State from which he is recruited and in the State in which he is employed, which shall include a declaration that all the wages and other dues payable to the workman and the fare for the return journey back to his State have been paid.
- (2) The contractor shall maintain the passbook up-to-date and cause it to be retained with the inter-State migrant workman concerned.

WAGES, WELFARE AND OTHER FACILITIES TO BE PROVIDED TO INTER-STATE MIGRANT WORKMEN

Wage rates and other conditions of service of inter-State migrant workmen.Sec13

The wage rates, holidays, hours of work and other conditions of service of an inter-State migrant workman shall

- a. The same or similar kind of work as is being performed by any other workman in that establishment, be the same as those applicable to such other workman; and
- b. In any other case, be such as may be prescribed by the appropriate Government

An inter-State migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act and wages payable to an inter-State migrant workman under this section shall be paid in cash.

Displacement allowance.Sec14

There shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, a displacement allowance equal to fifty per cent. of the monthly wages payable to him or seventy-five rupees, whichever is higher.

The amount paid to a workman as displacement allowance shall not be refundable and shall be in addition to the wages or other amounts payable to him.

Journey allowance, etc.Sec15

A journey allowance of a sum not less than the fare from the place of residence of the inter-State migrant workman in his State to the place of work in the other State shall be payable by the contractor to the workman both for the outward and return journeys and such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty.

Other facilities. Sec. 16.

It shall be the duty of every contractor employing inter-State migrant workmen in connection with the work of an establishment to which this Act applies,—

- a. to ensure regular payment of wages to such workmen;
- b. to ensure equal pay for equal work irrespective of sex;
- c. to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State;
- d. to provide and maintain suitable residential accommodation to such workmen during the period of their employment
- e. to provide the prescribed medical facilities to the workmen, free of charge;
- f. to provide such protective clothing to the workmen as may be prescribed; and

- g. in case of a fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kin of the workman.

Responsibility for payment of wages.

1. A contractor shall be responsible for payment of wages to each inter-State migrant workman employed by him and
2. Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
3. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.
4. In case the contractor fails to make payment of wages within the prescribed period or makes a short payment, then the principal employer shall be liable to make payment of the wages in full or the unpaid balance due, to the inter-State migrant workman and
5. recover the amount so paid from the contractor

Liability of principal employer in certain cases.

If any allowance required to be paid by a contractor to an inter-State migrant workman is not paid by the contractor or if any facility is not provided for the benefit of such workman, such allowance shall be paid, or, as the case may be, the facility shall be provided, by the principal employer.

All the allowances paid by the principal employer or all the expenses incurred by him in providing the facility may be recovered by him from the contractor.

Past liabilities.

It shall be the duty of every contractor and every principal employer to ensure that any loan given by such contractor or principal employer to any inter-State migrant workman does not remain outstanding after the completion of the period of employment of such workman.

Every obligation of an inter-State migrant workman to re-pay any debt obtained by him during the period of his employment from the contractor or the principal employer, on completion of his contract of employment, be deemed to have been extinguished and no suit or other proceeding shall lie in any court or before any authority for the recovery of such debt or any part thereof.

INSPECTING STAFF

Inspectors Sec 20

The appropriate Government may, appoint inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

An inspector may

1. If he has reason to believe that any inter-State migrant workmen are employed in any premises or place, enter, at all reasonable hours,
 - (i) satisfying himself whether the provisions of this Act in relation to the payment of wages, conditions of service, or facilities to be provided to such workmen are being complied with; (ii) examining any register or record or notices required to be kept or exhibited by the provisions of this Act or the rules made thereunder, and requiring the production thereof for inspection;
2. Examine any person found in any such premises or place to determine whether such person is an inter-State migrant workman;
3. require any person giving out work to any workman, to give any information, concerning the names and addresses of the persons to, for and from whom the work is given out or received, and concerning the payments to be made for the work;
4. seize or take copies of such register, a record of wages, or notices or portions thereof as he may consider relevant in respect of an offence under this Act, and
5. exercise such other powers as may be prescribed.

The home state Government has power appoint officers to check the compliances of the provisions of the act in host state where the workmen of the home state is employed

Provided that no such order shall be issued without the concurrence of the Government of the State in which such workmen are employed or by the central government if the central government is the appropriate government for that establishment where the workmen are employed.

Damodar Panda V.State of orissa

Officers of the Originating State must be allowed by the Recipient State to hold inquiries in the Recipient State regarding persons of the Originating State working as migrant labour in the Recipient State,

Adjudication of Disputes

Provisions regarding industrial disputes in relation to inter-State migrant workmen Sec22.

Any dispute or difference in connection with the employment or non-employment or the terms of employment or the conditions of labour, of an inter-State migrant workman, may,

1. If the industrial dispute is relatable to an establishment to which the appropriate government is the central government, be referred by the Central Government to any of the authorities created under that Act.
 - a. In the State wherein the establishment is situated;
 - b. in the State wherein the recruitment of such workman was made if he makes an application in that behalf to that Government on the ground that he has returned to that State after the completion of his employment;
2. If the industrial dispute is relatable to an establishment to which the appropriate govt is State Government, be referred the dispute,
 - a. to any of the said authorities in that State; or

- b. be referred, by the Government of the State wherein the recruitment of such workman was made to any of the said authorities in that State if he makes an application in that behalf to that Government on the ground that he has returned to that State after the completion of his employment:

Transfer of proceedings by application of the workman

Where during the pendency of any proceeding in respect of an industrial dispute under that Act before any of the said authorities in the State wherein the establishment is situated, an application is made to that authority by an inter-State migrant workman for the transfer of such proceeding to a corresponding authority in the State wherein his recruitment was made on the ground that he has returned to that State after the completion of his employment, that authority shall forward the application to the Central Government, or, as the case may be, to the Government of the State wherein such recruitment was made and transfer such proceeding in the prescribed manner to such authority as may be specified in this behalf by that Government:

Transfer of proceedings by the Central Government

If the Central Government is satisfied that it is expedient in the interests of justice so to do, it may, by order in writing and for reasons to be stated therein, withdraw any proceeding in respect of any industrial dispute relating to an inter-State migrant workman pending before an authority in the State in which the establishment concerned is situated and transfer the same to such authority in the State wherein the recruitment of such workman was made as may be specified in the order.

Registers and other records to be maintained.

Every principal employer and every contractor shall maintain such registers and records giving such particulars of the inter-State migrant workmen employed, the nature of work performed by such workmen, the rates of wages paid to the workmen and such other particulars in such form as may be prescribed

Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the inter-State migrant workmen are

employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

Penalties

Obstructions.

Whoever obstructs an inspector or a person appointed to check the compliances of the Act in another state, in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector or authorised person any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

Whoever willfully refuses to produce on the demand of any inspector or authorised person any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any inspector or authorised person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

Contravention of provisions regarding employment of inter-State migrant workmen.

Whoever contravenes any provisions of this Act or of any rules made thereunder regulating the employment of inter-State migrant workmen, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Effect of laws and agreements inconsistent with the Act. Sec 30

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act:

Provided that where under any such law, agreement, contract of service or standing orders, the inter-State migrant workmen employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the inter-State migrant workmen shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.

This Act will not preclude any inter-State migrant workmen from entering into an agreement with the principal employer or the contractor, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

REFERENCES

1. Inter-State Migrant Workmen (Regulation of Employment and conditions of Service) Act. Bare Act EBC 2020

CHAPTER-5

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

Synopsis

1. Background
2. Legislative initiations
3. Judicial initiations
4. Object of the Act
5. Definitions
6. Prevention of sexual harassment
7. Setting up of Complaints Committees
 - a. Internal Complaints Committee
 - b. Local Complaints Committee
8. Complaints
9. Conciliation
10. Inquiry
11. Appeal
12. Duties of employer
13. Annual report
14. Duties of appropriate govt.

As a nation, we can no longer stay silent standby when women are subject to sexual harassment and other gender-based discrimination at the workplace. Earning a livelihood with dignity and harassment-free work environment is a basic human right recognised as a fundamental right by the Indian Constitution.

To provide a definitive legal construct to combat the issue of sexual harassment at workplace India enacted the sexual harassment of women at workplace(prevention prohibition and redressal) Act 2013 which is modeled on the Supreme Court judgement in Vishaka vs State of Rajasthan.

Legislative Evolution

In the field of protection of women against sexual harassment at the workplace for the longest time in India did not have any legislative development. Aggrieved women are very often depended on writ petitions to seek justice for themselves. Apart from filing writ petition women also depended on a few provisions of IPC which are section 354 and 509 of IPC to file complaints with respect to sexual harassment suffered by them. A civil suit under tort can be filed if the basis for the filing of the case were mental anguish physical harassment loss of income and employment etc. If an employee suffers unfair dismissal or is denied employment benefits as a consequence of the rejection of sexual advances which amounts to unfair labour practices as specified in schedule V of industrial disputes act 1947 for which the employee can approach the Labour Court for necessary remedy.

Judicial Initiations

Vishaka v. State of Rajasthan

Each incident of sexual harassment of woman at workplace results in violation of the fundamental rights of “Gender Equality” and the “Right to Life and Liberty”. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g). The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse.

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

In the absence of any statutory definition of the term “sexual harassment”, it was left to the Supreme Court to do the needful. Relying on international conventions and norms, particularly General Recommendation No. 19 of the CEDAW constituted by the United Nations, the

Supreme Court defined the term “sexual harassment” for the first time in the year 1997 in Vishaka v. State of Rajasthan. The definition is almost in pari materia with the one proposed by the CEDAW, United Nations and reads:

Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

(a) physical contact and advances;

(b) a demand or request for sexual favours;

(c) sexually-coloured remarks;

(d) showing pornography;

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Object of the Act

The intention of this legislation is to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected.

Definitions

Aggrieved Women

In relation to a workplace

- a. Women of any age
- b. Employed or not
- c. Alleges to have been subjected to any act of sexual harassment

In relation to dwelling house

- a. Women of any age
- b. Employed in such dwelling house

Women of any age

Union of India V. Sujith suklabaidya 2007

Teenage girls of a school filed sexual harassment complaint against a peon in the school. The question before the court was that whether Vishaka guide lines are applicable for teenage girls? The court held that the underlying message of the case is that the entire environment at workplaces should be free from sexual harassment.

Employed or not

Jaya kodate V. Rashtrasant tukdoji Maharaj Nagpur University

The court held that the definition of an aggrieved woman contains the phrase whether employed or not, an aggrieved woman to be a woman always under a contract of employment with the workplace and said that the in the definition emphatically rules out any need of Master servant relationship between such aggrieved women and the respondents

- **Applies to third parties**

Srinivas RajanV. The Director of Metriculation Schools, Chennai

The act is applicable to third parties as well, since the definition specifically mentioned that an aggrieved woman will be women of any age whether employed or not so it is applicable to sexual harassment faced by third parties or outsiders in the employer's premises it is the obligation of the employer to take action against such acts.

- **Domestic Worker Sec 2(d)**

1. a woman
2. Who is employed
3. To do the household work in any household
4. For remuneration, whether in cash/ kind
5. By an agency/directly or temporary/permanent, part time/fulltime
6. Does not include member of the family of the employer

- **Employee Sec 2 (f)**

1. A person
2. Employed at a workplace
3. For any work on regular/ temporary/ad hoc/daily wage
4. Either directly/ through an agent including a contractor

With or without the knowledge of the principal employer

- **Employee Sec 2 (f)**

1. A person
2. Employed at a workplace
3. For any work on regular/ temporary/ad hoc/daily wage

4. Either directly/ through an agent including a contractor
5. With or without the knowledge of the principal employer
6. Whether for remuneration or not/ voluntary basis/ otherwise
7. Terms of employment is express or implied
8. Includes a co-worker, contract worker, probationer, trainee, apprentice or called any such name.

T. R. Sahrawant V. K. V. Sangatham

Central Administrative Tribunal Delhi held at even though the respondent may be a part-time temporary employee, his services cannot be terminated on the ground of sexual harassment without any inquiry and such action taken against the respondent, in this case, was considered against the principles of natural justice.

Employer Sec 2 (g)

“employer” means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be

(ii) In any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

When the employer is considered to be an employee

Jaya Kodate V. Rashtrasant Tukdoji Maharaj Nagpur University

Unless the context otherwise requires the employers also need to be treated as employees and every person who can be placed as an employer if he is a respondent and falls under the otherwise wider definition of term employee will be considered to be an employee the court also noted that the concept of either employee or employer as defined must be understood in a way conducive to further the object of enactment and unless otherwise necessitated. Hence appropriate circumstances the employer can be recognised as employee

When the employer turns the harasser

S. Srikanth Joshi V. Board of Management

In this case, the employer was charged for sexual harassment. The High Court of Karnataka had held that no one is entitled to be granted any relief who been the protector has himself turned into predator.

Respondent Sec 2 (m)

“respondent” means a person against whom the aggrieved woman has made a complaint under section 9;

Workplace Sec 2 (o)

“Workplace” includes—

- (i) Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate

Government or the local authority or a Government company or a corporation or a co-operative society;

- (ii) Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- (iii) Hospitals or nursing homes;
- (iv) Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- (v) Any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;
- (vi) A dwelling place or a house;

Definition covers both organized and unorganized workers

Sub clause (i), (ii), and (vi) clearly indicates the intention of the Act to bring the unorganized sector under the ambit of the act and thereby afford the protection of the Act to vast majority of the woman working in the unorganized sector.

Transport provided by the employer

The language of sub-clause (v) provides two qualifiers which must be satisfied in order for the transport to be considered as a workplace.

1. The journey must be arising out of or during the course of employment and
- (2) The transport must have been provided by the employer

Residential apartment where tenant is harassed by the landlord

Dr. Anil Sethi V. Commission of Women and others

The act has enacted to prevent sexual harassment at the workplace. A complaint of sexual harassment made by a tenant against her landlord cannot be considered under this Act. Since a landlord cannot be an employer of the tenant and tenant cannot be an employee.

Residential place provided by the employer

Sourabh kumar Mallik V. The controller and Auditor General of India

The court held that it was not necessary that a workplace would be only a place where actually office work is performed. Any extension of the place of work or any institution whether a hostel or a mess, where the employer has control for management would be treated as a workplace

Any place visited for official purpose is workplace

Women employee may face harassment not only within the physical boundaries of the workplace but even outside it, which may be during or in course of employment this may include harassment from a co-worker for from an employee of the one place visited by her in course of employment or by the third party of such workplace.

Sexual Harassment Sec 2 (n)

1. Any one or more of the following
2. Unwelcome acts or behavior (directly or by implication)
 - a. physical contact and advances or
 - b. demand or request for sexual favors or
 - c. making sexually coloured remarks or
 - d. showing pornography or
 - e. any other unwelcome physical, verbal or non-verbal contact of sexual nature.

Manisha Sharma V. U.O.I

- Sexual harassment cannot be construed in a narrow sense as it may include sexual advances and other verbal or physical harassment of a sexual nature

I.L.O.'s observation

The kinds of behaviour considered sexually harassing appear to vary among different cultures. the degree of physical contact tolerated between colleagues for instance may be more extensive in some culture than others sexual harassment is essentially a subjective concept. Any other standard would amount to an intolerable infringement of individual autonomy.

Unwelcome Acts

Hall and ors V. A.A. Sheiban Ltd (1989)85 ALR 503

Whether the behavior was unwelcome is a subjective question from the perspective of the particular person alleging sexual harassment.

Silence does not mean act is welcome

Styles V. Murray Meats Ltd (2005) VCAT 914

Even if the person experiencing harassment does not speak up or complain about it the contact might still be unwelcome

Actual physical contact is not necessary to constitute sexual harassment

Apparel export Promotion Council V. A.K.Chopra

The absence of any actual physical contact or the attempt to molest the complainants is immaterial, still, be considered as sexual harassment.

All physical contact cannot be termed as sexual harassment

Shantankumar V. Council of Scientific and Industrial research and others 2017 SCC online Del 11327

Physical contact or advances would constitute sexual harassment provided such physical contact is a part of the sexually determined behaviour. Mere accidental physical contact even though unwelcome would not amount to sexual harassment, if it is not sexually oriented.

Sec 3 Prevention of sexual harassment

1. No women shall be subjected to sexual harassment at any workplace
2. The following circumstances among other circumstances
3. If it occurs or present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment
 - a. Implied or explicit promise of preferential treatment in her employment or
 - b. Implied or explicit threat of detrimental treatment in her employment
 - c. Implied or explicit threat about her present or future employment status or
 - d. Interference with her work creating an intimidating or offensive or hostile work environment for her or
 - e. Humiliating treatment likely to affect her health or safety
 - f. Sub clauses 1,2 and 3 called quid pro quo sexual harassment
 - g. Sub-clause 4 hostile working environment harassment

Implied/explicit threat of detrimental treatment in her employment

Saudi Arabian Airlines V. Sehna Mudhadkal

If a female employee is coerced into submitting to unwelcome sexual advances in return for a job benefit, other female employees who are qualified for but were denied the benefit may be able to establish that sex was generally made a condition for receiving the benefit

SETTING UP COMPLAINTS COMMITTEES

Sec 4 Constitution of Internal Complaints Committee

Every employer of a workplace by an order in writing constitutes a committee to be known as the internal complaints committee.

Members

1. Presiding officer – senior woman employee
2. Not less than 2 members from amongst employees
3. One member from N.G.O or association committed to the cause of woman.
4. one half of the total members so nominated shall be women

The presiding officer and every member of the internal committee shall hold office for a period of 3 years from the date of their nomination as may be specified by the employer

Removal of Presiding officer/member from ICC

Grounds

1. Contravention of Sec 16
2. Convicted for an offence or enquiry in to an offence under any law for the time being in force pending against him
3. Found guilty in any disciplinary proceedings or disciplinary proceedings pending against him
4. So abused his position as to render his continuance in his office prejudicial to the public interest

a permanent body?

Shital Prasad Sharma V. State of Rajasthan

Under Section 4 of the Act, a committee has to be appointed for a term of 3 years to look into the Complaints received against the employees from time to time committing the act of sexual misconduct.

Presiding officer to be a senior woman employee

Shardaben Murlibhai Gurjar V. State of Gujarat 2015

It is important for the presiding officer to be of a senior rank within the organisation to ensure that she would be senior to any respondent who is also an employee and does not get influenced all intimidated by such respondent employee and also to have the leadership experience for stewarding the IC .

Local Complaints Committee

Constitution of LCC sec 6 (1)

Every Dist. Officer for the District concerned

Constitute LCC

To receive the sexual harassment complaints from

1. the establishments does not constituted ICC due to having less than 10 employees or
2. The complaint is against the employer himself

Composition of LCC Sec 7 (1)

Local committee shall consist of the following members to be nominated by the district officer

1. Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
2. one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
3. two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

4. the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio

Tenure Sec 7 (2)

The chairperson and every member of the local committee shall hold office for not exceeding 3 years from the date of their appointment

Removal of Chairperson/ Members Sec 7 (3)

Where the Chairperson or any Member of the 2 [Local Committee]—

- (a) Contravenes the provisions of section 16; or
- (b) Has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) Has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- (d) Has so abused his position as to render his continuance in office prejudicial to the public interest.

COMPLAINT

Complaint of Sexual Harassment Sec 9

- a. Any aggrieved woman
- b. Make a complaint in writing
- c. To ICC or LCC
- d. within a period of 3 months of the incident

In case of series of incidents, within a period of 3 months from the date of last incident.

Where to file a complaint if ICC has not been constituted?

There can broadly be two circumstances in which aggrieved women may find herself in a difficult decision to file a complaint with the IC firstly, in case an employer has less than 10 employees in its workplace such employer is not bound to constitute IC as per the law. Secondly, there may be a case where an employer has 10 or more employees in a workplace but has not constituted IC in accordance with the provisions of the Act. In either of the above two cases, an aggrieved woman can file a complaint with LC

CONCILIATION

Conciliation Sec 10

1. ICC or LCC may
2. Before initiating inquiry
3. At the request of the aggrieved woman
4. Take steps to settle the matter through conciliation

Proviso

No monetary settlement shall be made as basis of conciliation

Sec 10 (2) Record the settlement and forward same to employer.

Sec 10 (3) Copies of the settlement to be given to the aggrieved woman and the respondent.

Sec 10 (4) No further inquiry after the settlement

Conciliation and monetary settlement

Himanshu Shekhar V. State of Maharashtra 2017 Bom

As per the provisions of section 10, it is permissible for the IC for LC to settle the dispute.

However, no monetary settlement shall be made as a base for conservation.

INQUIRY

If conciliation is a failure

1. IC for LC as the case may be, shall, where the respondent is an employee proceed to make an inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent
2. In case of Domestic worker, LC if prima facie case exist forward the complaint to police, within 7 days for registering case
3. If the respondent failed to comply the settlement arrived under Sec 10, IC or LC can proceed with the case or forward the complaint to the police.
4. Both the parties shall give an opportunity to be heard and report to be made available to both parties.

Notwithstanding anything contained in section 509 of IPC the IC for LC may when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate to the aggrieved woman by the respondent.

Ramesh Pal V. UOI

It is the bounden duty of the employer to treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct. The Act makes it clear that the proceedings and report of IC has to be treated as a service matter.

For enquiry, ICC/LCC having powers of Civil Court

1. Summoning and enforcing the attendance and examination.
2. Discovery and production of documents

Inquiry shall be completed within 90 days

Action during pendency of inquiry Sec 12

On a written request of aggrieved woman, LC or IC recommend the employer to

1. Transfer the aggrieved woman/ respondent to any other workplace
2. Grant leave to the aggrieved woman up to 3 months

3. Grant such other relief to the aggrieved woman
 - Leave granted to be in addition to the leave she would be otherwise granted
 - On recommendation of ICC/LCC employer should implement such recommendations and report back to ICC/LCC

Object of action during pendency of inquiry

The objective of section 12 is to create a mechanism for providing certain relief to the complainant during the pendency of the enquiry into the complaint. There are two key factors with respect to the interim measures under the act, firstly, interim measures are subject to the written request of the complainant and secondly, the ICC has the discretion to either grant or disregard such request

Inquiry Report Sec 13

Report to Employer/ Dist. Officer & Parties Concerned

On completion of an enquiry under this act, the IC for the LC as the case may be shall provide a report of its findings to the employer or district officer, within a period of 10 days from the date of completion of the inquiry and such report be made available to the concerned parties

If the allegation is not proved recommend to employer/ Dist. Officer that no action is required in the matter

If the allegation is proved

Recommend to employer/Dist. Officer

1. Action for sexual harassment as a misconduct in accordance with the service rules
2. If no service rules- such other action
3. Deduct such sum from the respondent from salary or wages to the aggrieved woman/
legal heirs

Proviso

If the employer is unable to deduct the sum due to the respondent's absence from duty direct him to pay such sum to the aggrieved woman

If the respondent failed to pay IC/LC forward the order to Dist. Officer and recover the sum as arrear of land revenue

The employer/ Dist. Officer act on recommendation within 60 days

Is the recommendation of IC binding on employer?

Prathap Mandal V. UOI

The question is whether the employer may deviate from the recommendation and take action which may be lighter or harsher than the action recommended by the LC. The act directs that the employer is required to take time-bound action based strictly upon the recommendations made by the ICC no scope for deviation seems to lie on the face of the section

Inquiry Report could be set aside if findings are not recorded appropriately

Reshma M.G. V. UOI

The court held that if the finding entered by the committee was not recorded following the correct procedure laid down for that purpose, then it would be affecting the very foundation of the same and in that way, it can be contended that the inquiry report is liable to be set aside

Punishment for false or malicious complaint and false evidence Sec 14

1. IC/LC arrives a conclusion that the allegations against the respondent is malicious or
2. Aggrieved woman/ any other person made the complaint knowing fully well that the complaint is false
3. Aggrieved woman/ any other person produced any forged/ misleading document

It may recommended to the employer or District officer to take action against the woman or such person as the case may be in accordance with the provisions of the Service Rules applicable to them

Proviso 1

Mere inability to substantiate the complaint/ provide adequate proof need not attract the action

Proviso 2

Malicious intent on the part of the complainant after the inquiry in accordance with the procedure

IC/LC arrives a conclusion that any witness has given false evidence / produced any forged documents may recommend the employer/ Dist. Officer ,to take action in accordance with the service rules applicable to such witness.

Determination of compensation Sec 15

For the purpose of determining the sums to be paid to the aggrieved woman under section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to—

- (a) The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) The loss in the career opportunity due to the incident of sexual harassment;
- (c) Medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) The income and financial status of the respondent;
- (e) Feasibility of such payment in lump sum or in instalments.

Prohibition of publication or making known contents of complaint and inquiry proceedings Sec 16

Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005) .The contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act Shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses

Applicability of RTI Act

Section 15 is in fact a non-obstante provision ensuring that the information with regard to a sexual harassment complaint is not subject to the provisions of The Right to Information act 2005

Penalty for publication Sec 17

Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

Appeal Sec. 18

Any person aggrieved from the recommendations made by the IC after the allegation is proved or the allegation is not proved after the inquiry or prove that the complaint is false or malicious or publication of prohibited information under the Act.

Non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

The appeal shall be preferred within a period of ninety days of the recommendations.

Interference by Courts : When can courts be Appellate Authority

S Raju Iyer V. JNU

Delhi High Court observed that it did not sit as an appellate court to reappraise the finding of facts and conclusions arrived at by the departmental authority and was entitled to interfere with the orders passed in the departmental proceedings only if the said orders were wholly perverse or violative of the laws of the organisation or in violation of the principles of natural justice. It also said that in no manner, the exhaustive and analytical findings of the enquiry committee can at all be interfered by the court

Duties of the Employer Sec 19

Every employer shall—

- (a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;
- (b) Display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;
- (c) Organise workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (d) Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- (e) Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- (f) Make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- (g) Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;
- (h) Cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; 12
- (i) Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) Monitor the timely submission of reports by the Internal Committee

Annual Report Sec 21

The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, an annual report and submit the same to the employer and the District Officer.

(2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government.

Duties of the App. Govt. Sec 23 – 25

1. Appropriate Government to monitor implementation and maintain data.
2. Appropriate Government to take measures to publicise the Act
3. Power to call for information and inspection of records.

Act not in derogation of any other Law

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

RERERENCES

1. Handbook on the law of Sexual Harassment at Workplace – Shivandi Prasad and Attreyi Mukherjee (Second Edition 2019) Thomson Reuters
2. Sexual harassment of Women at Workplace (Prevention, Prohibition and redressal) Act 2013 – Bare Act EBC 2020.

Unit II

WAGES, BONUS AND GRATUITY

CHAPTER-1

Concept of Wages

- I. Origin and Introduction of Wages**
- II. Concept and Theories of Wages**
- III. Theories of Wages**
 - a. Wages Fund Theory**
 - b. Subsistence Theory**
 - c. The Surplus Value Theory of wages**
 - d. Residual Claimant Theory**
 - e. Marginal Productivity Theory**
 - f. The Bargaining Theory of Wages**
 - g. Behavioural Theories of Wages**

IV Kinds of Wages

- Meaning and Definitions**
- Classification Wages**
 - a. Subsistence Wage**
 - b. Minimum Wage**
 - c. Fair Wage**
 - d. Living Wage**

V The Minimum Wages Act, 1948

Salient features of the Act

1)Definitions

2)Fixation and Revision of Minimum Rates of Wages under the Act

Payment of Minimum Wages.

Concept of Wages

I) Origin and Introduction of Wages

Wage is a reward for the services rendered or remuneration for the work done and it is as old as the society itself. In the primitive days, wages were paid in kind, most common of them was grains and the food. But with the advent of industrialisation wages form a complex problem and in almost all industrialised countries it became a sensitive area of public policy. Very soon the quantum of wages assumed a common cause of friction between the employers and the wage-earners. Frequent disputes between employer and wage-earners resulted in strikes over the demand for wage-increase. The determination of adequate wages that should be justifiably payable to the workmen by the employer, was not merely an economic problem but a multidimensional phenomena, necessarily involving relevant factors like place of industry, prices of the product, living standards, basic needs of die wage-earner and the governmental policy in a given society. The natural instinct of the employer to keep the wage-bill to a minimum and workers struggle to secure a wage-increase to meet both ends, created a chaotic situation which demanded an immediate State's intervention to protect the weaker section of the society, namely, workers, in view of its low bargaining capacity.

How much and on which basis wages should be paid to the workers for services rendered by them has been a subject matter of great concern and debate among economic thinkers for a long time. This has given birth to several wage theories, i.e. how wages are determined. Out of them, some important theories of wages are discussed here.

II) Concept and Theories of Wages

- Concept of Wages

Theories of wages are nothing but a series of systematic attempts to explain what does determine the level of wage. They portray picture on the diagram of the way in which wages as the price of labour power are connected with other prices and other economic quantities. For almost two centuries how they have been developed and have had to be built out of a highly simplified picture of the real world, sketching on the broad outlines of the more obvious features, on the basis of general knowledge or else of inference as to the general shape which things

have. Wage theory has gone through three stages of development since the middle ages, as detailed below:

The "Just Wage" of the Middle ages-

The first was the medieval period of church domination, with the doctrine of the "Just Price" which meant in reality a just wage, whether for the trader or the craftsman; it was that price of his wares which would enable him to maintain himself and his family according to their established position in the community. The just price was concocted by churchmen and given a moral flavour to support the status it is a relic of a static society, from which both intellectual and natural progress were absent, and it might seem to be merely historical interest, nevertheless, there are vestigial remnants of the just wage in some of the more advanced societies of modern time. The allowances and privileges enjoyed by certainroy and privileged class of families in the society are instances explaining their existence even today.

III) Theories of Wages

1) Wages Fund Theory:

This theory was developed by Adam Smith (1723-1790). His theory was based on the basic assumption that workers are paid wages out of a pre-determined fund of wealth. This fund, he called, wages fund created as a result of savings. According to Adam Smith, the demand for labour and rate of wages depend on the size of the wages fund. Accordingly, if the wages fund is large, wages would be high and vice versa.

2) Subsistence Theory:

This theory is propounded by David Recardo (1772-1823). According to this theory, "The labourers are paid to enable them to subsist and perpetuate the race without increase or diminution". This Payment is also called as "Subsistence wages". The Basic assumption of this theory is that if workers are paid wages more than subsistence level workers' number will increase and, as a result wages will come down to subsistence level. On the contrary, if workers are paid less than subsistence wages, the number of workers will decrease as a result of starvation death: malnutrition, disease etc. and many would not marry. Then, wage rates would again go up to subsistence level. Since wage rate tends to be at, subsistence level at all cases, that

is why this theory is also known as “Iron Law of Wages”. The subsistence wages refers to minimum wages.

3) The Surplus Value Theory of Wages:

This theory was developed by Karl Marx (1849 – 1883). This theory is based on the basic assumption that like other article, labour is also an article which could be purchased on payment of its price i.e., wages. This payment, according to Karl Marx, is at subsistence level which is less than in proportion to time labour takes to produce items. The surplus, according to him, goes to the owner. Karl Marx is well known for his advocacy in favour of labour.

4) Residual Claimant Theory:

This theory owes its development to Francis A. Walker (1840-1897). According to Walker, there are four factors of production or business activity, viz., land, labour, capital and entrepreneurship. He views that once all other three factors are rewarded what remains left is paid as wages to workers. Thus, according to this theory, worker is the residual claimant. He can claim only in case of residue which remains after deducting all the capital expenses under a production.

5) Marginal Productivity Theory:

This theory was propounded by Phillips Henry Wick-steed (England) and John Bates Clark of U.S.A. According to this theory, wages is determined based on the production contributed theory, wages is determined based on the production contributed by the last worker, i.e., marginal worker. His/her production is called ‘marginal production’.

6) The Bargaining Theory of Wages:

John Davidson was the profounder of this theory. According to this theory, the fixation of wages depends on the bargaining power of workers/trade unions and of employers. If workers are stronger in bargaining process, then wages tends to be high. In case, employer plays a stronger role, then wages tends to be low.

7) Behavioural Theories of Wages:

Based on research studies and action programmes conducted, some behavioural scientists have also developed theories of wages. Their theories are based on elements like employee’s acceptance to a wage level, the prevalent internal wage structure, employee’s consideration on money or wages and salaries as motivators.

IV) Kinds of Wages

Meaning and Definition

In the ordinary language the term wages implies 'reward' to the labourers for the services rendered by them. It may be paid daily, weekly, fortnightly, monthly, per hour or per unit. Services rendered by the labourer include both physical and mental services.

In the words of **Benham**, "Wages are a sum of money paid under contract by an employer to a worker for services rendered".

According to **ILO** "Wages refer to that payment which is made by the employers to the labourer for his services hired on the conditions of payment per hour, per day, per week or per fortnight." We can sum up the wages by referring to that reward which is received from the employer for the services rendered by the labourer per week, per month, per fortnight or per unit, it includes allowances also.

Classification of Wages

Subsistence Wage :- The wage that can meet only bare physical needs of a worker and his family is called subsistence wage.

Minimum Wage: - Justice Higgin propounded the concept of minimum wages as the irreducible level of wage paid to an unskilled worker, considering him a human being living in a civilized society. In this single sentence, he indicated three important considerations, namely:

- (1) That minimum wage is an irreducible level which cannot be further reduced;
- (2) It is paid to an unskilled worker who has not undergone any expensive training to acquire skill;
- (3) The worker is to be considered a "human being living in a civilized society and therefore he is entitled to same basic needs of food clothing and shelter which any other human being requires. Thus according to Justice Higgins a minimum wages is that irreducible wage, which should enable the worker to get three basic necessities of life, i.e., food, clothing and shelter.

Fair Wage: - Fair Wages is an adjustable step that moves up according to the capacity of the industry to pay and the prevailing rates of wages in the area of industry.

Living Wage: - Having described the minimum wage to provide for food, clothing and shelter as a basic and irreducible level of wage, Justice Higgins developed his concept of living wage as one which should not only provide for food, clothing and shelter but for some frugal comfort of life, good education to children, some amusement and provision for sickness and old-age including some measure of social security. Again the frugal comfort should be such as measured at the changing values at a given time.

It is pertinent to note that the above concept of living wage, as described by Justice Higgins is also endorsed by Supreme Court in the *Express Newspaper (P) Ltd. V. Union of India* – Therefore the living wage should enable the wage-earner to provide for himself and his family not only for the three basic necessities of life, namely, food, clothing and shelter, but also for frugal comforts, good education to children, protection against ill-health and a measure of insurance against the more important misfortune including old-age. In any event the minimum wage must be paid irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen at lower wages. The wages must be fair, i.e., sufficiently high to provide standard family with food, shelter, clothing, medical care and education of children appropriate to the workmen. A fair wage lies between the minimum wage and the living wage which is the goal. Wages must be paid on an industry wise and region basis having due regard to the financial capacity of the unit.

V) The Minimum Wages Act, 1948

The **Minimum Wages Act 1948** is an Act of Parliament concerning Indian labour law that sets the minimum wages that must be paid to skilled and unskilled labours. The Indian Constitution has defined a 'living wage' that is the level of income for a worker which will ensure a basic standard of living including good health, dignity, comfort, education and provide for any contingency. However, to keep in mind an industry's capacity to pay the constitution has defined a 'fair wage'. Fair wage is that level of wage that not just maintains a level of employment, but seeks to increase it keeping in perspective the industry's capacity to pay.

To achieve this in its first session during November 1948, the Central Advisory Council appointed a Tripartite Committee of Fair Wage. This committee came up with the concept of a minimum wage, which not only guarantees bare subsistence and preserves efficiency but also provides for education, medical requirements and some level of comfort.

India introduced the Minimum Wages Act in 1948, giving both the Central government and State government jurisdiction in fixing wages. The act is legally non-binding, but statutory. Payment of wages below the minimum wage rate amounts to forced labour. Wage boards are set up to review the industry's capacity to pay and fix minimum wages such that they at least cover a family of four's requirements of calories, shelter, clothing, education, medical assistance, and entertainment. Under the law, wage rates in scheduled employments differ across states, sectors, skills, regions and occupations owing to difference in costs of living, regional industries' capacity to pay, consumption patterns, etc. Hence, there is no single uniform minimum wage rate across the country and the structure has become overly complex. The highest minimum wage rate as updated in 2012 was Rs. 322/day in Andaman and Nicobar and the lowest was Rs. 38/day in Tripura. In Mumbai, as of 2017, the minimum wage was Rs. 348/day for a *safai karmachari* (sewage cleaner and sweeper), but this was rarely paid.

Salient features of the Act –

- a) The Act provides for fixation of : i) minimum time rate of wages; ii) a minimum piece rate; iii) a guaranteed time rate; and iv) an overtime rate, for different occupations, localities or classes of work and for adults, adolescents, children and apprentices.
- b) The minimum rate of wages must consist basic rate of wages and a cost of living allowance and it should be an all-inclusive rate.
- c) Wages shall be paid in cash but with the prior approval of Appropriate Government may pay partial wage in kinds.
- d) It lays down that the cost of living allowance and the cash value of concessions in respect of supplies of essential commodities at concessional rates shall be computed by the competent authority at certain interval.
- e) The Act empowers the appropriate Government to fix the number of hours of work per day, to provide for weekly holiday and the payment of overtime wages in regard to any Scheduled employment in respect of which minimum rates of wages have been fixed under the act.
- f) The establishments covered by this Act are required to maintain registers and records in the prescribed manner.

- g) The Act also provides for appointment of Inspectors and authorities to hear and decide claims arising out of payment of wages.
- h) The provision is also made in the Act for dealing with complaints for violation of the provisions and for imposing penalties for the same.

1) Definitions :

Sec.2(h) provides that “Appropriate Government” means –

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

In *Regional Labour Commissioner, Bangalore and others v. T.K. Varkey and Company and another*((1992 I LLJ 547 Karnataka) some workers were employed by the contractor in construction of staff quarters for Railways. The workers were being paid minimum wages at the rates prescribed by the state government, whereas the Labour Enforcement officer's view was that, they should have been paid the rates prescribed by the central government. A Claim difference between the two rates was made which has been contested. It was held that the place where the employment is carried on and for whose benefit the employment is carried on and under whose control the work connected with the employment is carried on are the deciding factors in finding out whether the Appropriate Government is the Central Government or State Government. In the instant case, the employment has taken place in the place belonging to the Railways and the employment for the work carried on was for the purpose of construction of staff quarters for the benefit of the Railways. The work was being carried on by or under the authority of the Railways only. The fact that contractor had employed the workman was not a deciding factor because actually the work was carried on by or under the authority of Railways only. Therefore, the Central Government is the Appropriate Government and the minimum wages shall be payable in accordance with the notification issued by the Central Government.

Section 2 (c) “competent authority” means the authority appointed by the Appropriate Government by notification in the Official Gazette from time to time the cost of living index

number applicable to the Employees employed in the scheduled employments specified in such notification.

Section 2 (d) “cost of living index number” in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment.

Section 2 (e) “Employer” means any person who employs whether directly or through another person or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which types of wages have been fixed under this Act.

Employer includes except in sub-section (3) of Section 26-

- i) in a factory there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person named under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, as a manager of the factory;
- ii) any scheduled employment under the control of any government in India In respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such government for supervision and control of employees or where no person or authority is appointed, the Head of the Department;
- iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person is appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority;
- iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees for the payment of wages.

A managing agent is an employer. Private Engineering contractor engaged on Government contract or work is an employer of the drivers of the lorries which are hired out to him with the drivers at agreed rates.

In *Robert Toppo v. State of Jharkhand and others*, (2003, III LLJ 810, Jha) the petitioner is the Principal of the school in which a hall was being constructed and the labourers working in that construction work. On the report of the Labour Enforcement Officer the order was passed to

pay minimum wages for labourers. It was contended by the petitioner that labourers were guardians of students and they were helping the school by 'shramadhan' (donation of labour), therefore the school was not there employer. It was also contended that the order under Section 20 (2) was bad as no witnesses were examined.

It was held by the High Court that the petitioner was an employer under section 2(e) of the Minimum Wages Act, 1948 engaging workers in a scheduled appointment. The orders were also not bad for non-examination of witnesses as there was no mandate for such examination under the Act of the Rules. The penalty of 5 times was reduced to 3 times in circumstances of the case.

Section 2(g) "Scheduled employment" means an employment specified in the schedule, or any process or branch of work forming part of such employment. The schedule is listed in 2 parts as appended to enactment.

In *Chattaram Darsanram v Union of India*, a petition for quashing the notification dated 28th May, 1976 by the Central Govt. revising the minimum wages of the workmen employed in the Mica mines was filed. The question was whether workmen working in mine were working in scheduled employment.

It was held that item No.10 of Part I of the Schedule relates to employment in any 'mica works' and not 'mica mines'. The connotations of 'mica mines' and 'mica works' are different. It would not be reasonable to read 'mica mines' in the expression 'mica works'. Thus 'mica mines' is not included in the Schedule and as the inclusion of an employment in the Schedule is a condition precedent for issuing any notification fixing minimum wages is *ultra vires*.

In *Ahmedabad Panjrapole Sanstha v. Miscellaneous Mazdoor Sabha and others*, the petitioner Sanstha is engaged in the activity of taking care for sick and lame cattle and to maintain them. The Sanstha has other objects such as raising of cattle improving the breed, caring for the cattle, to run a dairy form in order to supply good milk and ghee in the interest of public and to grow grass to cut it or have it cut and to buy or sell the same. It has lands in different villages and it earns rental and other income and also agricultural income besides income earned by sale of wood, wool, manure etc. It has its branch at Vastrapur where cattle are put for treatment. It was held that having regard to the activities of the Panjrapole Sanstha, it is a 'commercial establishment' attracting Minimum Wages Act. The Vastrapur branch of Sanstha is

not a separate establishment and the fact that the other branches have not demanded minimum wage will not affect the right of the workmen.

Sec.2(h) “Wages” – ‘Wages’ means all remuneration, capable of being expressed in terms of money, which would if the terms of the contract of employment, express or implied, were fulfilled, be payable to person employed in respect of his employment or of work done in such employment and includes house rent allowance.

Wages do not include:

- (i) The value of –
 - (a) Any house accommodation, supply of light, water, medical attendance; or
 - (b) Any other amenity or any service excluded by general or special order of the appropriate Government.
- (ii) Any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- (iii) Any travelling allowance or the value of any travelling concession.

Where a trip allowance was prescribed by a notification, the notification was held to be invalid because trip allowance is meant to compensate the extra cost which an employee is likely to incur when he moves out of his headquarter in connection with his employment; it clearly partakes of the character of travelling allowance and travelling allowance according to the definition of the expression “wages” cannot form a component of the wages.
- (iv) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (v) Any gratuity payable on discharge.

In *Prern Sahyog v. Authority Under Minimum Wages Act and others*, on receiving a complaint of non-payment of wages, the Authorities under the Minimum Wages Act, 1948 ordered payment of eight times of wages as compensation. The Supreme Court held that the award of compensation was too excessive and hence it was reduced to equivalent of wages awarded to the workman.

In *Management of Ram Krishna Pharmaceutical, Hyderabad v. State Authority under Minimum Wages Act, 1948 and Joint Commissioner of Labour, A.P. Hyderabad and another*, a G.O. was issued fixing basic wages and the first respondent directed the petitioner to deposit certain amount towards the difference in minimum wages payable under the G.O. and actual wages being paid by the management. The petitioner company impugned the order of the Authority directing it to deposit the difference in minimum wages payable under G.O. and the actual wages paid. The High Court quashing the impugned order observed that a petitioner and the second respondent (employees) had entered into a statutory settlement under Section 12(3) of the Industrial Disputes Act, 1947 and as the total pay packet thereunder was higher than the minimum wages fixed by the G.O., the impugned order could not be sustained. It was not open to the second respondent employees to separate one component, namely, minimum basic wage and contend that basic wages are less than the wages prescribed under the G.O.

Sec.2(i) “Employer” means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or electrical in a scheduled employment in respect of which minimum rates of wages have been fixed. It includes:

- (1) An out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adopted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person.
- (2) An employee declared to be an employee by the appropriate Government.

It does not include any member of the Armed Forces of the Union. The definition of employee in this Act is wide enough to include a person working on job basis or piece work.

Wage structure – Broadly speaking the wage structure can be divided into three categories – The basic ‘minimum wage’ which provides bare subsistence and is at poverty line-level, a little above is the ‘fair wage’ and finally the ‘living wage’ which comes at a comfort level. It is not possible to demarcate these levels of wage structure with any precision.

Certain principles on which wages are fixed have been stated by the S/c in *Kamani Metals and Alloys v. Their Workmen*, - There is a minimum wage which , in any event must be paid,

irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate for the workmen but not at a rate exceeding his wage earning capacity in the class of establishment to which he belongs. A fair wages is thus related to the earning capacity and workload. It must, however, be realized that “fair wage” is not “living wage” by which is meant a wage which is sufficient to provide not only the essential above mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between minimum wage, which must be paid in any event, and the living wage, which is the goal.”

Minimum Wages – The expression “minimum wages” is not defined in the Act presumably because it would not be possible to lay down a uniform minimum wages for all industries throughout the country on account of different and varying conditions prevailing from industry to industry and from one part of the country to another. It was held in *Hydro (Engineers) Private Ltd. V. The Workmen*, that :-

“The concept of minimum wages takes in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wages in the light of cost of living at a particular juncture of time and neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of minimum wage. Furthermore in the light of spiraling of prices in recent years, if the wage scales are to be realistic it may become necessary to fix them so as to neutralise at least partly the price rise in essential commodities.”

Fair Wages – There is difference between minimum wages and fair wages. In case of fair wage, besides the principle of industry-cum-region, the company’s capacity to bear the financial burden must receive due consideration. But mere hopeful observations made in the director’s annual report cannot be basis for awarding increased wages because such observations are sometimes made to inspire hope and confidence in shareholders and they cannot be a substitute for actual audited figures.

In *S.A.F.L. Works v. State Industrial Court, Nagpur*, is a leading case on the point. In this case the Supreme Court observed that in fixing the paying capacity the Tribunal will have to fix the income as well as permitted deductions and allowances properly incurred. There can be no dispute that expenses incurred for purchase of raw material, maintenance of the factory, expenses incurred towards rent, public charges, maintenance of the establishment and expenses incurred in marketing of the produce should be deducted. These items are not exhaustive. As to whether a particular item of expenditure is liable to be deducted or not have to be determined on the facts of the case. No deduction should be allowed for payment of income tax or for allowances made for depreciation or for making provision for reserve. So far as expenses incurred towards payment of wage bill inclusive of dearness allowances, bonus, gratuity, etc. are concerned they will have to be deducted. After properly determining the paying capacity of the industry the Tribunal will have to proceed to fix fair wages which would include the fitment, scale of wages and dearness allowance. While after fixing the above the Tribunal will have to determine as to from which date retrospective effect will have to be re-determined the wage including fitment, scale of wages, dearness allowance, period during which retrospective effect is to be given will have to be determined afresh.

Living Wage :- The Fair Wage Committee in its report published by Government of India, Ministry of Labour in 1949 defined the 'living wage' as under:

“The living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.”

2) Fixation and Revision of Minimum Rates of Wages under the Act

Fixation of Minimum Wages [Sec.3(1)(a)] –

Section 3 lays down that the Government shall fix the minimum rates of wages which is payable to employees in the course of employment specified in Part I and Part II of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the

State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities.

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

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

Revision of Minimum Wages

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

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

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

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

1. Different scheduled employments;
2. Different classes of work in the same scheduled employments;

3. Adults, adolescents, children and apprentices;
4. Different localities.

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

1. By the hour,
2. By the day,
3. By the month,
4. By such other large wage periods as may be prescribed; and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day as the case may be, may be indicated. However, where wage period has been fixed in accordance with the Payment Wages Act, 1986 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

Procedure for Fixing and Revising Minimum Wages (Section 5)

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

Firstly, [Section 5(1)(a)] This method as the ‘Committee Method’.

The Appropriate Government may appoint as many committees and subcommittees as it considers necessary to hold inquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committee, the Appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

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

Secondly,[Section 5(1)(b)] this method is known as the ‘Notification Method’

When fixing minimum wages under Section 5(1)(b), Appropriate Government shall by notification in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration. The representations received will be considered by the Appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification.

However, if no date is specified, the notification shall come into force on expiry of 3 months from the date of its issue. Minimum wage rates can be revised with retrospective effect.

Payment of minimum wages:

Section 12 – It lays down that where in respect of any scheduled employment a notification U/S 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him, wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed. Provisions of Section 12 of this Act should not affect the provisions of the Payment of Wages Act, 1936.

In *Ansu Pokkuvararthu Madurai Thozhilalar v. T.N.S.T.C. Ltd.*, the petitioner was registered trade union which was formed to espouse cause of workers working in the Respondent/Corporation. Petitioner filed writ petition seeking direction to the respondent to pay wages, at rates prescribed in Government Order (G.O.), issued by Labour and Employment Department. The question before the Court was whether members of the petition are entitled to basic rates of wages and dearness allowance as given under G.O. The Court held that the expression ‘employee’ would include temporary employee also. Section 12 of the Act mandates that an employer shall pay to every employee engaged in a Scheduled employment under him, wages, at a rate not less than the minimum rate of wages fixed in the notification issued under section 5 of the Act. Therefore, it is clear that members of petition are entitled to basic rate of wages and dearness allowance as mentioned in G.O.

Section 13: Fixing hours of normal working day, etc. – Section 13(1) provides that, in regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may –

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

According to Section 13(2) the provisions of sub-section (1) shall, in relation to the following classes of employees apply only to such extent and subject to such conditions as may be prescribed :-

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

Employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Section 14: Overtime: Where an employee works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him overtime. An employee entitled to overtime must be such whose minimum rate of wage is fixed under this Act by the hour, by

the day or by such longer wage period as may be prescribed. The overtime shall be payable for every hour or for part of an hour so worked in excess at the rate fixed under this Act or under any law of the Appropriate Government for the time being in force, whichever is higher.

Recent case: giving less payment getting more work from the labour is always violates the labour laws rules, recently in March 2020 In United States of America, Indian based Sharmiste family gets the more work from labours and payed less. The federal court held that the Sharmiste family is held liable for this incident and sent them to Jail for 15 years.

CHAPTER-

2 BONUS

(Concept of Bonus and Right to Share in the Profits)

Introduction

The Payment of Bonus Act, 1965

- a. Definitions**
- b. Computation of available surplus**
- c. Sums deductible from gross profits**
- d. Eligibility for bonus**
- e. Disqualification for bonus**
- f. Payment of Maximum bonus**
- g. Calculation of Bonus with respect to certain employees**
- h. Deduction of certain amounts from bonus payable under the act**
- i. Time-limit for payment of bonus**
- j. Recovery of bonus due from an employer**
- k. Inspectors**
- l. Penalty**
- m. Power of exemption**

I) Introduction

The practice of paying bonus in India appears to have originated during First World War when certain textile mills granted 10% of wages as war bonus to their workers in 1917. In certain cases of industrial disputes demand for payment of bonus was also included. In 1950, the Full Bench of the Labour Appellate evolved a formula for determination of bonus. A plea was made to raise that formula in 1959. At the second and third meetings of the Eighteenth Session of Standing Labour Committee (G.O.I.) held in New Delhi in March/April 1960, it was agreed that a Commission be appointed to go into the question of bonus and evolve suitable norms. A Tripartite Commission was set up by the Government of India to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Government of India accepted the recommendations of the Commission subject to certain modifications. To implement these recommendations the Payment of Bonus Ordinance, 1965 was promulgated on 29th May, 1965. To replace the said Ordinance the Payment of Bonus Bill was introduced in the Parliament.

In *Mill Owners Association v. Rastriya Mill Mazdoor Sangh*, a Full Bench of the Labour Appellate Tribunal observed that bonus could no longer be considered as an *ex-gratia* payment and laid down a formula known as “Full Bench Formula”. Since both labour and capital contributed to the earnings of industrial concerns, it was only fair that labour should get some benefit if there was a surplus left after meeting prior and necessary charges. Broadly speaking the formula provided that the following prior charges should be deducted from the gross profits of an enterprise:

- (i) Return on paid up capital generally at the rate of six per cent;
- (ii) Return on working capital varying from two to four per cent;
- (iii) Depreciation worked out on a notional basis;
- (iv) Rehabilitation and
- (v) Income tax.

If after deduction of these prior charges, surplus was left over the workmen would be entitled to a share in the said surplus on an equitable basis. In the absence of any surplus, however, there would be no question of payment of bonus on general notions of social justice.

The Supreme Court, while approving this principle in *Muir Mill Ltd. V. Suti Mill Mazdoor Union*, laid down two conditions which had to be satisfied before a demand for bonus could be justified:

- (1) The wages fell short of the living standard; and
- (2) The industry makes huge profits part of which are due to the contribution made by workmen in increasing production.

The demand for bonus would become an industrial claim when either or both of these conditions were satisfied. The Government of India had been under a constant pressure to revise the bonus formula.

The object of the Act as contained in the preamble is to provide for payment of bonus to persons employed in certain establishments and for matters connected therewith.

Broadly speaking the scheme of the Act is four dimensional :

- (1) To impose statutory liability upon an employer of every establishment covered by the Act to pay bonus to employees in establishment:
- (2) To define the principle of payment of bonus according to the prescribed formula'
- (3) To provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of "set-off and set-on"; and
- (4) To provide machinery for enforcement of the liability for payment of bonus.

II) The Payment of Bonus Act, 1965.

1) Definitions

Section 2 (4) "allocable surplus" means-

- (a) in relation to an employer, being a company 3[(other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;
- (b) in any other case, sixty percent of such available surplus;

In *Maharashtra Veej Mandal Kamgar Sangh v. Maharashtra State Electricity Board and others*, it was held that Income Tax Officer is the competent authority to determine the correct amount o

depreciation allowable under the Income Tax Act subject to any appeal or revision from his order.

Section 2(5) “appropriate Government” means-

- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;

Section 2(12) “direct tax” means-

(a) any tax chargeable under-

- (i) the Income-tax Act;
- (ii) the Super Profits Tax Act, 1963 (14 of 1963);
- (iii) the Companies (Profits) Surtax Act, 1964 (7 of 1964);
- (iv) the agricultural income-tax law; and

(b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act;

Section 2(13) “employee” means any person (other than an apprentice) employed on a salary or wage not exceeding 1[three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

A person who is regularly employed for doing a regular work of sweeping is an employee and not a casual worker even though he is a part-time worker.

In *UCO Bank Employees Association, Madras v. Union of India and others*, due to change in ceiling limit of salary/or wage for purpose of bonus certain employees who were earlier getting bonus became ineligible for bonus and hence they sought a declaration in this petition that Section 2(13) of Payment of Bonus Act, 1965 should be declared unconstitutional. At the time of enactment of Payment of Bonus Act, 1965 the ceiling of salary or wage was fixed at Rs.1600. It was subsequently enhanced to Rs.2,500 and in the year 1995 during the pendency of the writ petition it was again raised to Rs.3,500. Some employees who were earlier eligible for bonus had become ineligible after enhancement of ceiling limit of wages. Dismissing the petition the High

Court observed that the State was the better judge of what the policy should be in economic matters. Section 2(13) of the Payment of Bonus Act was held to be constitutional.

Section 2(14) “employer includes-

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of subsection (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and
- (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

A person in order to be an employer need not be a manager. Chairman or director of a company having control over the affairs of establishment is an employer.

Section 2(18) Gross Profits – “Gross Profits” means the gross profits calculated under Section 4.

In the case of companies other than a banking company gross profits under Section 4 are to be computed in the manner laid down in the Second Schedule. The Schedule requires adding back to the net profits shown in the P. & L account the amount of depreciation deducted in that account while computing gross profits. Obviously, the depreciation so to be added back is the one worked out by the company under Section 205(2) of the Companies Act for the purpose of distribution of dividend under Section 205(1) of that Act. Section 6 provides that having arrived at the gross profits under Section 4 read with the Second Schedule the company is entitled to deduct therefrom depreciation admissible under Section 32(1) of the Income Tax Act, that is such percentage on the written down value as may, in the case of each of the classes of assets, be prescribed. Interest paid by one office to its another office on advances received from that office has to be disallowed in calculating gross profit of the office even if such expenditure is accepted as a proper expenditure by auditors. Presumption under Section 23 of the Act is not available to justify such deduction.

An adjudication and an award for bonus which is based exclusively on the provisions of the Act has to be done in accordance with the provisions laid down therein. After ascertaining the gross profits it is duty of the Tribunal to work out the available allocable surplus in

accordance with the provisions of the Act. The calculation of the amount of gross profits should not be a gross work but must be based on relevant materials.

In *All India Voltas and Volkart Employees Federation v. Voltas Ltd. And another*, the company paid to its employees certain amounts during 1964-65 and 1965-66 under a “Superannuation Special Retired Gratuity Scheme”. The workmen claimed that the amounts paid under the aforesaid scheme should be added back as bonus paid to its employees in respect of previous accounting years for the purpose of computing gross profits under the Act. It was held that the scheme framed by the company was scheme for payment of bonus though named differently. The employees who have joined this scheme have expressly stated in writing not to participate in the annual bonus since the Special Retiring Gratuity Scheme was in lieu of annual bonus. The scheme was devised in 1959 to reduce the liability of income tax. Amount paid by the company under the scheme have, therefore, remitted back to the Tribunal for appropriate orders in the light of the judgment.

Section 5. Computation of available surplus.—The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6;

Provided that the available surplus in respect of the accounting year commencing on any day 1968 and in respect of every subsequent accounting year shall be the aggregate of –

(a) the gross profits for that accounting year after deducting therefrom the sums

referred to in section 6; and

(b) an amount equal to the difference between --

(i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

In *Indian Oxygen Ltd. V. Their Workmen*, it was held that in calculating the allocable surplus the tax concession by way of rebate that an employer will get under Income-tax Act on

the bonus for fund to be payable, need, not be taken into consideration. Account shown as doubtful debts (and not as bad debts) is to be added back to gross profits. Similarly, capital expenditures in the nature of expenses incurred on Plant Transfer Charges, Patent fees and Rent paid for godown for storing goods, for erecting a factory are to be added back to the gross profit for the purpose of determining allocable surplus.

In *B.E. Supply Co. v. The Workmen*, it was held by the Supreme Court that a claim for depreciation on account of double shift can be allowed even if it was not claimed under the Income-tax Act. But the working for double shift has to be proved by adducing evidence. The amount to be allowed as prior charge towards depreciation will have to be computed after allowing for the notional depreciation. The amount of income tax payable for the bonus year to be calculated after deducting the statutory depreciation and not notional normal depreciation.

Section 6. Sums deductible from gross profits.—The following sums shall be deducted from the gross profits as prior charges, namely:-

(a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from the date) continue to be such notional normal depreciation;

(b) any amount by way of 1[development rebate or investment allowance or development allowance] which the employer is entitled to deduct from his income under the income-tax Act;

(c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;

(d) such further sums as are specified in respect of the employer in the Third Schedule.

Under Section 6, clause (a) the permissible deduction from the gross profits is not depreciation calculated according to any recognized method of accountancy followed by a

banking company, but only such depreciation as is admissible in accordance with the provisions of Section 32(1) of the Income tax Act.

In *Workmen N.G. Bank v. N.G. Bank*, the Bank claimed the deduction of depreciation at a figure higher than that appearing in the profit and loss account. It was held that the burden of proving that the depreciation claimed by it was the correct amount of depreciation, admissible under Section 32(1) of the Income-tax Act was on the Bank and that burden has to be discharged by the Bank by producing proper and satisfactory evidence.

It was further held that the calculation of the depreciation, in accordance with method specified in Section 32(1) of the Income-tax Act, has to be done by the Tribunal in the exercise of its quasi judicial duty. The Tribunal should not blindly accept the figure of depreciation arrived at by another authority charged with the function of determining depreciation under a different statute. The determination of depreciation under Section 32(1) of the Income-tax Act can be taken into account as evidence only if there is some provision of law which provides to that effect.

Section 8. Eligibility for bonus.—Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

It was held in *Project Manager, Ahmedabad Project, O.N.G.C. Sabarmati v. Sham Kumar Sahegal (Died) by his Legal Representatives*, that when an employee is suspended, it cannot be said that such an employee did not work for the establishment. The work “worked” in Section 8 of the Act should mean “ready and willing to work”. Therefore when an employee is prevented from working by an overt act on the part of the employer is reinstated in service then the reasonable inference is that the employees statutory eligibility for bonus within the meaning of Section 8 of the Act cannot be said to have been lost. Nor can the employer refuse to accede to the demand for such bonus if it is otherwise payable under the provisions of the Act.

Section 9. Disqualification for bonus.—Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for --

(a) fraud; or

- (b) riotous or violent behaviour while on the premises of the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment.

In *M/s.Sriram Bearings Ltd. V. The Presiding Officer, Labour Court, Ranchi & others*, it was held that the provisions of Section 9 of the Payment of Bonus Act cannot be given a restricted meaning and the words “an employee shall be disqualified from receiving bonus under the Act” cannot be read so as to mean that the employee shall be disqualified from receiving the bonus of the accounting year only in which he is dismissed because such disqualification is dependent only upon the order of dismissal from service. No such restriction in Section 9 has been put by the Legislature. Therefore, if an employee is dismissed from services, he stands disqualified from receiving any bonus under Act and not the bonus only of the accounting year.

Section 11. Payment of maximum bonus.—(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting; year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent, of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

Section 12. Calculation of Bonus with respect to certain employees – Where the salary or wage of an employee exceeds seven thousand rupees or the minimum wage of an employee exceeds seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under section 11 shall be calculated as if his salary or wages were seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem.

Explanation – For the purpose of this section, the expression ‘scheduled employment’ shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act, 1948.

It was held in *Indian Cable Co. v. Workmen*, that although officers drawing salary between Rs.750 and Rs.1600 per month are employees under Section 2 (13) and eligible for bonus, still for the purposes of calculating bonus payable 2(13) and eligible for bonus, still for the purpose of calculating bonus payable under Sections 10 and 11, such officer's salary will be taken at the maximum of Rs.750 per month and will be eligible for bonus calculated on that basis. When he is paid over and above his bonus an *ex-gratia* amount to make up for the loss occasioned expenditure debited directly to Reserve. Such amount can, therefore, be added back to the gross profits of the employer for purposes of working out the valuable surplus.

Section 18. Deduction of certain amounts from bonus payable under the Act. –

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

Section 19. Time-limit for payment of bonus. – All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer --

(a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) in any other case, within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extended the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

The claim for bonus can be made only after the close of the accounting year and in accordance with the provisions of the Act. The gross profits can be calculated only at the end of the accounting year and the available and allocable surplus can also be worked out only at the end of the accounting year. There is no question of an employer computing the gross profits

available and allocable surplus in the middle of an accounting year or at any time before the close of the relevant accounting year.

Section 21. Recovery of bonus due from an employer.- Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government or such authority as the appropriate Government may specify in this behalf 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 arrears 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 employee 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.

Explanation- In this section and in 5[sections 22,23, 24 and 25], “employee” includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment.

The mode of recovery prescribed under this section shall be available only if the bonus sought to be recovered is “under a settlement or an award or an agreement”. It will not apply to recovery of bonus which is payable under the Act.

Section 27. Inspectors. – (1) The appropriate Government may, by notification on the Official Gazette, appoint such person as it think fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

(2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with --

(a) Require an employer to furnish such information as he may consider necessary;

(b) at any reasonable time and with such assistance, if any, as he thinks fit enter any establishment or any premises connected therewith and require any one found in charge thereof

to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;

(c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;

(d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;

(e) exercise such other powers as may prescribed.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian penal Code (45 of 1860).

(4) Any person required to produce any accounts, book, register or other documents or to give information by an Inspector under sub-section (1) shall be legally bound to do so.

(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of any its books of account or other documents which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provision of section 34A of the Banking Regulation Act, 1949.

Section 28. Penalty.- if any person-

(a) contravenes any of the provision of this Act or any rule made thereunder, or

(b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 36 Power of exemption. – If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishment, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as maybe specified

therein and subject to such conditions as it may think fit to impose, such establishment or class of establishment from all or any of the provisions of this Act.

In *Associated Publishers (Madras) Ltd. V. Government of Tamil Nadu and others*, the scope of Section 36 has been examined. It was held that it was within the domain of the Government either to grant or refuse exemption. What is important is whether the State had taken into account the relevant aspects in refusing or granting exemption. In the instant case the Associated Publishers placed only the financial position and no other relevant circumstance before the State Government. Therefore, when the petitioner has not discharged the onus placed on him and failed to furnish materials about other relevant circumstances, the impugned order of the Government cannot be said to have been passed without any basis. If the exemption is granted on the ground of public interest, the Government must spell out the aspect of public interest failing which an order would be contrary to public interest. The words “public interest” need not be used when the liability to pay which is already there under the Act, continues.

CHAPTER-3

The Payment of Gratuity Act, 1972

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- **Payment of gratuity**
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The Payment of Gratuity Act, 1972

I) Introduction

Gratuity is defined as a benefit given by the employer to the employee for rendering services continuously for five years or more. It is a mandatory and monetary benefit usually given at the time of employee separation from organization or retirement. But there are certain rules which make an employee eligible to receive gratuity. The main purpose and concept of gratuity is to help the workman after the retirement, whether the retirement is a result of the rules of superannuation or physical disability or impairment of the vital part of the body. Gratuity is the amount which is not connected with any consideration and has to be considered as something given freely for the service the employee has rendered to the organization for more than 5 years.

As the right of industrial workers to receive gratuity has long been recognized by the Tribunals, yet the law relating to payment of gratuity was very vague and uncertain before passing of the present Act. There was good deal of disparity in the various schemes for the payment of gratuity. The Supreme Court has made efforts to regulate through judicial decisions by laying down principles for grant of gratuity. Still controversies with regard to the rules and principles for grant of gratuity. Still controversies with regard to the rules and principles were continuing. Ultimately all controversies were set at rest by passing of the Payment of Gratuity Act in the year 1972. As the preamble of the Act suggests, this Act aims to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. It was pointed out in *Delhi Cloth and General Mills Co. Ltd. V. Their Workmen*, that the object of providing a gratuity scheme is to provide a retiring benefit to the workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer.

In *Indian Ex-services League and others v. Union of India and others*, writ petitions were filed by some commissioned and non-commissioned ex-servicemen. Gratuity was payable at enhanced rate to persons retiring on a later date. Therefore those who had retired earlier to the specified date also claimed enhancement and payment of gratuity at rates payable to retirees after the specified date on the ground of one rank one pension rule. It was held that the claim for gratuity can be made only on the date of retirement on the basis of salary drawn on the date of retirement and being already paid on that footing, the transaction was completed and closed. It could then not be reopened as a result of enhancement made at a later date for persons retiring subsequently. The concept of gratuity is different from pension. Therefore claim for payment of gratuity at enhanced rate made on the basis of enhancement for persons retiring on a later date cannot be accepted.

❖ **Scope and application**

The Payment of Gratuity Act, 1972 (the Gratuity Act) is applicable to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments with ten or more employees. The full official text of the Gratuity Act can be found [here](#). Gratuity is fully paid by the employer, and no part comes from an employee's salary. To be eligible for gratuity under the Gratuity Act, an employee needs to have at least five full years of service with

the current employer, except in the event that an employee passes away or is rendered disabled due to accident or illness, in which case gratuity must be paid.

II) Definitions

Section 2(a) – “Appropriate Government” means –

- (i) In relation to an establishment –
 - (a) Belonging to, or under the control of, the Central Government,
 - (b) Having branches in more than one State,
 - (c) Of a factory belonging to or under the control of, the Central Government,
 - (d) Of major port, mine, oil-field or railway company, the Central Government,
- (ii) In any other case, the State Government.

In *Bharat Pump and Compressors Ltd. V. Regional Labour Commissioner (Central) and others*, the respondent No.3 was an employee of Bharat Pumps and Compressors Ltd., Naini, Allahabad. The services of the respondent workman were terminated on May 24, 1986. He preferred an appeal before Managing Director but he was dismissed on April 4, 1987. Later on taking a humanitarian approach corporation gave re-employment to the respondent. Later on he made an application for payment of gratuity to the State authority which was objected by the employer on the ground that the petitioner corporation was wholly owned by the Central Government and only Central authority was competent to pass order for payment of gratuity. Later on the respondent employee approached the Central authority which ordered payment of gratuity. In this writ petition the petitioner company impugned the order of Central Authority to pay gratuity to its employee. The High Court negated the contention of the petitioner that the third respondent employee having earlier invoked the State authority could not approach the Central Authority. Hence the Central Authority being the competent authority its order could not be challenged.

Section 2(b) “completed year of service” means continuous service for one year.

Section 2(c) “continuous service” means continuous service as defined in Section 2(A)

In *Lalappa Ligappa and others v. Laxmi Vishnu Textile Mills, Sholapur*, the question for consideration was about the meaning of the term “Continuous service” as defined in Section 2(c)

of the Payment Gratuity Act, 1972. It was held that the expression “actually employed” in Explanation 1 to Section 2(c), in the context in which it occurs must mean “actually worked”. The Supreme Court held that the High Court has right in holding that the permanent employees were not entitled to payment of gratuity for the years they remained absent without leave and had actually worked for less than 240 days in a year. It was also held that the badly employees are not covered by the substantive part of the definition of “continuous service” in Section 2(c) but come within Explanation I and therefore are not entitled to payment of gratuity for the badly period, i.e., in respect of the years in which there was no work allotted to them due to their failure to report to duty.

Section 2(e) “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;

In *Secretary O.N.G.C. Ltd. V. V.U. Warriar*, the Supreme Court held that the respondent was holding the post of Additional Director (Finance and Accounts) in O.N.G.C. Ltd. at the time of his retirement and was getting a salary exceeding Rs.2500/- was not an ‘employee’ with the meaning of Section 2(e) of the Payment of Gratuity Act, 1972.

In *E.I.D. Parry (I) Ltd. V. G. Omkar Murthy and others*, the respondent employees were in the employment of the appellant between 1958 and 1984. On October 1, 1984 voluntary retirement scheme was introduced and the respondents availed of that benefit and left the service after obtaining the benefits as provided under the Payment of Gratuity Act, 1972. The employees thereafter claimed the difference between the gratuity received by them and the gratuity payable under Section 40(3) of the Andhra Pradesh Shops and Establishments Act, 1966. The Supreme Court observed that at the relevant time when the respondents voluntarily retired from service, the Payment of Gratuity Act, 1972 could not apply to them as they were getting wages of more than Rs.1600 p.m. by virtue of Section 2(e) of the Central Act. Moreover the finding was that the gratuity under the State Act was more beneficial than Central Act. Hence, the other contention of repugnancy of State Act would not arise at all.

Section 2(f) “Employer” means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop:-

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority.

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, or managing director or by any other name, such person;

Section 2(h) “family”, in relation to an employee, shall be deemed to consist of:-

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any.

(ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any:

Explanation.-Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee.

Section 2(s) “wages”, means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

In *Kirloskar Brothers Ltd. v. Appellate Authority (under Payment of gratuity Act) and other*, the employees of the petitioner claimed that incentive bonus paid to them should be included in wages for the purposes of calculating gratuity payable to them. The authority under the Payment of Gratuity Act and the Single Judge of the High Court held that the incentive bonus was included in wages as defined in Section 2(s) of the Act. This appeal is against the above order. It was held by the High Court that the definition of 'wages' makes it clear that it shall not include any bonus, commission, house rent allowance, overtime wages and any other allowance. Therefore the definition does not leave any doubt that incentive bonus/production bonus could not be included in the wages under the Payment of Gratuity Act, 1972.

Considerations towards ascertaining Gratuity

Section 2-A. Continuous Service – (1) For the purpose of this Act-

(1) An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

(2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer-

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case:

(b) for the said period of six months if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than-

- (i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
- (ii) one hundred and twenty days, in any other case;

Explanation.- For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment(Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
- (ii) he has been on leave with full wages, earned in the previous year;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

(3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period.

In *D.B.R. Mills Ltd. v. Appellate Authority, under Payment of Gratuity Act*, the question for determination was whether public holidays including Sundays are to be excluded computing 240 days. It was held that the cessation of work by the employees on these days cannot be said to be due to any fault of the employee. Therefore he would be deemed to be in continuous service if he has been actually employed by an employer during the 12 months, immediately preceding the year for not less than 240 days in an establishment.

Section 4 – Payment of gratuity – (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

- (a) on his superannuation, or
- (b) on his retirement or resignation,
- (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account: Provided further that in the case of 2[an employee who is employed in a seasonal establishment, and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

*Explanation.-*In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (i),-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee [may be wholly or partially forfeited.

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

For the purpose of claiming gratuity under the Act, the employer must have rendered continuous service for a period of 5 years. Where such period of service has not been rendered gratuity shall not be paid under the Act. Where an employee claims gratuity on the basis of an agreement it was held in ***D.S.Purwar v. Elphinstone Spinning and Weaving Mills***, that claim of gratuity on the basis of an agreement is outside the scope of adjudication under the Payment of Gratuity Act, 1972.

In *Suchil Kumar Maloo v. Gujarat Raffia Industries Ltd.*, Gujarat High Court has held that considering Section 4 of the Payment of Gratuity Act any employee, who has rendered service for not less than five years; on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease is eligible for gratuity. On fair reading of Section 4 of the Act what is required to be considered is that on the eventuality as mentioned in Section 4, whether an employee has rendered continuous service for not less than five years or not and nothing further than that. The object and purpose of amendment in Section 2(e) of the Act by removing the ceiling on wages for coverage of the Act is to widen the scope and to give the benefit of gratuity to all the employees and to widen the coverage.

In ***Duncun Agro Industries Ltd. v. Subanna B.***, the question involved for determination was whether the workmen were entitled for gratuity for the period of service rendered before coming into force of this Act. It was held that gratuity is payable to an employee who has rendered continuous service of not less than five years and continuous service in view of provisions of Section 2(c) which defines 'continuous service' as service whether rendered prior or after commencement of the Act, workmen would be entitled for gratuity for the period of service rendered prior to or after the commencement of the Act.

Section 7 Determination of the amount of gratuity – (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (i) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on this ground.

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute.

(c) The Controlling Authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and, if, as a result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

- (d) The Controlling Authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto. (e) As soon as may be after a deposit is made under Clause (a), the Controlling Authority shall pay the amount of the deposit-
- (i) to the applicant where he is the employee; or
 - (ii) where the applicant is the employee, to the [nominee or, as the case may be, the guardian of such nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.
- (5) For the purpose of conducting an inquiry under Sub-Section (4), the controlling authority shall have the same powers as are vested in a Court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters namely:-
- (a) enforcing the attendance of any person or examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examination of witnesses.
- (6) Any inquiry under this Section shall be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code, 1860 (45 of 1860).
- (7) Any person aggrieved by an order under sub-section (4), may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:
- Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.
- Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.
- (8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

In ***Gurunath Vithal Thamse v. National Textile Corporation(N.M).***, the application of the petition for payment of gratuity was rejected by the controlling authority and that order was

sustained by appellate authority as well under the Payment of Gratuity Act, 1972. Application was rejected on the ground that it was preferred three years after superannuation of the employee. It was observed by the High Court that the Legislature had not specified any period of limitation for moving the controlling authority. The said authority was held to have clearly exceeded its jurisdiction in passing the impugned order rejecting the claim of employee.

Section 8 Recovery of Gratuity – If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the Controlling Authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act.

In *Champaran Sugar Company Ltd. V. The Joint Labour Commissioner, and the Appellate Authority*, it was held that by virtue of provisions of Section 8 of the Act payment of interest on gratuity amount is the mandate of law itself and its not dependent on an express claim by the employee thereof. The right to interest accrues to the employee from the failure of the employer to perform his statutory duty to tender and pay gratuity and not from any formal demand thereof by the employee. Similarly the liability to pay interest does not stem from the certificate of the Controlling Authority but from the default in the performance of his duty by the employer.

Formula for Calculation of Gratuity

Gratuity in India is calculated using the formula:

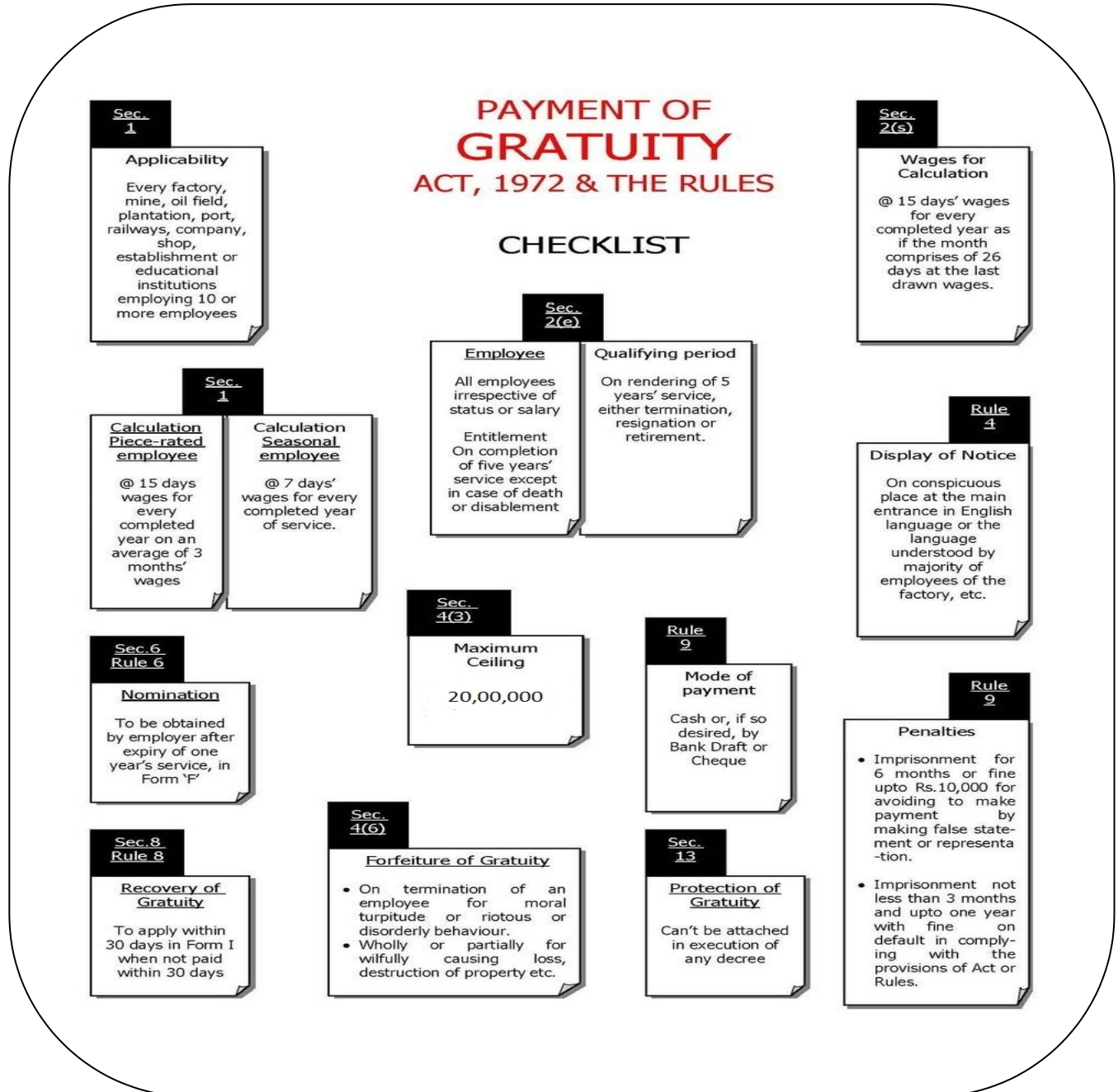
$$\text{Gratuity} = \text{Last Drawn Salary} \times 15/26 \times \text{No. of Years of Service}$$

Notes:

- The ratio 15/26 represents 15 days out of 26 working days in a month.
- Last drawn salary = Basic Salary + Dearness Allowance.

- Years of Service are rounded down to the nearest full year. For example, if the employee has a total service of 20 years, 10 months and 25 days, 21 years will be factored into the calculations.

Chart showing Determination of Gratuity



REFERENCES

1. Labour and Industrial Laws – S.N.Misra (29th Edition 2019)

UNIT III

PROTECTION OF CHILD LABOUR AND CONTRACT LABOUR

CHAPTER-1

The Child and Adolescent Labour (Prohibition and Regulation) Act 1986

Synopsis

1. Introduction
2. Background
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 - a. Wages
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INTRODUCTION

Development and future of the society can be assessed not on the basis of super computers and the technological advances. That is decided on the basis of how the society treats the children (Kofi A Annan)

Right to childhood is a sacred entitlement of mankind. Almost one third of the world population comprises children. Children are not only tomorrows citizens, but also today's as well. They are the Saul of our nation. Social justice must begin with children, unless tender plant is properly nourished, it has little chance of growing in to strong and a useful tree. Millions of children are forced to work as child labourers due to various reasons. Child abuse, deprivation, exploitation etc are universal problem. Perpetuation of child labour is a challenge to the society. Large portion of them have deprived of their basic rights.

Reasons for Child Labour

Poverty and unemployment levels are high. Poor children and their families may rely upon child labor in order to improve their chances of attaining basic necessities. Access to free and compulsory education is limited is another reason for child labour. Another reason for child labour is that the laws which are prohibiting child labour and its enforcement is often inadequate. Social and economic backwardness, disease or disability, the lure of cheap labour, family tradition etc are also reasons for child labour.

Global Initiations to Eliminate Child Labour

U.N. Declaration of the Rights of the Child

In 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child. It marked the first major international consensus on the fundamental principles of children's rights. The Preamble to the Declaration of the Rights of the Child highlights children's need for special care and protection, "including appropriate legal protection, before as well as after birth.

1. The right to equality, without distinction on account of race, religion or national origin.
2. The right to special protection for the child's physical, mental and social development.

3. The right to a name and a nationality.
4. The right to adequate nutrition, housing and medical services.
5. The right to special education and treatment when a child is physically or mentally handicapped.
6. The right to understanding and love by parents and society.
7. The right to recreational activities and free education.
8. The right to be among the first to receive relief in all circumstances.
9. The right to protection against all forms of neglect, cruelty and exploitation.
10. The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.

International Convention on the Rights of the Child, 1989

A great headway had been made in the year 1989, which marked the 30th anniversary of the 1959 Declaration of the Rights of the Child and the 10th anniversary adopted an international convention on the rights of the Child. The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. This selection of rights is founded on respect for the dignity and worth of each individual, regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status or ability and therefore applies to every human being in the world.

The Convention specifies the basic human rights that are held by children everywhere: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. Some of the main points of the convention are-

1. The convention defines a child and every human being below the age of 18 years
2. Every child has the inherent right to life, to a name to acquire a nationality and as far as possible the right to know and be cared by his or her parents.

3. Children shall have the right to freedom of expression, thought, conscience and religion, association and peaceful assembly, education, rest and leisure, social security the highest attainable standard of health and a standard of a standard of living adequate for his or her physical, mental, spiritual, moral and social development.
4. Children shall not be separated from their parents against their will
5. children shall be protected from economic exploitation and hazardous work, drug use and trafficking, sexual exploitation and sexual abuse and all other forms of exploitation prejudicial to any aspects of the child welfare.
6. Minority or indigenous child shall not be denied right to his or her own culture, religion or language.
7. A mentally or physically disabled child should enjoy a full and decent life.
8. a child who is capable of forming his or her own views should have the right to express those views freely in all matters affecting the child, including any judicial and administrative proceedings.
9. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Capital punishment or life imprisonment shall not be enforced for offences committed by persons under 18 years.
10. States will establish 10 minimum age below which children shall be presumed not to have the capacity to infringe the penal law.
11. State Parties shall take all feasible measures so that children under 15 do not take a direct part in hostilities and shall refrain from recruiting them into their armed forces.
12. The best interest of the child shall be the Paramount consideration for adoption.

There are a total of 35 Articles in this convention and the above represent only some salient features of them.

RIGHTS OF A CHILD AND INDIAN CINSTITUTION

Indian Constitution is drafted almost at the same time when the universal declaration of human rights was adopted. Framers of Indian constitution were influenced by the concept of human rights. Indian constitution guarantees almost all human rights which were later embodied in the Covenants. Part 3 and part 4 of Indian constitution is relevant for the elimination of child labour .

Fundamental Rights

All the Fundamental rights embodied in the Indian Constitution can be used by children. In addition to this certain rights especially for children is also incorporated in the Constitution, This class is weak and vulnerable for various kinds of exploitation and they need special protection.

1. Article 15- Article 15 discrimination of citizens on the ground only of religion, race, caste, sex, place of birth or any of them.

But Article 15 (3) Nothing in this article shall prevent the state from making any special provision for women and children, by this clause we have a special provision to protect women and children.

2. Article 24 - Article 24 prohibits the employment of children in factories. Article 24 provided that no child below the age of 14 years shall be employed to work in any factory or mine or any other hazardous employment.
3. By 86th Constitutional Amendment 2002 inserted article 21 A to the Indian Constitution. Article 21A provides that the state shall provide free and compulsory education to all children 6 to 14 years as such manner as the state determines.

Directive principles of State Policy

Article 39(f)- Those children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 39(e)- Clause (e) of Article 39 has provisions relating to the health and well-being of the children - that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

Article 45-impose an obligation on the state to provide early childhood care and education to all children until they complete 6 years.

Fundamental Duties

Article 51A

Clause (k) of Article 51A -It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

LEGISLATIVE INITIATIONS FOR PROHIBITION OF CHILD LABOUR

In pursuance of Directive Principles of State Policy, the Parliament has enacted Child Labour (Prohibition and Regulation) Act 1986 which prohibits the employment of children in certain employment and regulate the conditions of work in other employment. The legislation could not abolish the menace of child labour completely but it could prohibit the employment of children who are not completed 14 years in certain employment which is listed in the 8th schedule of the Act.

National Policy of Child Labour

The National Policy of Child Labour 1987 focuses on three welfare aspects of the child

1. Enforcement of the laws relating to prohibiting child labour.
2. Avail the benefits to the families of the child labour.
3. Take up projects in child labour concentrated areas.

Child Labour Prohibition and Regulation Amendment Act 2006

The child labour prohibition and Regulation Act has amended in the year 2006 and ban the employment of children below the age of 14 years as domestic servants and also in the hospitality industry. Violation of this provision is an offence punishable with imprisonment of 3 months which may be extended to 1 year and also fine of Rs 10000 which may be extended to 20,000.

Child Labour (Prohibition and Regulation) Amendment Act 2016

By this amendment the system of child labour is completely prohibited in India and the employment of adolescents are regulated. Also by the amendment enhanced the penalties for

violating the provisions of the Act. The act is renamed as the Child and Adolescent Labour (Prohibition and Regulation) Act.

Children right to free and compulsory Education Act 2009

This act makes access to children from 6 to 14 to education as a legal right from 2010. It places an obligation on the government to enroll every child into School.

Commission of protection of child rights act 2005 enacted by parliament provides constitution of National Commission and State Commission for protection of child rights

Objects of the Act

An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.

1. To ban the employment of children those who have not completed their 14th-year comma in specified occupations and processes
2. To lay down the procedure to decide modifications to the schedule of banned occupation or processes.
3. To regulate this condition of work of adolescents in employments where they are not prohibited from working.
4. To lay down enhanced penalties for the employment of children in violation of the provisions of this act, and other acts which forbid the employment of children.
5. To obtain uniformity in the definition of child in the related laws.

The short title of the Act was amended in 2016 and now it is called as the child and adolescent labour prohibition and Regulation Act 1986. As a consequence of the amendment, engagement of children is prohibited in all occupations. The engagement of adolescent is also prohibited in hazardous occupations.

DEFINITIONS

Adolescent Sec 2 (i) means a person who has completed his fourteenth year of age but has not completed his eighteenth year

Child Sec 2 (ii) means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more

Prohibition of Employment of Children in any Occupation and Process

Sec 3(1) No child shall be employed or permitted to work in any occupation or process.

(2) Nothing in sub-section (1) shall apply where the child,—

1. helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
2. works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.

Explanation.—for the purposes of this section, the expression,

1. **Family** in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother;
2. **family enterprise** means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;
3. **artist** means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sportsperson or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section(2).

The system of child labour is completely abolished except in family enterprise and business without disturbing the education of those children Which also allows the engagement of children in audiovisual entertainment advertisement, films, television series etc. subject to the conditions and safety measures as prescribed.

Sec 3 A -Prohibition of employment of adolescence in certain hazardous occupation and process:

No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule:

Provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.

Technical Advisory Committee

The central government may constitute Advisory Committee to be called as Technical Advisory Committee to advice the central government for this purpose of addition of occupations and processes to the schedule

2. The committee shall consist of a chairman and such other members not exceeding 10, as may be appointed by the central government.
3. Committee shall meet as often as it may consider necessary and shall have the power to regulate its own procedure
4. The committee may also constitute one or more sub-committees and appoint any person who is not a member of the committee.

Regulation of Conditions of work of Adolescents

Part III of the Act deals with Regulation of Conditions of work of Adolescents, which applies only to establishments in which none of the occupations or processes referred to Sec 3 A carried on.

Hours and period of work.-- (1) No adolescent shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of an adolescent shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.

(5) No adolescent shall be required or permitted to work overtime.

(6) No adolescent shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Weekly holidays.--Every adolescent employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Notice to Inspector.--(1) Every occupier in relation to an establishment in which an adolescent was employed or permitted to work immediately before the date of commencement of this Act, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars

Namely:--

- (a) The name and situation of the establishment;
- (b) The name of the person in the actual management of the establishment;
- (c) The address to which communications relating to the establishment should be sent;
- (d) The nature of the occupation or process carried on in the establishment.

(2) Every occupier employs adolescent in his establishment after the commencement of the Act within a period of thirty days from such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars mentioned above.

But the provisions relating to hours and period of work, weekly holiday and Notice to the inspector won't be applicable to the establishments wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

Disputes as to age.--If any question arises between an Inspector and an occupier as to the age of any adolescent who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such adolescent granted by the prescribed medical authority, be referred by the Inspector for the decision to the prescribed medical authority.

Maintenance of register.-- There shall be register maintained by every occupier in respect of adolescent employed or permitted to work in any establishment, which should be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing--

- (a) The name and date of birth of every adolescent so employed or permitted to work;
- (b) Hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;
- (c) The nature of work of any such adolescent; and

(d) Such other particulars as may be prescribed.

Display of notice containing abstract of sections 3 and 14.-- Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of sections 3 A and 14.

Health and safety.--The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

Penalties

Child Labour- Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees or with both.

Provided that the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both

Hemendra Bhai V. State of Chhattisgarh

In pursuance, to the directions of the Supreme Court, A surveyor appointed to inspect the employment of children in factories and establishments. Surveyors visited one home and found one boy rolling beedi. Father of the child informed that beedies are made for a beedi manufacturing industry. He will be getting raw materials and produce beedi at home. The surveyor submitted a report to the Assistant Labour Commissioner and he issued Show Cause Notice to the industry directing to deposit 20,000 Rupees as per the directions of the supreme

court and also to provide education to children working in Beedi manufacturing on the premises of the firm. But the amount did not recover from him. The inspector appointed under the child labour Act submitted a charge sheet before the chief judicial magistrate for the commission of an offence under section 14 of the Act against the industry showing him as an employer.

A petition filed by the industry to quash the criminal proceedings charged against him. The H.C quashed the proceedings on the following grounds

1. The firm had not employed the child as a labourer in any workshop where its beedi manufacturing is carried on. The workers were supplied raw materials and they rolled beedis in their respective houses taking the assistance of their children. The firm had no control or supervision over the work of those workers.
2. If the house of the worker was treated as a workshop under the definition, then the worker who was the owner of the house become the occupier
3. There was no document or material to show that the child labourer in question was below 14 years of age.

Child and Adolescent Labour Rehabilitation Fund

The appropriate Government shall constitute a Fund in every district to be called the Child and Adolescent Labour Rehabilitation Fund to which the amount of the fine realized from the employer of the child and adolescents within the jurisdiction of such districts shall be credited.

The appropriate Government shall credit an amount of fifteen thousand rupees to the Fund for each child or adolescent for whom the fine amount has been credited

The amount credited to the Fund shall be deposited in such banks or invested in such manner, as the appropriate Government may decide.

The amount deposited or invested and the interest accrued on it shall be paid to the child or adolescent in whose favour such amount is credited,

Who can file a complaint?

Under sec 16 of the Act any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.

Administration of the Act

Appointment of Inspectors.

The appropriate Government may appoint Inspectors for the purposes of securing compliance with the provisions of this Act.

The appropriate Government may confer powers and impose duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

Inspection and Monitoring

The appropriate Government shall make or cause to be made a periodic inspection of the places at which the employment of children is prohibited and hazardous occupations or processes are carried out at such intervals as it thinks fit and monitor the issues, relating to the provisions of this Act.

There are many laws and regulatory departments for child labour, yet it is ineffective in controlling ongoing child labour. This is possible only when there is a cooperation of all the sections of the society and the law enforcement agencies and by removing or minimizing the causes of child labour. The main thrust should be on controlling the population of the country, education of the children and providing sufficient funds for its removal from the gross domestic product of India.

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CHAPTER-2

CONTRACT LABOUR (REGULATION AND ABOLITION) ACT,1970

Synopsis

1. Background
2. Object
3. Applicability
4. Definitions
5. Advisory Boards
 - a. State Advisory Boards
6. Registration of establishments
 - a. Appointment of Registrars
 - b. Procedure for Registration
 - c. Effect of non-registration
7. Licensing of Contractors
 - a. Appointment
 - b. Powers and functions
8. Welfare and health of workers
9. Liability of the Principal employer
10. Inspecting Staff
 - a. Powers and functions
11. Effect laws/ agreements inconsistent with the Act

The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of government for a long time. In The Second Five year plan, the Planning Commission made certain recommendations, Namely, undertaking of studies to ascertain the extent of the problem of contract labour, abolition of system and improvement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of the tripartite committee at which the state government also represented and the general consensus of opinion was that the system should be abolished wherever possible or practicable and that in the case where the system could not be

abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

The object of the Act

This act aims at the abolition of contract labour in respect of such category as may be notified by the appropriate government in the light of certain criteria that have been laid down, the service conditions of contract labour where abolition is not possible. It provides for the setting up of the advisory board of a tripartite character, representing various interests, Advises Central and state government in administering the legislation and registration of establishment and contractor. The Act provides for certain welfare measures and amenities to the Contract labour and also provides to guard against the delay in payment of wages.

Extension

It extends to the whole of India.

Applicability

It applies

- a. To every establishment in which 20 or more workmen are employed for were employed on any day of the preceding 12 March as contract labour.
- b. To every contractor for employs or who employed on any day of the preceding 12 March 20 or more workmen.

Provided that the appropriate Government may, after giving not less than 2 months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing the such number of workmen less than 20 as may be specified in the notification.

Sec 1(5) Act does not apply to

- a. The establishments in which work only of an intermittent or casual nature is performed.
- b. If a question arises whether work performed in the establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

For the purpose of this subsection, work perform in an establishment shall not be deemed to be of intermittent nature

- a. If it was performed for more than 120 days in the preceding 12 months, or
- b. it is a seasonal character and is performed for more than 60 days in a year.
- c.

Definitions

Contractor Sec 2 (c)

In relation to an establishment, a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through Contract Labour or who supplies Contract Labour for any work of the establishment and includes a subcontractor.

Establishment Sec 2 (e)

Establishment means

- a. Any office or department of the government or a local authority or
- b. Any place where any industry, trade, business, manufacture or occupation is carried on

Principal employer means Sec 2 (g)

- a. In relation to any office or department of the government or local authority the head of the office or department or such other officer, as the government or the local authority as the case may specify in this behalf.
- b. In a factory, the owner or the occupier of the factory and where a person has been named as manager of the factory under the factories act 1948 the person so named.
- c. In a mine the owner or the agent of the mine and where a person has been named as the manager of the mine the person so named.
- d. Any other establishment, any person responsible for the supervision and control of the establishment.

In National Airport Delhi V. Bangalore Airport Service Co-operative society

The question was whether porters in the airport engage through a contractor where employees of the Airport and aerodrome officer were the principal employer or not. It was that in order to determine whether there was a relationship of employer and employee, two questions had to be decided.

- a. whether there was a contract of employment between the contract employees and the officer
- b. Whether the portage service was incident or integral part of the functions of the Airport Authority.

It is held that the relationship between employer and employee cannot be established merely because the Aerodrome Officer had a little control over the activity of the contract employees. The power to suspend or to recommend to remove from service is also not an important fact. Test control may be a relevant factor but which is not the decisive factor in a master-servant relationship in all cases. Hence, the aerodrome officer is not a principal employer.

Workman Sec 2 (i)

Any person employed in or in connection with the work of any establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied

But does not include any such person

- a. Who is employed mainly in a managerial or administrative capacity or
- b. Who, employed in the supervisory capacity draws wages exceeding 10000 rupees per month or 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 or
- c. Who is an outworker, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise process for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out worker or in some other premises not be premises under the control and management of the principal employer.

The Advisory Boards

Sec 3 Central advisory board - Central Government shall constitute Central Advisory Board to advise the central government for such matters arising out of the administration of this act and to carry out other functions assigned to it under this act.

Constitution

The Central Board shall consist of—

- (a) A Chairman to be appointed by the Central Government;
- (b) The Chief Labour Commissioner (Central), Ex-Officio;
- (c) The such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Board.

(3) The term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

Sec 4. State Advisory Board.—(1) The State Government may constitute a board to be called the State Advisory Contract Labour Board to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The State Board shall consist of—

- a. A Chairman to be appointed by the State Government;
- b. The Labour Commissioner, ex-officio, or in his absence any other officer nominated by the State Government in that behalf;

- c. the such number of members, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

(3) the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of the State Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

Sec 5. Power to constitute committees.—

(1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

(2) The committee shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed:

Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

Registration of establishment employing contract labour

Sec 6 appointment of registering officers

Appointment of registering officers.—The appropriate Government may, by an order notified in the Official Gazette—

- a. appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter; and
- b. define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

Registration of certain establishments. Sec 7—(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments

generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:

It is the responsibility of the principal employer of every establishment to which this Act applies shall register the establishment with the Registering Officer in the prescribed manner.

Provided that the registering officer may entertain any such application for registration after the expiry of the period fixed in this behalf if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

Corporation of India workers Union v. Food Corporation of India and others

Gujarat High Court held that under section 7 of the Act, the principal employer is required to obtain a certificate of registration issued by the appropriate government and under section 12 The contractor is required to obtain a licence. The workmen can be employed as contract labour only through a licenced contractor Unless both the aforesaid condition complied, the provisions of this act would not be attracted. In a situation wherein either of these two conditions is not satisfied a workman employed by an intermediary would be deemed to have been employed by the principal employer. Therefore in relation to the period when either the principal employer did not possess the certificate of registration or the contractor did not possess the licence, that they are directly employed by the principal employer.

Revocation of registration in certain cases. Sec 8—If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.

Effect of non-registration. Sec 9—No principal employer of an establishment, to which this Act applies, shall—

- a. in the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section,
- b. in the case of an establishment the registration in respect of which has been revoked under section 8,

employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be.

Prohibition of employment of contract labour. Sec 10—(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any **process, operation or other work in any establishment.**

(2) Before issuing any notification prohibiting the employment of contract labour in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- a. whether the process, operation or other work is incidental to or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- b. whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- c. whether it is done ordinarily through, regular workmen in that establishment or an establishment similar thereto;
- d. whether it is sufficient to employ a considerable number of whole-time workmen.

Explanation.—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

Sandeep Verma and others V. Union of India and others

Employees were working as clerks, peons, electricians etc. in the Central Board of Secondary Education (Principal employer) under a contractor. The contractor used to pay wages and had a condition in the contract that service can be terminated by the contractor. The service is those employees terminated by the contractor.

The court made the following observations

1. A perusal of the contract suggested that it was the contractor who paid the wages.
2. The service of the employees have not been terminated by the principal employer and the relationship of employer and employee was not established
3. The employees' appointment was not in accordance with the rules of the principal Sec 10 of the Act.

Employees were not the direct employees of the principal employer.

In UP State Electricity Board Lucknow V. Presiding Officer Industrial Tribunal U.P

Employer UP State Electricity Board by an agreement gave the contract of security of its employee's Colony to Industrial security service Allahabad. Initially, the contract was for 6 months which was extended from time to time. The workers of ISI through their Union started raising demand with regard to their service conditions, pays etc., which was against the terms of the contract. They filed a case under the authority of payment of wages act. the authority held that the employer is not liable for payment of wages. security e of the colony was disturbed because of the agitation of the workers. The security Commission recommended for removal of the staff. The employees who were into agitation were removed and replaced them with new staff. The employees raised an industrial dispute against the removal of them from the employment. Industrial Tribunal ordered for the absorption of contract employees. The employer approach to the High Court.

1. The high court held that the order of absorption is not correct because the security work is not a permanent and perennial nature of work of the electricity board.
2. Term of the contract that under no circumstances members of the security staff of the contractor shall be treated to be the employees of the Board.

3. Termination of employment is well within the contract, in case of negligence on the part of the security personnel, on the recommendation of the security committee.

Appointment of licensing officers Sec 11.—The appropriate Government may, by an order notified in the Official Gazette,—

- a. appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and
- b. define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

Licensing of contractors. Sec 12 —(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

General Labour Union V. K.M.Deasi

There is no provision in the Contract Labour Regulation and abolition act whereby it can be construed even by a remote possible way that in case of failure on the part of the contractor to register his contract under section 12 of the act, the employees employed by the contractor would become the direct employees of the company. Failure on the part of the contractor to register the contract would lead to invoking penal provisions.

It was held in *United labour Union and others V. Union of India and others* that mere existence of penal provisions does not detract from the position that there can be no deemed Contract labour if the two conditions relating to registration of the principal employer and obtaining of a valid licence by the contractor are not satisfied. If the protection or right given by reason of a deeming provision is not available, then the natural consequence must follow in addition to the penal consequence, unless there is provision to the contrary.

Grant of licences Sec 13.—(1) Every application for the grant of a licence under sub-section (1) of section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of the process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

Revocation, suspension and amendment of licences. Sec 14 —(1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that—

- a. a licence granted under section 12 has been obtained by misrepresentation or suppression of any material fact, or
- b. the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof

deposited as security for the due performance of the conditions subject to which the licence has been granted.

(2) Subject to any rules that may be made in this behalf, the licensing officer may vary or amend a licence granted under section 12.

Appeal Sec 15 .—(1) Any person aggrieved by an order made under section 7, section 8, section 12 or section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

WELFARE AND HEALTH OF CONTRACT LABOUR

Canteens.—(1) The appropriate Government may make rules requiring that in every establishment—

- a. to which this Act applies,
- b. wherein work requiring the employment of contract labour is likely to continue for such period as may be prescribed, and
- c. wherein contract labour numbering one hundred or more is ordinarily employed by a contractor,

one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

2. Without prejudice to the generality of the foregoing power, such rules may provide for—

- a. the date by which the canteens shall be provided;

- b. the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
- c. the foodstuffs which may be served therein and the charges which may be made therefore.

Rest-rooms.Sec 17 —(1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment—

- a. to which this Act applies, and
 - b. in which work requiring the employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.
2. The rest-rooms or the alternative accommodation to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

Other facilities.Sec 18 —It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain—

- a. a sufficient supply of wholesome drinking water for the contract labour at convenient places;
- b. a sufficient number of latrines and urinals of the prescribed types so situated as to be
- c. convenient and accessible to the contract labour in the establishment; and
- d. washing facilities.

First-aid facilities Sec 19.—There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.

Liability of principal employer in certain cases. Sec 20—(1) If any amenity required to be provided under section 16, section 17, section 18 or section 19 for the benefit of the contract

labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed.

(2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Responsibility for payment of wages. Sec 21—(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

PENALTIES AND PROCEDURE

Obstructions.—Sec 22(1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Contravention of provisions regarding employment of contract labour Sec 23.—Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Deva Nath and Others V. National Fertilizers Ltd.

The court held that it is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the government after considering the matter as required to be considered under section 10 of the Act. The only consequence provided in the Act where either the principal employer or the labour contractor violates provisions of section 9 and 12 respectively is the penal provision as envisaged under the Act for which reference may be made to Section 23 and 25 of the Act. In a writ petition the High Court could not issue any Mandamus for deeming the Contract Labour as having become employees of the principal employer.

In ***S.B. Deshmugh V. Labour Enforcement officer*** a complaint was filed against the chief Regional Manager of State bank of India and a contractor under the Act for employing 12 persons as contract labour for maintenance , cleaning, dusting of the building of the Bank which

was prohibited by the notification issued by the Central Govt. under Sec 10 (1) of the Act. it was held that the prohibition under Sec 10 (1) of the Act is not the qua the establishment but it is qua a particular activity of contract labour. It prohibits the employment of contract labour in any process, operation and any other work in any establishment. If at all any contravention , the same is done by the principal employer of the establishment, he will be prosecuted under the Act. if the contractor aided or abated in the commission of such offence he can also be prosecuted.

Other offences. Sec 24—If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Cognizance of offences. Sec 26—No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence punishable under this Act.

Limitation of prosecutions. Sec 27—No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

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

INSPECTING STAFF

The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

Powers of Inspectors

An inspector may, within the local limits for which he is appointed—

- a. enter, at all reasonable hours, with such assistance (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection;
- b. examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein;
- c. require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;
- d. seize or take copies of such register, record of wages or notices 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 the principal employer or contractor; and
- e. exercise such other powers as may be prescribed.

3. Any person required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).

4. The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to any search or seizure under sub-section (2) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

Registers and other records to be maintained. Sec 29—(1) Every principal employer and every

contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

(2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

Effect of laws and agreements inconsistent with this Act. Sec 30—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act:

Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

Power to exempt in special cases. Sec 31—The appropriate Government may, in the case of an emergency, direct, by notification in the Official Gazette, that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, all or

any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.

Protection of action taken under this Act. Sec 32—(1) No suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other Government servant or against any member of the Central Board or the State Board, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

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3. Hand book of Labour and Industrial Laws- P.L.Malik (18th Edition 2018)

UNIT- IV

SOCIAL SECURITY

CHAPTER-1

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS **ACT, 1952**

SYNOPSIS

- **Objectives and Schemes**
- **Contribution and matters which may be provided for in Schemes**
- **Dispute arises regarding the applicability of the Act**
- **Central Board**
- **State Board**
- **Dispute with respect to the contribution.**

OBJECTIVES

- The Central Board of Trustees administers a contributory provident fund, pension scheme and an insurance scheme for the workforce engaged in the organized sector in India. The Board is assisted by the Employees' PF Organization (EPFO), consisting of offices at 135 locations across the country. The Organization has a well equipped training set up where officers and employees of the Organization as well as Representatives of the Employers and Employees attend sessions for trainings and seminars. The EPFO is under the administrative control of Ministry of Labour and Employment, Government of India.
- The Board operates three schemes - EPF Scheme 1952, Pension Scheme 1995 (EPS) and Insurance Scheme 1976 (EDLI)

The employees provident funds and Miscellaneous provisions Act, 1952 is enacted to provide a kind of social security to the industrial workers. The Act mainly provides retirement or old age benefits, such as provident fund, superannuation Pension, Invalidation Pension Family Pension and Deposit Linked Insurance

The Act provides for payment of terminal benefits to various contingencies such as retrenchment, closure, retirement on reaching the age of superannuation voluntary retirement and retirement due to incapacity to work.

Applicability: every employee employed in or in connection with the work of factory or other establishment covered by the schemes other than an excluded employee is entitled and required to become a member of the fund from the date of joining the factory or the establishment.

- **Contribution and matters which may be provided for in Schemes:**
 - Both employer and employee has to contribute equally
 - 12 % of the basic salary has to be contributed by employee the same amount has to be contributed by employer
- **Dispute arises regarding the applicability of the Act**
- Determine the amount due from any employer under any provisions of this Act
- The officer conducting the inquiry
 - Enforcing the attendance of any person or examining him on oaths
 - Requiring the discovery and production of documents
 - Receiving evidence on affidavit
 - Issuing commissions for the examination of witnesses
- Any such inquiry shall be deemed to be a judicial proceeding within the meaning of section 193, and 228 and for the purpose of section 196, of the IPC
- Sec 193 of IPC: whoever intentionally gives false evidence in any judicial proceeding or fabricates false evidence for the purpose of being used in any stage of judicial proceeding,

shall be punished with imprisonment of either description for a term which may extend to seven years

- Sec 196 of IPC : the evidence if fabricated shall be punishable.
- Sec 228 of IPC: intentionally or interruption to public servant sitting in judicial proceeding shall be punished with simple imprisonment for a term which may extend to six months or with fine of one thousand rupees or both.
- When parties are fails to attend the inquiry the court decides the matter in favour of ex parte
- Determination of escaped amount: if any amount due from the employer
 - notice to employer
 - Within the five years the order is passed for re-determining amount due from the employer
- Tribunal: the industrial tribunal constituted by the CG for adjudication of issues under this Act.
- Case: ***State Bank of Travancore v. Recovery Officer, Employees Provident Fund Organization (2003) Lab L.J. 88 (karn)***

Issues

- Inadequacy of price in the time public auction would be set aside
- It was held that in public auction the price may be variance hence it will not be set aside the auction
- Case: ***Regional PF Commissioner v. Shiv kumar Joshi AIR 2000 SC 331***

Issue:

- provisions of Consumer Protection Act can be invoked against PF Commissioner
- Whether the PF Schemes are comes under the purview of 'Service' under the sec 2 (1) (d) of the Consumer protection Act.

- Judgment: the consumer protection Act will be applicable to PF act
- **Central Board: Through notification the CG can constitute Board of Trustees**
 - The Chairman and vice Chairman to be appointed by the CG
 - The Central PF Commissioner
 - Five official appointed by CG
 - Fifteen persons representing from different states becomes the officials
 - Ten persons representing from employers
 - Ten persons representing from employees
 - Administer fund
 - The board has to administer the schemes like Pension and Insurance
 - The accounts shall be Audited by The Central Board through Auditor General of India
 - The Auditors can ask Books of Accounts, connected vouchers, documents and papers.
 - The accounts shall be certified by the Auditors and same shall be send to CG
 - Annual report shall be submit to CG
- Executive Committee: the CG by notification in official Gazette Constitute this committee
 - A chairman appointed by the CG from amongst the members of the Central Board
 - Two persons appointed by the CG from amongst the officials
 - Three person appointed by different states from amongst the officials
 - Three persons representing the employers elected by the Central Board
 - Three persons representing the employees elected by the Central Board.

- The Central PF Commissioner, ex officio
- **State Board:** CG may, after consultation with the Govt of state constitute the State Board
- CG may time to time assign the duties and functions

Sec 5-C. constituted as board corporate under the name specified in the notification

- Sec 5-D. Appointment of officers: the CG shall appoint a central provident fund commissioner who shall be the Chief Executive Officer of the Central Board
- The CG may also appoint Financial officer and Chief Accounts Officer to assist CPF Commissioner
- The Central Board may appoint other officers like Additional Central Provident Fund Commissioner, Deputy PFC, Assistant PF Commissioner, Regional PF Commissioner and any other officers for these schemes
- A Contribution means a contribution payable in respect of a member under scheme or contribution payable in respect of an employee to whom the insurance scheme applies.
- Sec 6 contribution and matters which may be provided for in schemes: Employer contribution 10% of basic wages [DA+Retaining Allowance] (read sec 6)
- Employee contribution equal to the employer
- Provided if any establishment make an application to CG, they can contribute 12%
- Dearness allowance shall deemed to be include cash value of any food concession
- Retaining allowance : an allowance payable for the time being to an employee of any factory or other establishment during any period in which any establishment is not working for retaining his service.
- **Dispute (Employer and Employee)**
- Authorized office-

- CPC (Chief Provident fund Commissioner)
- APC (Additional Provident fund Commissioner)
- DPC (Deputy Provident fund Commissioner)
- RPC (Regional Provident fund Commissioner)
- Inquiry starts
 - Employer and Employee has to present
 - The decision would be made by the authorizing officer
 - If the decision is satisfied by the employer then he is liable to pay the due

If the parties not satisfied then within the 45 days file the review application to authorized officer (Sec 7B)

- If the application has been **accepted** by the authorized officer
- New decision would be taken by the authority
- That would be binding on the parties
- if the decision is satisfied the employer is liable to pay the due
- If the employer is not satisfied then Appeal to Appellate Tribunal
- If the Review application is rejected by the officers then there is no appeal filed to Appellate Tribunal
- On the other side in the time of **inquiry** if one of them was not present
 - Exparte order made by the authorizing officer under (sec 7A)
 - The affected party can file application for setting aside the exparte order, with sufficient cause within the 3 months (90days)
 - The authorizing officer heard with giving sufficient opportunities to parties

- New decision shall be taken by authorizing officer
- If the decision will be satisfied then employer has to pay due payments

if not satisfied then Appeal to Appellate Tribunal

- E P F is the main scheme under EPFMPA 1952, however an employee who is drawing ` pay above prescribe limit 15000 can become a member with permission of Assistant PF Commissioner, if he and his employer agree
- It covers every establishment in which 20 or more persons are working. exemptions even if they employ less than 20 persons each
- As per the rules, in EPF, employee whose pay is more than Rs 15000 per month at the time of joining, is not eligible and is called non eligible employee. Employees drawing less than Rs 15000 per month have to mandatorily become members of the EPF.
- Contribution by employer and employee: the contribution paid by the employer is 12% of basic wages plus dearness allowance plus retaining allowance. An equal contribution is payable by the employee also.

EPF withdrawal due to corona virus: member of the Employees Provident fund organization (EPFO) have been allowed to take non refundable advances from their EPF accounts to meet the financial emergencies caused due to the corona virus induced lockdown.

As per the EPF withdrawal rules a member can withdraw an amount equal to three months of basic salary and dearness allowance (DA) of 75% of the credit balance in the account, whichever is lower.¹

The government has reduced both employer and employee contribution to the letters EPF account from 12% of employees' salary to 10% for next 3 months, as part of its corona virus relief measures, thus, employers will save money due to 2% reduction in their contribution to EPF.

¹ <https://economictimes.indiatimes.com/wealth/invest/57-large-cap-funds-fail-to-beat-their-benchmarks-over-20-years-what-should-you-do/articleshow/76400444.cms> site visited on 16-6-2020.

As per the finance ministry announcement, Business need support to ramp up production over the next quarter. It is necessary to provide more take home salary to employees and also to give relief to employers in payment of Provident Fund dues. This indicate that the reduction in EPF contribution by the employer is not meant to be transferred/added to the take home salaries of the employees because if this were to happen then there would be no net relief for the employer organizations.

The government has cut the Employees provident fund contribution by both employer and employee for the next three months i.e. May, June and July 2020.

CHAPTER-2

MATERNITY BENEFIT ACT 1961

SYNOPSIS

- **Objectives**
- **Definitions**
- **Employment of or work by, women prohibited during certain period**
- **Right to payment of maternity benefits**
- **payment of maternity benefit in certain cases**
- **payment of maternity benefit in case of death of a woman**
- **Nursing breaks**
- **Recent amendments**
- **Covid-19 and Maternity benefit**

Objectives

- The Act regulates employment of woman in certain establishments for a certain period before and after child birth and provides for maternity and other benefits,

- The Act applies to mines, factories, circus, industry, plantation and shops and establishments employing ten or more persons, except employees covered under the employees State insurance act, 1948.
- It can be extended to other establishments by the state governments. There is no wage limit for coverage under the Act, the central Government is appropriate Government in respect of the circus industry and Mines
- The woman maintaining the family as well as working place
- Before this Act there are several Acts were working in India
- To maintain the unborn child and avoid heavy work. EX. Circus, mining, plantation in these areas women are working more.
- The maternity benefits are available to women before the birth of the child and after the birth of the child.
- All several state acts have been collected and prepared on whole that will applicable to ever one that is called Maternity benefit Act 1961.

Sec 3: Definitions

- a) Appropriate government: in relation to an establishment being a mine or an establishment, wherein persons are employed for the exhibition of equestrian, acrobatic and other performances the central government and in relation to any other establishment, the state government
- b) Child: includes a still born child
- c) Delivery: the birth of child
- d) Employer:

In relation to an establishment which is under the control of the government a person or authority for the supervision and control for the supervision and control of employees or where any person or authority is appointed, the head of the department.

In any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person

e) Establishment : a factory, a mine, a plantation, an establishment wherein person are employed for the exhibition of equestrian, acrobatic and other performances

ha) medical termination of pregnancy means the termination of pregnancy permissible under the provision of the Medical Termination of Pregnancy Act 1971

Miscarriage means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the IPC.

wages: means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, where fulfilled and includes.

1. Such allowances includes DA and HRA

2. Incentive bonus

3. The money value of the concessional supply of food grains and other articles, but does not include

- i. any bonus other than incentive bonus
- ii. Overtime earnings and any deduction or payment made on account of fines
- iii. Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force,
- iv. Any gratuity payable on the termination of service

Sec 4: employment of or work by, women prohibited during certain period: no employer shall knowingly employ a woman in any establishment during the six weeks

immediately following the day of her delivery, (miscarriage or medical termination of pregnancy)

No woman shall work in any establishment during the six weeks immediately following the day of her delivery, (miscarriage or medical termination of pregnancy)

- Without prejudice to the provision of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub section (4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the fetus, or is likely to cause her miscarriage or otherwise to adversely affect her health
- Sec 5. **Right to payment of maternity benefits:** every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of her employer daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.
- No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims months immediately preceding the date of her expected delivery.
- The maximum period for which any woman shall be entitled to maternity benefit shall be (twenty six weeks of which not more than eight weeks) shall preceded the date of her expected delivery
- Provided that the maximum period entitled to maternity benefit by a woman having **two or more than two surviving children** shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery
- Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of death.

- A woman legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.
- In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.
- **Sec 5A continuance of payment of maternity benefit in certain cases:** every woman entitled to the benefit under this act shall, notwithstanding the application of the employees State Insurance Act, 1948, to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 50 of that act.
- **Sec 5 B: payment of maternity benefit in certain cases:** every woman
 - a) Who is employed in a factory or other establishment to which the provisions of the employees state insurance Act, 1948.
 - b) Whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub clause (b) of clause (9) of the section 2 of that Act, and
 - c) Who fulfils the conditions specified in sub section (2) of section 5, shall be entitled to the payment of maternity benefit under this Act.
 - d) **Sec 6. notice of claim for maternity benefit and payment thereof:** any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing given in such a form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

- e) In the case of a woman who is pregnant such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.
- Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.
- On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

Sec 7. **payment of maternity benefit in case of death of a woman:** if a woman entitled to maternity benefit or any other amount under this Act dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to subsection (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representatives

- No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims months immediately preceding the date of her expected delivery.
- The maximum period for which any woman shall be entitled to maternity benefit shall be (twenty six weeks of which not more than eight weeks) shall precede the date of her expected delivery
- Provided that the maximum period entitled to maternity benefit by a woman having **two or more than two surviving children** shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery
- Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of death.
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- In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.
- **Sec 6. notice of claim for maternity benefit and payment thereof:** any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing given in such a form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.
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- On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.
- **Sec 7. payment of maternity benefit in case of death of a woman:** if a woman entitled to maternity benefit or any other amount under this Act dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to subsection (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representatives.
- **Sec 8. payment of medical bonus:** every woman is entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of **one thousand rupees**. If no prenatal confinement and post natal care is provided for by the employer free of charge.

- Central govt may increase this amount up to twenty three thousand rupees by gazette notification
- **Sec 9. leave for miscarriage, etc.** : in case of miscarriage or medical termination of pregnancy, a woman shall on production of such proof as may be prescribed, be entitled to leave with wages at the of maternity benefit, for period of **six weeks** immediately following the day of miscarriage or medical termination of pregnancy

Sec 9A. Leave with wages for tubectomy operation: in case of tubectomy operation, a woman shall, on production such proof as may be prescribed be entitled to leave with wages at the rate of maternity benefit for **period of two weeks** immediately following the day of her tubectomy operation

- **Sec 10. leave for illness arising out of pregnancy**, delivery, premature birth of child (miscarriage, medical termination of pregnancy or tubectomy operation : if sufficient production of documents the employee shall get **one month leave** with wages.
- **Sec 11. Nursing breaks:** every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for **nursing the child until the child attains the age of fifteen months.**
- **Sec 11A. Crèche facility:** every establishment having fifty or more employees shall have the facility of crèche within such or along with common facilities.
- Provided that the employer shall allow four visits a day to the crèche by the woman, which shall also include the interval for rest allowed to her.
- Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.
- **Recent amendments**
- For woman who is expecting before having 2 children – 26 weeks of leaves avail.
- Pre expected (before the expected delivery up to 8 weeks)

- Post expected (remaining months leaves are available)
- For woman who are expected after having 2 children
 - Pre expected 6 weeks
 - Post delivery another 6 weeks
- Adoption : if the woman adopted a child who is less than 3 months – 12 weeks leaves avail to woman
- Commissioning mother (mother health is not good)
 - Biological mother who use her egg
 - Create an embryo planted in any other woman
 - 12 weeks leaves avail to that woman
- Work from home
 - After expiry of the 26 weeks leave period
 - Depending upon the nature of the work
 - On mutual agreement
- Sec 17. power of inspector to direct payments to be made: any woman claiming
 - Maternity benefit
 - Her employer dismissal or discharge
- Inspector can conduct the inquiry
 - Payment wrongfully withheld and direct the payment to be made in accordance with his orders
 - Discharge or dismiss

- Any person aggrieved by the decision of the inspector under this sections shall appeal to prescribed authority within 30 days
- The prescribed authority decision is final and not further appeal
- Any amount payable under this section shall be recoverable by the collector on a certificate issued for that amount by the inspector as an arrear of land revenue
- Sec 18. forfeiture of maternity benefit: if a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence, she forfeit her claim to the maternity benefit for such period
- Recent amendments
- For woman who are expecting before having 2 children – 26 weeks of leaves avail.
- Pre expected (before the expected delivery up to 8 weeks)
- Post expected (remaining months leaves are available)
- **Covid-19 and Maternity benefit**



- Srijana Gummalla worked as an education management consultant for a year at Dr Redy's Foundation. She is currently serving as the Commissioner of the Greater Vishakhapatnam Municipal Corporation (GVMC). Her posting as a sub-Collector in

Vishakhapatnam was a regulatory role. She looks into land administration, civil supplies, fair price shops and Rythu bazaars that take commodities to people. Gummalla believes in adopting technological mechanisms, wherever possible, as she believes that the lack of human interference helps reduce corruption. She has voiced her opinion about gender neutrality at her workplace. She wishes to gain respect as an officer and doesn't want herself to be treated differently because of her gender.

- **“Today, with the coronavirus outbreak, the circumstances are such. I requested the Chief Minister to allow me to rejoin and he asked me if I was completely sure. I am grateful that he allowed me.”**
- The coronavirus pandemic has increased the uncertainty of employment for women in India across various sectors, including farming and labour. As the migrant workers are heading back to their homes and may seek to substitute their income by working in the farming sector, The National Commission For Women (NCW) has suggested that there is a need to re-frame the policies to help the women farmers overcome the economic setback brought by the lockdown. On Friday, the NCW conducted a virtual day-long consultation where they mulled an advisory for the states to allow them to prescribe the changes required in policies for the economic welfare of the women farmers amid the lockdown.



UNIT V

PROTECTION OF UNORGANIZED LABOUR

CHAPTER-1

THE UNORGANIZED WORKERS SOCIAL SECURITY ACT, 2008

SYNOPSIS

- **The objects of the Act**
- **Framing of scheme**
- **National Social Security Boards**
- **State Social Security board for unorganised workers**
- **Workers facilitation centre**
- **Eligibility for registration and social security benefits**
- An Act to provide for the social security and welfare of unorganized workers and for other matters connected therewith or incidental thereto:
- **The objects of the Act**
 - Out of total employment, unorganized sector constitute more than 95%.
 - These workers are not getting social security
 - Ex. Handloom weavers, construction workers, fishermen, beedi workers, non coal mine workers
 - The government and nongovernmental organization are trying to provide social security to these workers.

- Despite all these efforts, there is a huge deficit in the coverage of the unorganized sector in the matter of labour protection social security measures ensuring the welfare and well benign or workers in the unorganised sector, such as agricultural workers, construction workers, beedi workers, hand loom workers, leather workers, etc
- The 2007 the unorganized workers social security Bill aims to provide for social security and welfare of the unorganised sector workers and for the matters connected with
- The CG shall constitute a National Social Security Advisory Board to recommend suitable welfare schemes for different sections of unorganized sector workers.
- The CG may suitable welfare schemes relating to the life and disability cover, health and maternity benefits, old age protection, or any other benefits.
- The State government shall constitute the state social security advisory board to recommend suitable welfare schemes for different sections of unorganized workers in that state govt may notify suitable schemes.
- A worker of an unorganized sector shall be eligible for social security benefits if, he is duly registered. Every registered worker in the unorganized sector shall be issued an identity card which shall be a smart card carrying a unique identification number and shall be portable

Sec 3 **framing of scheme:** the CG shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to

- Life and disability cover
- Health and maternity benefits
- Old age protection
- Any other benefit as may be determined by the CG
- The State Govt may formulate and notify, form time to time, suitable welfare schemes for unorganized workers, including schemes relating to

- Provident fund
- Employment injury benefit
- Housing
- Educational schemes for children
- Skill up gradation of workers
- Funeral assistance and
- Old age homes

Sec 4. funding of CG Schemes : the CG and State Govt and contributed by beneficiaries

Sec 5 : **National Social Security Boards** : the CG through notification constitute the Board

- Union Labour and employment Minister would be the Chairperson, ex officio;
- The director general labour welfare would be the member secretary, ex officio;
- Thirty four members to be nominated by the CG out of whom
 - Seven from unorganized workers
 - Seven from employers or unorganized sector
 - Seven representing eminent persons from civil society
 - Two representing members from Lok Sabha and one from Rajay Sabha
 - Five representing CG Ministers and Departments concern
 - Five representing State Govt
- From time to tome CG shall notifying the changes in this regard
- The term of the National Board is three years
- Every year atleast three meeting shall be conducted
- The members may receive allowance.
- Functions

- Recommend to the CG for suitable scheme for different sections of unorganized workers
- Advise the CG for administration this matters
- Monitor such social welfare schemes for unorganized workers
- Review the progress of registration and issue of identity cards to the unorganized workers
- Review the record keeping functions performed at the state level
- Review the expenditure from the funds under various schemes
- Undertakes such other functions as are assigned to it by the CG from time to time

Sec 6: State Social Security board for unorganised workers: state Govt shall through notification constitute social security Board.

- Minister of Labour and Employment of the concerned would be chairperson. Exofficio
- The principal secretary or secretary (labour) would be the Member Secretary exofficia and
- Twenty eight members to be nominated by the State Govt out of whom
- Seven representing the unorganised workers
- Seven representing employers of unorganised workers
- Two representing members of Legislative assembly of the concerned state.
- Five representing eminent person from civil society
- Seven representing State Govt department concerned.
- The state govt is framing the schemes from time to time
- The term of the board is three years
- The Board shall schedule meeting quarterly
- The members shall receive the allowance of the meeting

- Functions of State Board
- Recommended the State Govt in formulating suitable schemes for different sections
- Advise the state govt on labour matters
- Monitor social schemes
- Review the record keeping functions performed at the district level
- Review the progress of registration and issue of cards to unorganised sector workers
- Review the expenditure

Sec 7 funding of state government schemes: wholly funded by the State govt or partly fund by state and employers and employee contribution, and CG may provide financial assistance for these schemes.

Sec 8. record keeping by district administration

- The District Panchayath in rural areas
- The urban local bodies in urban areas.

Sec 9. **workers facilitation centre** : the Govt may setup such workers facilitation centres as may be considered necessary from time to time to perform the following functions namely

- Disseminate information on available social security schemes for the unorganized workers
- Facilitate the filling, processing and forwarding of application forms for registration of unorganized workers
- Assist unorganized worker to obtain registration from the District administration
- Facilitate the enrolment of the registered unorganized workers in social security schemes.

Sec 10. Eligibility for registration and social security benefits: every unorganized worker shall be eligible for registration subject to the fulfillment of the following conditions.

- He or she shall have completed fourteen years of age
- A self declaration by him or her confirming that he or she is an unorganized worker

Every eligible unorganized worker shall make an application in the prescribed form to the District administration.

CHAPTER-2

THE KARNATAKA SHOPS AND ESTABLISHMENT ACT 1961

SYNOPSIS

- **Objectives**
- **What businesses must comply**
- **What businesses are exempt**
- **Documents required**
- **employment of women and children**
- **Weekly holidays**
- **Annual leave with wages**
- **Key compliances**
- **Registration procedure**
- **Authorities**

- **Establishments exempted from weekly holiday**
- **Employment and Regulation**
- **Objectives**
 - Registration is a mandatory requirement for all companies, persons, and legal entities planning to set up a shop or commercial establishment in the state.
 - The Act is an important document for employers and their human resources (HR) departments in the state. The Act regulates commercial establishments in areas such as working hours prescribed for employees, annual leaves with wages, wages and compensation, employment of women and children, and other aspects.
 - Businesses that have yet to set up in the state should review the document to understand key statutory requirements, while employers that have already set up in the state should review the Act to ensure their HR policies and handbook are compliant.
- **What businesses must comply**
 - Commercial establishment means any commercial, trading, banking, insurance entity, an establishment, or administrative services wherein persons employed are mainly engaged in office work, a hotel, restaurant, a cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment.
 - The Act defines shops as a place where any trade or business is carried on or services are rendered to customers, including offices, storerooms, and godowns . The term does not include shops attached to a factory where the persons employed fall within the scope of India's Factories Act, 1948.
- **What businesses are exempt**
- The establishments that are exempt from the applicability of the Act include:

Federal, state government or local authority offices

Any industry or entity that provides power, light, or water to the public, or any water transport service, postal, railway survey, telephone or telegraph service, any system of public sanitation or conversancy

Railway dining cars

Establishments for the care or treatment of the mentally unfit, infirm or the sic

The food corporation of India's establishments;

The offices of legal and medical practitioners provided that they have not employed more than three persons;

A banking company's offices;

Persons who are occupying the positions of management in any establishment

How to register under the Act

It is mandatory for all new shops or commercial establishments in Karnataka – whether employing more than one employee or not, to apply for registration under the Act within 30 days of commencement of business.

The application can be made online on e-Karmika which is the state government portal that provides an online facility for registration under the Act, and renewal or amendment of licenses. Once the application is made, the inspection and granting of registration takes about 15 days.

Documents required

For registration, the applicant must fill up details of the company in form-A, and submit it along with the following supporting documents:

- Commercial address proof;
- Identity proof and permanent account number (PAN) card copy of proprietor, partners or directors;

- PAN copy of the entity;
- Registration documents such as partnership deed or memorandum of association (MOA) of the company; and
- Fee payment challans.

employment of women and children

- The Act prohibits companies from employing children under 14 years of age. It also prohibits night shift for women employees or young persons between the age of 14 to 18 years.
- Information technology (IT) or biotech companies that require women employees to work in the night are required to obtain special permission from authorities

Weekly holidays

- It is mandatory for all establishments to remain closed for at least one day of the week and provide a day rest to its employees.
- The weekly holiday provision, however, is not available to medical shops, general stores, theater, petrol bunks, lodges, hotels, clubs, hostel, and companies offering IT or biotechnology related services.

Annual leave with wages

- Every employee working in an establishment in Karnataka is allowed to avail a leave with wages at the rate of one day for every twenty days of work performed. For young persons, the provision is more relaxed offering a leave with wages at the rate of one day for every fifteen days of work performed.

Key compliances for your business

- *Hours of operation*

- The Act provides for nine-hours a day or forty-eight hours a week work schedule for every employee in the state.
- For those working overtime, it mandates employees to pay overtime wages at twice the rate of normal wages.
- **Registration procedure**
 - Each owner, within 30 days from starting the business shall submit application form in Form A to register his establishment
 - Registration certificate must be displayed on visible inside the office premises.
 - Registration certificate is valid for 5 years period. Before the expiry of the period, renewal application to be submitted for the next period.
- It shall be the duty of the employer to notify to the registration authority, in the prescribed form, any change with respect to any information contained in his statement during registration/renewal within 15 days after the change, Ex. Change in address, change in ownership, change in number of employees etc
- After closing the business of his establishment, should surrender the registration certificate to the registration authority.

Authorities

- To enforce this act labour commissioner will be the “Chief Inspector”. It is notified that Inspector/Senior Inspector as “Inspector” and all department level authorities as “Additional Inspector”.
- **Establishments exempted from weekly holiday**
 - Medicine and Medical equipment sale

- Club, lodging and Hotel, Hostel attached to school or college, residential schools.
- Shops, stalls and refreshment rooms at busstand and railway station
- Hair cutting saloon.
- Shops dealing mainly in Meat, Fish, Egg, Milk and Dairy product (except Ghee) Bread, Chocolate, Fresh ingredients, confectionery, Ice cream and cooked food for sale, Fruits, vegetables, flowers, raw fodder sales
- Paan Beedi, Cigarette, Soft drink sale shop
- Daily news paper, Weekly magazine sales shop and related office
- Cinema, theater, and other public Recreation centers
- Petrol, Diesel for sale
- Tan bodies
- Exhibition shops and Museum
- Oil, flour mill, Brick and Lime manufacturing industries
- Copper, Brass, Container, Manufacturing firms.
- Information/Biotechnology information/ Biological, engineering related service
- Organizations conducting research on infectious diseases.
- Information/ biotechnology information/biological engineering related service
- Organizations conditioning research on infectious diseases

Working hours:

Any establishment shall not run its business before and after following hours

- In Bangalore city; Morning before 6 am and Night after 9 pm.
- Other places ; Morning before 8 am and Night after 8 pm.

Employment and Regulation: Every employer, employing any person in or in connection with his establishment shall issue an appointment order in form 'P'.

- Every day, employee attendance shall be registered in form 'T'.
- The organizations having weekly holiday exemption, after taking continuous service of 6 days from any employee, shall give 7th day as mandatory holiday for him. In special cases 7th day cannot be given as holiday, 11th day should be given as mandatory holiday.
- After each month salary shall be paid before 7th date of next month.
- Working period of any employee should not exceed 48 hours and 58 hours including extra working hours.
- End of the year, counting the working day of the employees for present year; 1 day per 20 days as earned leave and 1 day per 30 days as sick leave shall be calculated. This leave account shall be recorded in the format 'F'.
- Any employee who has completed 180 days service to the establishment cannot be dismissed without prior notice.
- Minimum wages to the labours working in shops and commercial establishment has been fixed by the Karnataka state Government.

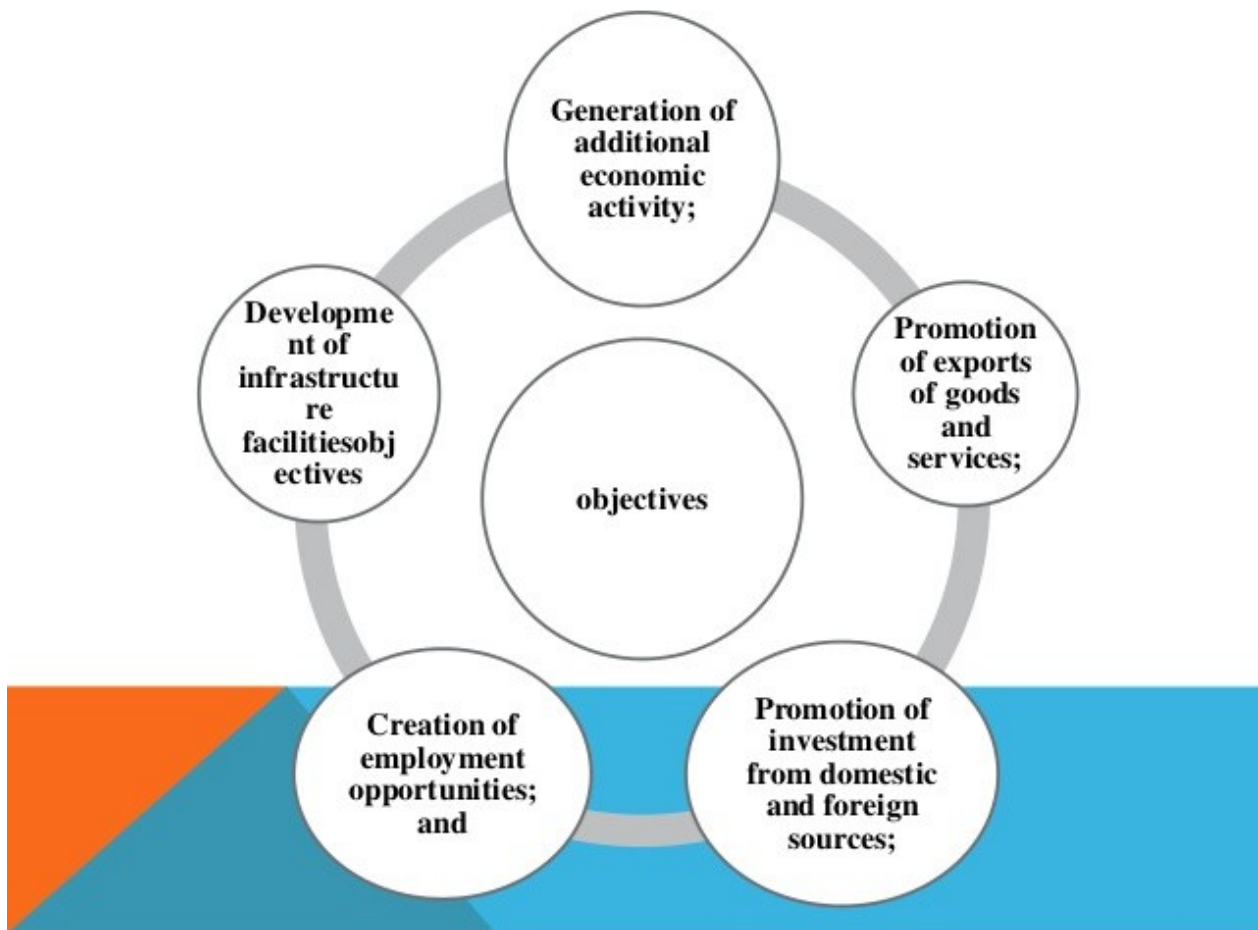
CHAPTER-3

SPECIAL ECONOMIC ZONE ACT 2005

SYNOPSIS

- **Objectives**
- **Incentives for setting up in an Indian SEZ**
- **Impact of the COVID-19 outbreak – relaxations and opportunities**

- Objectives



The creation of special economic zones by the host country may be motivated by the desire to attract foreign direct investment (FDI). The benefits a company gains by being in a special economic zone may mean that it can produce and trade goods at a lower price, aimed at being globally competitive,

In India are areas that offer incentives to resident businesses, SEZs typically offer competitive infrastructure, duty free exports, tax incentives, and other measures designed to make it easier to conduct business.

The Special Economic Zones policy in India first came into effect on April 1, 2000. The prime objective was to enhance foreign investment and provide an internationally competitive and hassle-free environment for exports. The idea was to promote exports from the country and realizing the need that level playing field must be made available to the domestic enterprises and manufacturing.

The policy relating to SEZs, so far contained in the foreign trade policy, was originally implemented through piecemeal and adhoc amendments to different laws, besides executive orders. In order to avoid these pitfalls and to give a long-term and stable policy framework with minimum regulations the SEZ Act 05 was enacted.

Special Economic Zones is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs. In other words, SEZ is a geographical region that has economic laws different from a country's typical economic laws. Usually the goal is to increase foreign investments. SEZs have been established in several countries, including China, India, Jordan, Poland, Kazakhstan, Philippines and Russia. North Korea has also attempted this to a degree.

Normal labour laws are applicable to SEZs, which are enforced by the respective state governments. The state governments have been requested to simplify the procedure/returns and for introduction of a single window clearance mechanism by delegating appropriate powers to development commissioners of SEZs.

Incentives for setting up in an Indian SEZ

Some incentives for setting up a sourcing or manufacturing platform within an Indian SEZ include:

- Duty-free import and domestic procurement of goods for the development, operation, and maintenance of your company;
- 100 percent income tax exemption on export income for first five years, 50 percent for five years thereafter, and 50 percent of the export profit reinvested in the business for the next five years;

- Exemption from the goods and services tax (GST) and levies imposed by state government (supplies to SEZs are zero rated under the IGST Act, 2017, meaning they are not taxed);
- Single window clearances for all state and federal government approvals;
- Exemption in electricity duty and tax on sale of electricity by certain states in India;
- Presence of customs officer in the SEZs to facilitate and expedite the trade processes; and
- Some states also offer land to SEZ developers at concessional rates to promote industries in accordance with the state's prevailing Industrial Policy.

Impact of the COVID-19 outbreak - relaxations and opportunities

A few weeks back, the telecom department and the software technology parks of India (STPI) issued a notification last month, allowing employees working at IT and BPO firms in SEZs to work from home until April 30, 2020.

COVID-19 pandemic may be good news for Indian competitiveness and capital inflows as long as the government can match mid-2020 recovery by providing incentives for foreign investors. With disruption in supply chain from China, and economies in the US and Europe taking a hit, multinational companies will have to look out for cheaper alternative destinations to meet their manufacturing needs.

This production requirement could be partially met by India as it provides incentives and opportunities for foreign firms to manufacture in SEZs.

China has been the world's largest exporter since 2009, and the country accounts for one third of the global manufacturing exports. The Covid-19 pandemic has allowed countries across the globe to realise the importance of local manufacturing. The pandemic has brought to halt the entire global supply chain as many countries were reliant on a single country for their manufacturing needs.

India has been touted as the next global manufacturing hub. Moreover, COVID-19 offers a unique proposition to investors and companies to invest and manufacture here. also, the

industries have a good opportunity to export their products to the world, besides supplying to the growing domestic market.

According to the UBS report, India continues to be among the top destinations in Asia for manufacturing shift. Also, a recent report by the Government states that Special Economic Zones have continued to lead in increasing the exports for the country. Despite a slow global economy, SEZs in India have managed to achieve USD 100 billion worth of exports in FY 2019-20 by mid February. The numbers echo the interest created by the sector in the past decade.

During the pandemic, Indian SEZs have lost more than 50 percent export orders to the pandemic, and the pain was furthered by logistics and supply chain roadblocks, inter state restrictions, mass exodus of migrant workforce, and cash flow issues. All these created severe bottlenecks and crippled the state of Indian manufacturing. But, there is an underlying silver lining to the whole situation as COVID-19 brings along an opportunity for the Government and the sector to finally realise the potential of SEZs as it can become a robust almost alternative for foreign investors. The investors who wish to set up new manufacturing units will find SEZs as an attractive investment hub with good infrastructure with last mile connectivity. The recent amendments proposed by the Government for the sector will play a vital role in boosting investments in the manufacturing sector, generate greater employment, and trigger the growth in export volumes post COVID-19. The potential of SEZs has been furthered by providing relaxation and simplifying the provisions for setting up of multisector SEZs.

Post of the lockdown, the country is likely to tap the unrealised potential of warehousing, logistics infrastructure and transportation sector creating a superior trading infrastructure, building a seamless interface of single window clearances, harnessing technology, and advantages such as skilled workforce at competitive rates, along with other domestic resources can substantially make a strong case for a robust SEZ ecosystem. It will help in attracting more players and boost levels of international trade and investments. Ease of doing business for domestic and international players will make SEZs global manufacturing and distribution hubs in the coming years.

SEZ sector continues to garner the interest required, which is apparent from the flow of investment, jump in exports, creation of employment, and encouragement to manufacturing in

the country. Additionally, SEZs have had a substantial impact with the emergence of new economic activities, redefining local pockets and human life, among others. There is a need for unrestricted support from the Government and the local authorities to retain investory interest in SEZs, divide greater flexibility and improved ease of doing business. This is not only critical to power the growth of the SEZ sector, but also to boost the growth of the country.²

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