

**OBJECT**

The object of the Factories Act is to regulate the conditions of work in manufacturing establishments coming within the definition of the term "factory" as used in the Act.

The first Act, in India relating to the subject was passed in 1881. This was followed by new Acts in 1891, 1911, 1922, 1934 and 1948. The Act of 1948 is more comprehensive than the previous Acts. It contains detailed provisions regarding the health, safety and welfare of workers inside factories, the hours of work, the minimum age of workers, leave with pay etc. The Act has been amended several times.

The Act of 1948 is based on the provisions of the Factories Act of Great Britain passed in 1937.

The Act was amended extensively in 1976 and 1987. The provisions of the Amendment have been quoted and summarised at the appropriate places in this chapter.

**APPLICATION OF THE ACT**

The Factories Act of 1948 came into force on 1st April 1949. It applies to factories, as defined in the Act, all over India, including the State of Jammu and Kashmir.<sup>1</sup>

Unless otherwise provided, the Factories Act applies to factories belonging to the Central or any State Government.—Sec. 116.

**DEFINITIONS UNDER THE FACTORIES ACT****Factory**

The term Factory is defined in Section 2(m) of the Act as follows : "Factory means any premises including the precincts thereof—

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any

<sup>1</sup> The Factories Act and certain other similar Acts were extended to this State by the Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (No. 51 of 1970).

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

but does not include a mine subject to the operation of the Indian Mines Act, 1952 (Act XXXV of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

*Explanation* : For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account.

[Clause 2(m) as amended in 1976.]

Further, for the purposes of Sec. 2(m), the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof. [Expl. 2 to Sr. 2(m) as introduced by the Amendment Act of 1987.]

Under Section 85, the State Government is empowered to declare any establishment carrying on a manufacturing process to be a factory for the purposes of the Act even though it employs less than the prescribed minimum number of workers, provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

### Summary

From Sec. 2(m) of the Act it follows that an establishment comes within the definition of a Factory if the conditions stated below are satisfied :

1. It is a place where a "manufacturing process" is carried on.
2. It employs the prescribed minimum number of "workers" viz, ten if "power" is used, and twenty if no "power" is used. It is sufficient if the prescribed number of workers were employed on any day of the preceding twelve months.

3. It is not a mine coming within the purview of the Indian Mines Act of 1952, a railway running shed, mobile unit belonging to the armed forces of the Union, a hotel, restaurant or eating place.

**Case Law**

1. *Premises* : "The word 'premises' has now come to refer to either land or buildings or to both, depending on the context." "The word premises is a generic term meaning open land or land with buildings or buildings alone." *Ardeshir H Bhiwandivala v. State of Bombay*.<sup>1</sup>
2. *Precincts* : The words "premises including precincts" have been used in a wide sense. The term 'precincts' means a space enclosed by the walls or fences of the factory. Under English law it has been held that the walls and the fences built around the factory fixes the boundaries of the premises. *Back v. Dock. Kerr Co. Ltd.*<sup>2</sup>

**Manufacturing Process**

This term is defined in Section 2(k) in a very wide sense. It includes :

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

[Clause 2(k) as amended in 1976]

For the corresponding section of the English Act, it was held that the different processes enumerated in the clauses are merely illustrative so that laundries, carpet beating, or bottle washing works come within the Act, if mechanical power is used. *Patterson v. Hunt*.<sup>3</sup>

The following undertakings have been held to be manufacturing processes—making ; conversion of raw-films into finished products ; the preparation of eatables in the kitchen of a restaurant ; use of a refrigerator for adapting any article with a view to its sale.

The scraping out of salt and grading them, even though done by manual labour, is a manufacturing process.

<sup>1</sup> AIR (1962) Supreme Court 29

<sup>2</sup> (1960) A.C. 325

<sup>3</sup> (1909) 73 J. P. 496

The work of composition in printing business, the use of electric motor for the purpose of lifting or pumping water, process of moistening, stripping and packing of tobacco leaves, activities of a petrol pump come within the purview of manufacturing process.

### Worker

“Worker means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the Principal employer, whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.”—Sec. 2(1), as amended in 1976.

*Explanation* : Worker means any person engaged in any work connected with or incidental to a manufacturing process. Thus the definition is wide. The term includes persons engaged directly and also those who are engaged through an agency (including a contractor with or without the knowledge of the principal employer).

The term includes clerical workers and persons paid by piece rates in a factory.

The term ‘worker’ does not include any member of the armed forces of Union.

In case of a factory worker there must be a relationship between the employer and the employed.

Apprentices, whether remunerated or not, are workers within the meaning of the Act.

Obligations of workers—See p. 866.

### Case Law :

- (i) A technical institute, where pupils are trained in wood work, is not a factory because there is no relationship of employer and employed between the organisers and the pupils. *Weston v. London Country Council*.<sup>1</sup>
- (ii) The words “directly or through any agency”, used in the definition of the term Worker, indicate that employment is by the management.

<sup>1</sup> (1941) 1 K. B. 608

There should be a contract of employment between the management and the person employed. *Chintaman Rao v. State of Madhya Pradesh*.<sup>1</sup>

- (iii) Mere selling agents through occupying a room in the factory are not workers within the meaning of the Act. *Prag Narayan v. Crown*.<sup>2</sup> But persons selling manufactured articles in the factory premises are workers. *Local Government v. Nusarwanji*.<sup>3</sup>

Section 111 of the Act refers to obligations of workers. Under the Section 111 a worker in a factory shall not—

- (a) wilfully interfere with or misuse any appliance, convenience or other thing provided in the factory for the purpose of securing the health, safety or welfare of the workers therein ;
- (b) wilfully and without reasonable cause do anything likely to endanger himself or others, and
- (c) wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein [Sec. 111(1)].

If any worker employed in a factory violates any of the provisions of Sec. 111 or any rule made thereunder he shall be punishable with imprisonment for a term extending three months or with fine upto one hundred rupees or with both [Sec. 111(2)].

Section 111-A as introduced by the Amendment Act of 1987 refers to rights of worker, under section 111-A every worker shall have the right to—

- (i) obtain from the occupier, information relating to workers' health and safety at work ;
- (ii) get trained within the factory wherever possible, or to get himself sponsored by the occupier for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work ;
- (iii) represent to the Inspector directly or through his representatives in the matter of inadequate provision for protection of his health or safety in the factory.

### Power

“Power means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.”—Sec. 2(g).

<sup>1</sup> (1958) S.C.J. 753 (Supreme Court)

<sup>2</sup> (1928) Lah. 78

<sup>3</sup> (1933) Nag. 283

**Prime mover**

"Prime mover means any engine, motor or other appliance which generates or otherwise provides power."—Sec. 2(h).

**Transmission machinery**

"Transmission machinery means any shaft, wheel, drum pulley, system of pulleys coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance".—Sec. 2(i).

**Machinery**

"Machinery includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied."—Sec. 2(j).

**Adult**

"Adult means a person who has completed his eighteenth year of age."—Sec. 2(a).

**Adolescent**

"Adolescent means a person who has completed his fifteenth year of age but has not completed his eighteenth year."—Sec. 2(b).

**Child**

"Child means a person who has not completed his fifteenth year of age."—Sec. 2(c).

**Young Person**

"Young Person means a person who is either a child or an adolescent."—Sec. 2(d).

**Calendar year**

"Calendar Year means the period of twelve months beginning with the first day of January in any year."—Sec. 2(d).

**Day**

"Day means a period of twentyfour hours beginning at midnight." Sec. 2(e).

References to the time of the day in the Act are to the Indian Standard Time. In areas where the I. S. T. is not observed, the State Government can by rules define the local mean time.—Sec. 3.

**Week**

“Week means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories.”—Sec. 2(f).

**Shift and Relay**

Where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a “relay” and each of such periods is called a “shift.”—Sec. 2(r).

**Occupier**

“Occupier” of a factory means the person who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.—Sec. 2(n).

In case of a ship, which is being repaired or on maintenance work is being carried out in dry dock which is available for hire, the following persons for certain section of the Act will be deemed to be occupier (i) the owner of the dock, and (ii) the owner of the ship or his agent or master or other officers-in-charge in the ship or any person who contracts with such owner, agent or master or other officers-in-charge to carry out the repair or maintenance work.—Sec. 2(n) added by The Factories (Amendment) Act, 1976. The Amendment Act of 1987 has enlarged the definition of occupier to a considerable extent.

Section 2(n) of the amended Act 1987 provides that,

- “(I) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier.
- (II) in the case of a Company, any one of the directors shall be deemed to be the occupier.
- (III) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority as the case may be, shall be deemed to be the occupier”.

The Act imposes several duties and responsibilities on the occupier of the factory. (See next page.)

An occupier of factory may be an owner, a lessee or a mere licensee but he must have the right to occupy the property. He should also control the management.

### **APPROVAL, LICENCING AND REGISTRATION**

It is necessary to obtain a licence before a factory is started. Section 6 provides that the State Government may make rules requiring, for the purposes of this Act, the submission of plans or any class or description of factories to the Chief Inspector or the State Government, and the plans and specifications of a factory and its location.

The Amendment of 1976 provides that any replacement and addition to the factory will not be allowed if it does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health.

#### **Notice by occupier**

Section 7 provides that the occupier of a factory must, at least 15 days before he begins to occupy or use any premises as a factory, send to the Chief Inspector of Factories a written notice containing the following particulars :

- (1) the name and situation of factory ;
- (2) the name and address of the occupier ;
- (3) the name and address of the owner of the premises or building (including the precincts thereof) ;
- (4) the address to which communications relating to factory may be sent ;
- (5) the nature of the manufacturing process to be carried on in the factory during the next twelve months ;
- (6) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power or any separate stand-by plant ;
- (7) the name of the manager of the factory for the purposes of this Act ;
- (8) the number of workers likely to be employed in the factory ;
- (9) such other particulars as may be prescribed.



The rules stated above are enforced because the plans and specifications of the factory must insure proper measures of health, safety and welfare of the workers.

The Amendment Act of 1987 prescribes the general duties of the occupier in regard to the health, safety and welfare of the workers in his factory, (Sec. 7-A). In accordance with Sec. 7-A(1), every occupier shall ensure, as far as reasonably possible, the health, safety and welfare of all workers while they are at work in the factory.

Every occupier shall prepare a statement in respect of the health and safety of the worker and bring the statement to the notice of all workers. [Sec. 7A(3)]

Section 7B provides that, "Every person who designs, manufactures, imports or supplies any article for use in the factory shall ensure so far as is reasonably practicable that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used".

He must provide adequate information in connection with the use of the article and about the use for which it is designed and tested.

For the purpose of this section, article shall include plant and machinery.

## THE INSPECTION STAFF

The Factories Act empowers the State Government to appoint Inspectors, Chief Inspectors of Factories, Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors. Every District Magistrate is an Inspector for his district. No person can act as an Inspector if he is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

### Powers of Inspectors

Section 9 provides that subject to any rules made in this behalf, an Inspector may exercise the following powers within the local limits for which he is appointed—

- (a) enter, with such assistants, being persons in the service of the Government or any local or other public authority, as he thinks fit, and place which is used, or which he has reason to believe is used, as a factory ;

- (b) make examination of the premises, plant and machinery ;
- (c) require the production of any prescribed register and any other document relating to the factory, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of the Act ; and
- (d) exercise such other powers as may be prescribed for carrying out the purposes of this Act ;
- (e) seize or take copies of any register, record or other document as he may consider necessary in respect of any offence committed under this Act ;
- (f) direct the occupier that any premises or any part thereof shall be left undisturbed for so long as is necessary for the purpose of any examination ;
- (g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under Clause (b) ;
- (h) in case of any article or substance found in any premises which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test and take possession of any article or substance and detain it for necessary examination ;
- (i) exercise such other powers as may be prescribed.

No person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

Under Section 91, an Inspector may take a sample of any substance, used or intended to be used in a factory, for the purpose of finding out whether the substance is injurious and if the factory is violating any of the provisions of the Act.

### **Obstructing an Inspector**

Whoever wilfully obstructs an Inspector in the exercise or any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any worker in a factory from appearing before, or being examined by, an Inspector, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 20,000 or with both.—Sec. 95.

The onus is on the prosecution to show that a person has obstructed an inspector.

### **Duties of Inspector**

It is the duty of factory inspectors to enforce the provisions of the Factories Act and other industrial laws. For this purpose they inspect factories periodically. If any rule is violated they take steps like prosecuting the guilty persons etc.

### **CERTIFYING SURGEONS**

Section 10 provides that the State Government may appointed qualified medical practitioners to be certifying surgeons for the purposes of the Act for specified local areas or for specified factories or class of factories.

No person can be a certifying surgeon for a factory or industry in which he is interested directly or indirectly—Sec. 10(3).

The State Government may by order in writing and subject to specified conditions, exempt any person of class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.

### **Duties**

The certifying surgeon has the following duties under the Act and the rules framed under it.

1. The examination and certification of young persons.
2. The examination of persons engaged in factories in dangerous occupations or processes.
3. Medical supervision of factories in cases where such supervision had been prescribed owing to the dangerous nature of the work carried on or for any other reason, viz.,
  - (i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing therein ;
  - (ii) by reason of any change in the manufacturing process carried on or in the substance used therein there is a likelihood of injury to the health of workers employed in that manufacturing process ;
  - (iii) young persons are, or about to be, employed in any work which is likely to cause injury to their health.—Sec. 10(4).

## PROVISIONS REGARDING THE HEALTH OF WORKERS

Sections 11 to 20 of the Act contain certain provisions intended to ensure that the conditions under which work is carried on in factories do not affect the health of the workers injuriously. The provisions are explained below :

### 1. Cleanliness (Sec. 11, as amended in 1976)

Every factory shall be kept clean and free from effluvia (or outflow of bad smelling gases) from any drain, privy or other nuisance. The following other measures must also be adopted :

- (a) Accumulations of dirt and refuse shall be removed daily from workrooms, staircases and passages.
- (b) The floor of every workroom shall be cleaned at least once in every week by washing, using disinfectants etc.
- (c) Where the floor is liable to get wet, means of drainage must be provided.
- (d) All inside walls and partitions and ceilings, when painted otherwise than with washable water-paint, must be repainted or revarnished at least once in every five years. Where they have smooth impervious surfaces, they must be cleaned at least once in fourteen months. In any other case, they must be whitewashed or colour-washed at least once in fourteen months.
- (e) Where they are painted with washable water paint, must be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months.
- (f) All doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years.

Where the nature of the operations of a factory (or class or description of factories or part of factories) is such that all the aforesaid rules cannot be complied with, the State Government can grant exemptions and specify alternative methods of keeping the factory clean.

### 2. Disposal of wastes and effluents (Sec. 12, as amended in 1976)

Effective arrangements shall be made in every factory for the disposal of wastes and effluents due to the manufacturing

process carried on therein, so as to render them innocuous, and for their disposal. The arrangements must be approved by the authority under the rules. The state government may formulate rules prescribing the arrangements to be made in this respect. Sec. 12(2).

### **3. Ventilation and Temperature (Sec. 13)**

Effective and suitable provisions shall be made in every factory for securing and maintaining in every workroom—

- (a) adequate ventilation by the circulation of fresh air, and
- (b) such temperature as will secure to workers therein reasonable comfort and prevent injury to their health.

The walls and the roof must be of such material and of such design as to keep the temperature low. The hot parts of machines and processes must be separated and insulated. The State Government may make rules providing for the keeping of thermometers in specified places and the adoption of methods which will keep the temperature low.

Section 13(2) provides that the State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory and direct that "proper measuring instruments at such places and in such position as may be specified, shall be provided and such records as may be prescribed, shall be maintained."

Section 13(3) provides that if it appears to the Chief Inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may issue an order in writing specifying measures to be adopted and may order to carry out the measures before a specified date.

### **4. Dust and Fume (Sec. 14)**

If the manufacturing process gives off dust or fume which is injurious or offensive, measures shall be adopted to prevent its inhalation and accumulation. If a stationary internal combustion engine is used, steps must be taken to conduct its exhaust outside. In other cases, steps must be taken to prevent the accumulation of the exhaust fumes.

### **5. Artificial humidification (Sec. 15)**

In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules

regarding the following : (a) the standards of humidification, (b) the methods used for artificially increasing humidity, (c) tests for determining the humidity, and (d) the methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.—Sec. 15(1).

The water used for humidification shall be taken from a public supply or other source of drinking water and must be effectively purified before use.—Sec. 15(2).

The inspector of factories may, if necessary, specify the measures necessary for purifying the water.—Sec. 15(3).

### 6. Overcrowding (Sec. 16)

No room in any factory shall be overcrowded to an extent injurious to the health of the workers, [Sec. 16(1)]. In factories existing before the commencement of the Act, there must be at least 55 cubic metres (350 c.ft.) of space for every worker employed therein. In factories built after the Act, there must be at least 75 cubic metres (500 c.ft.) of space per worker. In calculating the amount of space, no account shall be taken of any space which is more than 5 metres (14 ft.) above the floor of the room. If the Chief Inspector so requires, there shall be posted in every room a notice specifying the maximum number of worker who may be employed in the room in accordance with the above rules. The Chief Inspector may, by order in writing, exempt a workroom from the operation of the above rules if in his opinion it is unnecessary in the interest of health.

According to Section 16(2) there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least 9.9 cubic meters and of a factory built after the commencement of this Act at least 14.2 cubic meters of space for every worker employed therein.

### 7. Lighting (Sec. 17)

In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial or both. Glazed windows and skylights shall be kept clean on both sides and free from obstruction. Effective provision shall be made, so far as is practicable, to prevent glare and the formation of shadows to such an extent as to cause eye-strain or the risk of accident. The State Government may prescribe standards of suitable lighting.

### **8. Drinking water (Sec. 18)**

In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water. All such points shall be legibly marked "drinking water" in the language understood by the majority of the workers. Section 18(2) of the amending Act provides that the place of drinking water shall not be situated within six meters of any washing place, urinal, latrine, spittoon, open drain carrying sillage or effluent or any source of contamination. A shorter distance can be approved in writing by the Chief Inspector. In every factory wherein more than 250 workers are ordinarily employed, provision shall be made for cooling drinking water during hot weather by effective means and for distribution thereof. The State Governments may make rules regarding above provisions. [Sec. 18(3)]

### **9. Latrines and Urinals (Sec. 19)**

In every factory sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory. Separate enclosed accommodation shall be provided for male and female workers. Such accommodation shall be adequately lighted and ventilated. No latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage. All such accommodation shall be maintained in a clean and sanitary condition at all times. Sweepers shall be appointed whose primary duty would be to keep clean latrines, urinals and washing places. [Sec. 19(1)]

Certain additional measures are to be taken in factories where more than 250 workers are ordinarily employed. The latrines and urinals shall be of the prescribed sanitary types. The floors, internal walls up to the height of 90 cms. (3ft.) and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface. These parts and sanitary pans shall be thoroughly washed and cleaned at least once every 7 days with suitable detergents or disinfectants or both [Sec. 19(2)]. The state Government may prescribe the number of latrines and urinals to be provided in proportion to the number of workers. Other rules regarding sanitation may be made, including the obligations of the workers in this regard.

## 10. Spittoons (Sec. 20)

A sufficient number of spittoons must be provided at convenient places. They must be maintained in a clean and hygienic condition. The State Government may make rules regarding their number, location and maintenance. No person shall spit except in the spittoons. If a person does so he may be fined up to Rs. 5.

### Summary

Summary of the provisions of the Factories Act relating to the health of workers are stated below.

#### 1. Cleanliness

Every factory shall be kept clean and free from dirt, and the outflow of drains etc. The floors must be cleaned. Drainage shall be provided. Inside walls, partitions and ceilings must be repainted at least once in five years. When washable waterpaint is used they must be painted once every three years and washed at least every period of six months.—Sec. 11, as amended in 1976.

#### 2. Disposal of wastes and effluents

The waste materials produced from the manufacturing process must be effectively disposed of.—Sec. 12.

#### 3. Ventilation and Temperature

There must be provision for adequate ventilation by the circulation of fresh air. The temperature must be kept at a comfortable level. Hot parts of machines must be separated and insulated.—Sec. 13.

Section 13(2) provides that the State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory and direct that "proper measuring instruments at such places and in such position as may be specified, shall be provided and such records as may be prescribed, shall be maintained."

Section 13(3) provides that if it appears to the Chief Inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may issue an order in writing specifying measures to be adopted and may order to carry out the measures before a specified date.



#### **4. Dust and Fume**

If the manufacturing process used gives off injurious or offensive dust and fume steps must be taken so that they are not inhaled or accumulated. The exhaust fumes of internal combustion engines must be conducted outside the factory.—Sec. 14.

#### **5. Artificial humidification**

The water used for this purpose must be pure. It must be taken from some source of drinking water supply. The State Government can frame rules regarding the process of humidification etc.—Sec. 15.

#### **6. Overcrowding**

There must be no overcrowding in a factory. In factories existing before the commencement of the Act there must be at least 350 c.ft. (or 55 cubic metres) of space per worker. For factories built afterwards, there must be at least 500 c.ft. (or 75 cubic metres) of space. In calculating the space, an account is to be taken of space above 14ft. (or 5 metres) from the floor.—Sec. 16.

According to Section 16(2) there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least 9.9 cubic meters and of a factory built after the commencement of this Act at least 14.2 cubic meters of space for every worker employed therein.

#### **7. Lighting**

Factories must be well lighted. Effective measures must be adopted to prevent glare or formation of shadows which might cause eyestrain.—Sec. 17.

#### **8. Drinking water**

Arrangements must be made to provide a sufficient supply of wholesome drinking water. All supply points of such water must be marked "drinking water." No such points shall be within 20 ft. (or 7.5 metres) of any latrine, washing place etc. Factories employing more than 250 workers must cool the water during the hot weather.—Sec. 18.

Section 18(2) of the amending Act provides that the place of drinking water shall not be situated within six meters of any washing place, urinal latrine, spitton, open drain carrying sullage

or effluent or any source of contamination. A shorter distance can be approved in writing by the Chief Inspector.

### 9. Latrines and Urinals

Every factory must provide sufficient number of latrines and urinals. There must be separate provision for male and female workers. Latrine and urinals must be kept in a clean and sanitary condition. In factories employing more than 250 workers, they shall be of prescribed sanitary types.—Sec. 19.

### 10. Spittoons

A sufficient number of spittoons must be provided at convenient places, in a clean and hygienic condition.—Sec. 20.

## PROVISIONS REGARDING THE SAFETY OF WORKERS

Sections 21 to 40A, 40B and 41 of the Act lay down rules for the purpose of securing the safety of workers. They are explained below.

### 1. Fencing of machinery (Sec. 21, as amended in 1976)

The following machinery must be securely fenced by safeguards of substantial construction which shall be constantly maintained and kept in position while the parts of machinery are in motion or in use; moving parts of prime movers and flywheels connected to a prime mover; the headrace and tailrace of every water-wheel and water turbine; any part of a stock-bar which projects beyond the head stock of a lathe.

The following machinery must be fenced in a similar fashion unless they are in such position or of such construction as to be safe : every part of an electric generator, a motor or rotary converter; every part of transmission machinery; and, every dangerous part of any other machinery. [Sec. 21(1)]

The State Government may by rules provide for further precautions. It may also exempt any particular machinery or part thereof from the provisions of this section [Sec. 21(2)]

#### Case Law :

The machinery must be securely fenced. *Carroll v. Andrew Barclay and Sons Ltd.*<sup>1</sup>; *Supdt. and Remembrancer, W.B. v. P. Sen.*<sup>2</sup>

<sup>1</sup> (1949-50) 1 F. J. R. 1

<sup>2</sup> AIR (1949) Cal. 604

## 2. Work on or near machinery in motion (Sec. 22, as amended in 1976)

It may be necessary in a factory to examine a machine referred to in Sec. 21 while in motion and to work on it (e.g., for slipping of belts or for lubrication). Such examination or work must be carried out by a specially trained adult male worker whose name has been recorded in a specially prescribed register. He must wear tightly fitting clothes which shall be supplied by the occupier.

Such worker shall not handle a belt at a moving pulley unless—

- (i) the belt is not more than fifteen centimetres in width ;
- (ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case a belt is not permissible) ;
- (iii) the belt joint is either laced or flush with the belt ;
- (iv) the belt, including the joint and the pulley rim, are in good repair ;
- (v) there is reasonable clearance between the pulley and any fixed plant or structure ;
- (vi) secure foothold and, where necessary, secure handhold, are provided for the operator ; and
- (vii) any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person.

No woman or young person shall be allowed to clean, lubricate or adjust any part of the machinery while the prime mover or transmission machinery is in motion or to work between moving parts, or between fixed and moving parts, of any machinery which is in motion.

The State Government may prohibit in any specified factory or class or description of factory, the cleaning, lubrication or adjustment of specified parts of a moving machinery by any person.

The Maharashtra Factory Rules provide that the following machines are dangerous—(i) Power presses other than hydraulic presses ; (ii) Milling machines used in the metal trades ; (iii) Guillotine machines ; (iv) Circular saws ; (v) Plating Printing machines.

## 3. Employment of young persons on dangerous machines (Sec. 23)

No young person shall work at any dangerous machine unless he has been fully instructed as to the dangers arising in

connection with the machine and the precautions to be observed, and (a) has received sufficient training in work at the machine or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine. The State Government is to prescribe what machines are dangerous for the purpose of this section.

#### **4. Striking gear and devices for cutting off power (Sec. 24, as amended in 1976)**

In every factory suitable striking gear or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery. Such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley. Driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

In every factory suitable devices for cutting power in emergencies from running machinery shall be provided and maintained in every workroom. For factories which were in operation before the commencement of the Act, the maintenance or devices for cutting off power is required only for workrooms in which electricity is used for power.

When a device, which can inadvertently shift from "off" to "on" position is provided in a factory to cut off power, arrangement shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted.

#### **5. Self-acting machines (Sec. 25)**

No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of 45 cms. (or 18 inches) from any fixed structure which is not part of the machine.

The Chief Inspector may permit the continued use of a machine, not complying with the above requirement, if it was installed before the commencement of the Act. He may, however, impose conditions for ensuring safety.

**6. Casing of new machinery (Sec. 26)**

In all machinery installed after the commencement of the Act,

- (a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger ;
- (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased unless it is so situated that it is safe without encasement. [Sec. 26(')]

The State Government may make rules specifying further safeguards.

It is a punishable offence to sell or let out on hire, either directly or as an agent, any machine which does not comply with the provisions of this section or of any rules made by the State Government on the subject. (The offender may be punished with imprisonment up to three months and/or fined up to Rs. 500.)

**7. Women and children near cotton-openers (Sec. 27)**

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work.

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

**8. Hoists and lifts (Sec. 28)**

(1) In every factory—

(a) every hoist and lift shall be—

- (i) of good mechanical construction, sound material and adequate strength ;
- (ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination ;

(b) every hoistway and liftway shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift, and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and fixed structure or moving part ;

- (c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon ;
- (d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side which access is afforded to a landing ;
- (e) every gate referred to in clause (b) or clause (d) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(2) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely :

- (a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load ;
- (b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments ;
- (c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(3) The Chief Inspector may permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safety as he may think fit to impose.

(4) The State Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections (i) and (ii) by order direct that such requirement shall not apply to such class or description of hoist or lift.

For the purposes of Sec. 28, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

**9. Lifting machines chains, ropes and lifting tackles (Sec. 29)**

In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials :

- (a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be—
  - (i) of good construction, sound material and adequate strength and free from defects ;
  - (ii) properly maintained ; and
  - (iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing, and a register shall be kept containing the prescribed particulars of every such examination ;
- (b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register ; and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain rope or lifting tackle in use shall be displayed in prominent positions on the premises ;
- (c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within twenty feet (or 7.5 meters) of that place.

Section 29(1) provides that every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials shall be of good construction, sound material and adequate strength and free from defects. These must be properly maintained and thoroughly examined by a competent person at least once in every period of twelve months or at such intervals as the Chief Inspector may specify in writing. A register must be maintained containing the particulars of every such examination.

The State Government may by rules prescribe further requirements or exempt from compliance any of the requirements if it considers it unnecessary or impracticable.

#### **10. Revolving machinery (Sec. 30)**

(1) In every room in a factory in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle and the diameter of the pulley upon such shaft or spindle and such speeds shall in no case be exceeded.

#### **11. Pressure plant (Sec. 31)**

If in any factory any operation is carried on at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure is not exceeded. The State Government may make rules for the examination and testing of machinery and prescribe safety measures. The State Government may exempt part of the provisions of this section.

#### **12. Floors, stairs and means of access (Sec. 32, as amended in 1976)**

In every factory all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip.

Section 32(c), as amended in 1987, provides that "When any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working."

Where it is necessary to ensure safety they shall be provided with substantial handrails. Safe means of access must be provided and maintained to every place at which any person is at any time required to work.

When any person has to work at a place from where he is likely to fall a distance exceeding two metres, then, unless the place is one which provides secure foothold and, where necessary, secure handhold, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the persons so working.



**Case Law :**

The plaintiff was injured because of accumulation of rain water in a small depression in the concrete of the passage. Damages were given. *Davies v. De Havill & Aircraft Co. Ltd.*<sup>1</sup>

**13. Pits, sumps, openings in floors etc. (Sec. 33)**

Every fixed vessel, sump, tank, pit or opening in the ground or in a floor which by reason of its depth, situation, construction or contents is or may be a source of danger, shall be either securely covered or securely fenced. The State Government may exempt compliance in any particular case.

**14. Excessive weights (Sec. 34)**

(1) No person shall be employed in any factory to carry or move any load so heavy as to be likely to cause him injury.

(2) The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

Factory Rules of the different States have prescribed the maximum weights to be carried in the factories. Some examples are mentioned below :

	<i>Mumbai</i>	<i>West Bengal</i>
Adult female	30 kgs.	65 lbs.
Adolescent male	30 "	65 "
Male child	16 "	35 "
Female child	13 "	30 "

**15. Protection of eyes (Sec. 35)**

In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves—

(a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or

(b) risk to the eyes by reason of excessive light,—

the State Government may by rules require that effective screen or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

<sup>1</sup> (1950) 2 All E. R. 582

**Case Law :**

Workers must be informed about the place where the goggles are obtainable. It is not enough to say that the goggles were hung up in the office room. *Finch v. Telegraph Construction and Maintenance Co. Ltd.*<sup>1</sup>

**16. Precautions against dangerous fumes (Sec. 36)**

(1) In any factory no person shall enter or be permitted to enter any chamber, tank, vat, pit, pipe, flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve risk of persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) Omitted by the Amendment of 1976.

(3) No person in any factory shall enter or be permitted to enter any confined space such as is referred to in sub-section (i) until all practicable measure have been taken to remove any fumes which may be present and to prevent any ingress of fumes and unless either—

(a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is free from dangerous fumes and fit for persons to enter, or

(b) the worker is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person standing outside the confined space. [(Sec. 36(2))]

(4) Suitable breathing apparatus, reviving apparatus and belt and ropes shall in every factory be kept ready for instant use beside any such confined space as aforesaid which any person has entered. All such apparatus shall be periodically examined and certified by a competent person to be fit for use. And a sufficient number of persons employed in every factory shall be trained and practised in the use of all such apparatus and in the method of restoring respiration.

(5) No person shall be permitted to enter in any factory, any boiler furnace, boiler flue, chamber, tank, vat, pipe or other confined space for the purpose of working or making any examination therein until it has been sufficiently cooled by ventilation or otherwise to be safe for persons to enter.

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<sup>1</sup> (1945) All. E. R. 452

(6) The State Government may make rules prescribing the minimum dimensions of manholes and may also grant exemptions in particular cases.

In any factory—

- (a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided under Sec. 36A of 1987 and
- (b) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space, no lamp or light other than that of flame-proof construction shall be permitted to be used therein.—Sec. 36A added by Factories (Amendment) Act, 1976.

#### 17. Explosive or inflammable gas etc (Sec. 37)

(1) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by—

- (a) effective enclosure of the plant or machinery used in the process ;
- (b) removal or prevention of the accumulation of such dust, gas, fume or vapour ;
- (c) exclusion or effective enclosure of all possible sources of ignition.

(2) When the plant is not so constructed as to withstand the probable pressure which an explosion would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by providing chokes, baffles, vents or other effective appliances.

(3) Where any part of a plant or machinery contains explosive or inflammable gas or vapour at a pressure greater than the atmospheric pressure, the part shall not be opened except under the following conditions :

- (a) The flow of gas or vapour must be effectively stopped by a stop valve or other means ;
- (b) All practicable measures must be taken to reduce the pressure to the atmospheric pressure ; and

(c) Where the fastening of such part has been loosened or removed, the fastening must be secured or securely replaced.

The aforesaid provisions do not apply to plant or machinery installed in open air.

(4) The container of explosive or inflammable substances shall not be subjected to any operation which involves the application of heat unless adequate measures have been adopted to remove the substance or its fumes or to render the substance or fumes non-explosive or non-inflammable. The substance shall be allowed to re-enter the container only after the latter has been sufficiently cooled.

(5) The State Government may by rules allow exemptions from the provisions of this section.

#### **18. Precaution in case of fire (Sec. 38, as amended in 1987)**

For Sec. 38. of the Act, the Amendment Act of 1987 has replaced a new Sec. 38. The new section provides :

(1) In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally.

(2) In every factory there shall be provided such means of escape in case of fire as may be prescribed.

(3) In every factory the doors affording exit from any room shall not be locked or fastened so that they cannot be easily and immediately opened from the inside while any person is within the room. All such doors, unless they are of the sliding type, shall be constructed to open outward.

(4) In every factory, every window, door or other exit affording a means of escape in case of fire, other than the means of exit in ordinary use, shall be distinctively marked in a language understood by the majority of the workers and in red letters of adequate size or by some other effective and clearly understood sign.

(5) There shall be provided in every factory effective and clearly audible means of giving warning in case of fire to every person employed in the factory. Safe means of escape for all persons in the event of a fire, and section 38(1) provides that in every factory all practicable measures shall be taken to prevent outbreak of fire or its spread and to provide and maintain safe means of escape for all in the event of a fire and the necessary facilities for extinguishing fire.

Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases. [Sec. 38(2)]

The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the above provisions. [Sec. 38(3)]

If the Chief Inspector, having regard to the nature of the work carried on in any factory, the construction of such factory, special risk to life or safety or any other circumstances is of the opinion that the measures provided in the factory, whether as prescribed or not, are inadequate, he may, by order in writing, require that such additional measures as he may consider reasonable and necessary be provided in the factory before such date as specified in the order. [Sec. 38(4)]

(6) A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of a factory.

(7) Effective measures shall be taken to ensure that in every factory—

- (a) where more than twenty workers are ordinarily employed in any place above the ground floor, or
- (b) wherein explosive or highly inflammable materials are used or stored,

all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such case.

(8) The State Government may make rules prescribing, in respect of any factory or class or description of factories, the means of escape to be provided in case of fire and the nature and amount of fire-fighting apparatus to be provided and maintained.

(9) *Additional means of escape* : Notwithstanding anything contained in sub-section (1) or sub-section (7), the Inspector, having special regard to the nature of work carried on the factory, construction of the factory, special risk to life or safety or any other circumstance may think that the prescribed means of escape is not adequate for safe, easy or quick exit of the workers in case of fire. If so, then he may, by order in writing require that such additional means of escape or other measures as he may

consider reasonable and necessary be provided in the factory. A date should be specified in the order before which the Inspector's order will have to be followed.

(10) *Reference to Chief Inspector* : If any question arises whether or not the means of escape provided in the factory is adequate to permit safe, easy or quick exit of the workers in case of fire, the same shall be referred to the Chief Inspector. The Chief Inspector shall, after giving the persons concerned a reasonable opportunity to represent their views, decide the same.

(11) *Appeal* : Any person aggrieved by the decision of the Chief Inspector under sub-section (9) may, before the expiry of the thirty days from the date on which the decision is communicated to him prefer an appeal to the State Government. The State Government shall after giving the appellant a reasonable opportunity to represent his views, make such order in relation to the appeal as it thinks fit.

#### **19. Power to require specifications of defective parts or tests of stability (Sec. 39)**

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the occupier or manager of the factory or both an order in writing requiring him before a specified date—

- (a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such buildings, ways, machinery or plant can be used with safety, or
- (b) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

#### **20. Safety of buildings and machinery (Sec. 40)**

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

(2) If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or

plant in a factory involves imminent danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

### **21. Maintenance of buildings (Sec. 40A)**

Wherein in the opinion of the Inspector, any building or part of a building in a factory is in such a state of disrepair that it may prove dangerous to the health and welfare of the workers, the Inspector may serve on the occupier or manager or both of the factory an order in writing specifying the proper measures and requiring the same to be carried out before such date as is specified in the order. [Added by the Amendment of 1976.]

### **22. Safety Officers (Sec. 40B)**

(1) In every factory—

- (i) wherein one thousand or more workers are ordinarily employed, or
- (ii) if according to the opinion of the State Government, any manufacturing process or operation which is being carried on involves any risk of bodily injury, poisoning or disease, or any other hazard to health to the workers of the factory, the occupier shall, if so required by the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.

(2) The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.

[Added by the Amendment of 1976].

### **23. Power to make rules to supplement this Chapter (Sec. 41)**

The State Government may make rules providing for the use of such further devices and measures for safety as may be necessary.

According to Section 41A(1) the "State Government may, for the purposes of advising it to consider applications for grant of permission for the initial location of a factory involving of hazardous process or the expansion of any such factory, appoint a Site Appraisal Committee." The committee shall include :

- (a) the Chief Inspector of the state who shall be its chairman.

- (b) a representative of the Central Board for the prevention and control of water pollution appointed by the Central Government.
- (c) a representative of the Central Board for the prevention and Control of Air Pollution.
- (d) a representative of the State Board appointed under Section 4 of the Water (Prevention and control of pollution) Act, 1974.
- (e) a representative of the State Board for the prevention and control of Air Pollution.
- (f) a representative of the Department of Environment in the State.
- (g) a representative of the Meteorological Department of the Government of India.
- (h) an expert in the field of occupational health.
- (i) a representative of the Town Planning Department of the State Government.

Five other members will be coopted by the State Government including a scientist having specialized knowledge of the hazardous process involved in the factory and a representative of the local authority within whose jurisdiction the factory is to be established.

Under Section 41(A)(2) of the amending Act, the Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and submit its recommendation to the State Government within a period of ninety days of the receipt of such application.

### Summary

Summary of the provisions of the Factories Act regarding the safety of the workers are stated below : (Sections 21 to 41).

1. *Fencing of machinery* : All *dangerous machinery* must be securely fenced e.g., moving parts of prime movers and flywheels connected to every prime mover, electric generators, etc.—Sec. 21.

2. *Work on or near machinery in motion* : Work on or near machinery in motion must be carried out only by specially *trained adult male workers* wearing tightly fitting clothes.—Sec. 22.

3. *Employment of young persons on dangerous machines* : No young person shall work at any dangerous machine unless he has been specially instructed as to the dangers and the



*precautions* to be observed, has received sufficient training about the work, and is under the supervision of some person having thorough knowledge and experience of the machine.—Sec. 23.

4. *Striking gear and devices for cutting off power* : In every factory suitable devices for *cutting off power* in emergencies from running machinery shall be provided and maintained in every workroom.—Sec. 24.

5. *Self-acting machines* : *Moving parts* of a self-acting machine must not be allowed to come within 45 cms. of any fixed structure which is not part of the machine.—Sec. 25.

6. *Casing of new machinery* : In all machinery installed after the commencement of the Act, certain parts must be sunk, encased or otherwise *effectively guarded*. e.g., set screw, bolt, toothed gearing etc.—Sec. 26.

7. *Women and children near cotton openers* : Women and children must not be allowed to work near *cotton openers*, except in certain cases.—Sec. 27.

8. *Hoists, lifts, chains etc.* : *Every hoist and lift* must be so constructed as to be safe. There are detailed rules as to how such safety is to be secured. There are similar provisions regarding lifting machines, chains, ropes and lifting tackle.—Secs. 28, 29.

9. *Revolving machinery* : Where grinding is carried on, the maximum safe working speed of every *revolving machinery* connected therewith must be notified. Steps must be taken to see that the safe speed is not exceeded.—Sec. 30.

10. *Pressure plant* : Where any operation is carried on at a pressure higher than the *atmospheric pressure*, steps must be taken to ensure that the safe working pressure is not exceeded.—Sec. 31.

11. *Floors, stairs and means of access* : All floors, steps, stairs, passage and gangways shall be of *sound construction* and properly maintained. Handrails shall be provided where necessary. Safe means of access shall be provided to the place where the worker will carry on any work.—Sec. 32.

12. *Pits, sumps, openings in floors etc.* : Pits, sumps, openings in floors etc. must be *securely covered* or fenced.—Sec. 33.

13. *Excessive weights* : No worker shall be made to carry a load so heavy as to cause him injury.—Sec. 34.

14. *Protection of eyes* : Effective screen or suitable goggles shall be provided to *protect the eyes* of the worker from fragments thrown off in course of any manufacturing process and from excessive light if any.—Sec. 35.

15. *Precautions against dangerous fumes* : No person shall be allowed to enter any chamber, tank etc. where *dangerous fumes* are likely to be present, unless it is equipped with a manhole or other means of going out. In such space no portable electric light of more than 24 volts shall be used. Only a lamp or light of flame proof construction can be used in such space. For people entering such space suitable breathing apparatus, reviving apparatus etc. shall be provided. Such places shall be cooled by ventilation before any person is allowed to enter.—Secs. 36 and 36A.

16. *Explosive or inflammable gas etc.* : Where a manufacturing process produces inflammable gas, dust, fume, etc. steps must be taken to enclose the machine concerned, prevent the accumulation of substances and exclude all possible sources of *ignition*. Extra precautionary measures are to be taken where such substances are worked at greater than the atmospheric pressure.—Sec. 37.

17. *Precaution in case of fire* : *Fire escapes* shall be provided. Windows and doors shall be constructed to open outwards. The means of exit in case of the fire shall be clearly marked in red letters. Arrangements must be made to give warning in case of fire—Sec. 38.

18. *Specifications of defectives etc. and safety of buildings and machinery* : If any building or machine is in a *defective or dangerous condition*, the inspector of factories can ask for the holding of tests to determine how they can be made safe. He can also direct the adoption of the measures necessary to make them safe. In case of immediate danger, the use of the building or machine can be prohibited.—Secs. 39, 40.

19. *Maintenance of Buildings* : If the Inspector of Factories thinks that any building in a factory, or any part of it, is in such a state of disrepair that it is likely to affect the health and welfare of the workers, he may serve on the occupier or manager or both in writing specifying the measures to be done before the specified date.—Sec. 40A.

20. *Safety Officers* : The State Government may notify to the occupier to employ a number of Safety Officers in a factory (i) wherein one thousand or more workers are ordinarily employed, or (ii) wherein any manufacturing process or operation which involves the risk of bodily injury, poisoning, disease or any other hazard to health of the persons employed in the factory.—Sec. 40B.

21. *Rules* : The State Government may make *rules* providing for the use of such further devices for safety as may be necessary.—Sec. 41.

### PROVISIONS REGARDING THE WELFARE OF WORKERS

Sections 42 to 50 of the Act contain provisions regarding the welfare of workers. They are explained below.

#### 1. Washing facilities (Sec. 42)

In every factory—

- (a) adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein ;
- (b) separate and adequately screened facilities shall be provided for the use of male and female workers ;
- (c) such facilities shall be conveniently accessible and shall be kept clean. The State Government may make rules prescribing adequate standards of facilities for washing.

#### 2. Facilities for storing and drying clothing (Sec. 43)

The State Government may make rules requiring the provision of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

The State Government can frame rules providing for keeping clothing with safety.

#### 3. Facilities for sitting (Sec. 44)

(1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunity for rest which may occur in course of work.

(2) If in the opinion of the Chief Inspector workers in a particular room are able to do their work efficiently in a sitting position, he may by an order in writing direct the occupier of the factory to provide sitting arrangements before a specified date.

(3) The State Government may by notification in the official Gazette direct that the aforesaid provisions shall not apply to specified cases.

#### **4. First-aid appliances (Sec. 45)**

(1) First-aid boxes or cupboards equipped with the prescribed contents must be provided in every factory. They must be readily accessible during working hours. The number of such boxes shall not be less than one for every 150 workers employed.

(2) The boxes or cupboards must not contain anything other than the prescribed contents.

(3) Each box or cupboard shall be kept in charge of a separate responsible person who holds a certificate in first-aid treatment recognised by the State Government and who shall always be readily available during the working hours.

(4) In every factory wherein more than 500 workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size. The ambulance room will contain the prescribed equipment, it will be in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

#### **5. Canteens (Sec. 46, as amended in 1976)**

(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the date by which such canteen shall be provided ;
- (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen ;
- (c) the foodstuffs to be served therein and the charges which may be made therefor ;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen ;
- (dd) the items of expenditure in running of the canteen which are not to be taken into account in fixing the cost of food-stuffs and which shall be borne by the employer.

- (e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

#### 6. Shelters, rest rooms and lunch rooms (Sec. 47)

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

A canteen maintained in accordance with Sec. 46 is regarded as part of the requirements of this sub-section. Where a lunch room exists no worker shall eat any food in the work room.

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

(3) The State Government may—

- (a) prescribe the standards in respect of shelters, rest rooms etc. ;
- (b) by notification in the official Gazette, exempt any factory or class or description of factories from the requirements of this section.

#### 7. Creches (Sec. 48)

(1) In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The Government may make rules—

- (a) prescribing the location and the standards of such rooms ;
- (b) requiring the provision of additional facilities for the care of children ;
- (c) requiring the provision in the factory of free milk or refreshment or both for such children ;
- (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

### 8. Welfare officers (Sec. 49)

(1) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties qualifications and conditions of service of officers employed under sub-section (1). Even if a factory employs over five hundred workers only for a few months in the year and not continuously throughout the year, the occupier must employ the specified number of welfare officers. [*Employers' Association of Northern India v. Secretary of Labour, AIR (1952).*]

### 9. Power to make rules to supplement this Chapter (Sec. 50)

The State Government may make rules—

(a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed any factory or class or description of factories from compliance with any of the provisions of this Chapter ;

(b) requiring in any factory or class or description of factories that representatives of the workers employed in the factory shall be associated with the management of the welfare arrangements of the workers.

### Summary

Summary of the provisions of the Factories Act regarding the welfare of workers are stated below :

1. *Washing* : In every factory adequate and suitable facilities for *washing* shall be provided and maintained. They shall be conveniently accessible and shall be kept clean. There must be separate provisions for male and female workers.—Sec. 42.

2. *Storing and drying* : The State Government may make rules requiring the provision of suitable facilities for *storing and drying clothing*.—Sec. 43.

3. *Sitting* : *Sitting facilities* must be provided for workers who have to work in a standing position, so that they may take rest when possible. When work can be done in a sitting position efficiently, the Chief Inspector may direct the provision of sitting arrangements.—Sec. 44.

4. *First aid* : Every factory must provide *first aid boxes* or cupboards. They must contain the prescribed materials and they

must be in charge of persons trained in first aid treatment. Factories employing more than 500 persons must maintain an ambulance room containing the prescribed equipment and in charge of the prescribed medical and nursing staff.—Sec. 45.

5. *Canteens* : Where more than 250 workers are employed, the State Government may require the opening of *canteen or canteens* for workers. Rules may be framed regarding the food served; its management etc.—Sec. 46.

6. *Shelters* : In every factory where more than 150 workers are employed there must be provided adequate and suitable *shelters or rest rooms and a lunch room* (with drinking water supply) where workers may eat meals brought by them. Such rooms must be sufficiently lighted and ventilated and must be maintained in a cool and clean condition. The standards may be fixed by the State Government.—Sec. 47.

7. *Creches* : In every factory where more than 30 women are employed, a *room shall be provided for the use of the children* (below 6 years) of such women. The room shall be adequate size, well lighted and ventilated, maintained in a clean and sanitary condition and shall be in charge of a woman trained in the care of children and infants. The standards shall be laid down by the State Government.—Sec. 48.

8. *Welfare officers* : *Welfare officers* must be appointed in every factory where 500 or more workers are employed. The State Government may prescribe the duties, qualifications etc. of such officers.—Sec. 49.

9. *Rules* : The State Government may *make rules regarding the welfare of workers*.—Sec. 50.

## THE WORKING HOURS OF ADULTS

### Adult

For definition, see page 816.

### Weekly Hours

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.—Sec. 51.

### Daily Hours

No adult worker shall be required or allowed to work in a factory for more than nine hours in any working day. The daily

maximum may be exceeded with the previous approval of the Chief Inspector, to facilitate change of shifts.—Sec. 54.

### **Intervals for Rest**

The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour. The State Government or the Chief Inspector may, by order in writing, and for reasons stated therein, increase the work period to six.—Sec. 55.

### **Spreadover**

The periods of work of an adult worker in a factory shall be arranged that inclusive of his intervals for rest under section 55, they shall not spread-over more than ten and half hours in any day. The Chief Inspector may for specified reasons increase the spreadover up to twelve hours.—Sec. 56.

## **RULES REGARDING EMPLOYMENT OF ADULTS**

### **Night Shifts**

Where a worker in a factory works on a shift which extends beyond midnight, (a) his weekly holiday and compensatory holiday means a period of holiday for 24 consecutive hours beginning when his shift ends and (b) the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends and the hours he has worked after midnight shall be counted in the previous day.—Sec. 57.

### **Overlapping Shifts**

Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time. The State Government or the Chief Inspector may grant exemption from this rule.—Sec. 58.

### **Double Employment**

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.—Sec. 60.



## Notice of Periods of Work

There must be displayed in every factory a notice showing periods of work of adults, classification of workers in groups according to nature of their work, shifts and relays etc. Change made in the system of work must be notified to the Inspector before change. The manager of every factory must maintain a Register of Adult Workers showing the name of each worker, the nature of his work, the group in which he is included, the relay in which he is allotted etc. The hours of work of an adult worker must correspond with the notice referred to above and the Register.—Sections 61, 62, 63.

No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.—Sec. 62(1A) added by the Factories (Amendment) Act, 1976.

## Exemptions

By sections 64 and 65, the State Government has been given power to exempt for limited periods certain factories from compliance with some of the provisions relating to hours of work and employment.

Such exemptions are necessary in special cases, for example in the case of workers engaged in *urgent repairs* or in *preparatory and complementary work*. In some industries work is of an *intermittent character* and the enforcement of all the rules stated above will create hardship. The nature of the work in certain industries requires exceptional treatment, e.g., *workers engaged in engine rooms and boilers* or in the *printing of newspapers*. The State Government may exempt persons holding positions of *supervision and management* or in *confidential positions* in a factory from the operation of the rules regarding working hours (except the rule against the employment of women at night).

**Confidential Position :** The State Government may empower the Chief Inspector to declare a person other than any person defined by such rules, as a person holding position of supervision or management or employed in a confidential position in a factory, if, the Chief Inspector is of opinion that he can be employed.

If any such person does not get more than Rs. 750 p.m. as wages, he will be entitled to extra wages for overtime work.—Sec. 65(1), added by The Factories (Amendment) Act, 1976.

*Hours and Spreadover* : Any exemption granted under Sec. 65(2) shall be subject to the following conditions, namely :

- (i) the total number of hours of work in any day shall not exceed twelve ;
- (ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day ;
- (iii) the total number of hours of work in any week, including overtime, shall not exceed sixty ;
- (iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five—Sec. 65(3), Factories (Amendment) Act, 1976.

*Quarter* : This is a period of three consecutive months beginning on the 1st January, the 1st of April, the 1st of July or the 1st of October.—Sec. 64.

## RESTRICTIONS ON THE EMPLOYMENT OF WOMEN

By section 66 the following restrictions have been imposed to women workers ;

- (a) *Maximum daily work is 9 hours* : No exemption from the provisions of Section 54 (which lays down that the maximum daily hours of work shall be nine hours) can be granted in respect of any women.
- (b) *Prohibition of night work* : No women shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m. The State Government may by notification in the official Gazette vary the limits for any factory or group or class or description of factories. But such variation must not authorise the employment of women between the hours 10 p.m. and 5 a.m.
- (c) *Change of shift only after holiday* : There shall be no change of shifts for women except after a weekly holiday or any other holiday.

*Exception* : There is an exceptional case. The State Government may make rules providing for the exemption from the aforesaid restrictions (wholly or partially or conditionally) of women working in fish-curing or fish-canning factories. In factories, mentioned above, the employment of women beyond the hours specified is necessary to prevent damage to or

deterioration in any raw material. But such rules shall remain in force for not more than three years at a time.

*Other restrictions* : There are other restrictions on the employment of women workers :

1. *Work on or near machinery in motion* : No woman or young person shall be allowed to clean, lubricate or adjust any part of the machinery while the prime mover or transmission machinery is in motion or to work between moving parts, or between fixed and moving parts of any machinery which is in motion.—Sec. 22(2). (See p. 829).

2. *Cotton openers* : No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.

If the feed-end of a cotton opener is in a room separated from the delivery-end by a partition extending to the roof or to such height as the Inspector may in a particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.—Sec. 27. (See p. 831).

3. *Excessive weights* : The State Government may make rules prescribing the maximum weights which may be lifted, carried, or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.—Sec. 34. (See p. 835).

4. *Creches* : In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.—Sec. 48. (See p. 847).

5. *Dangerous operations* : The State Government is empowered to make special rules for the purpose of controlling and regulating factories which carry on operations exposing women, young persons and other workers to a serious risk of bodily injury, poisoning or disease.—Sec. 87(b) (See p. 867).

## EMPLOYMENT OF YOUNG PERSONS

**Definition of Young Persons**—See page 816.

### Employment of Children

No child who has not completed his fourteenth year shall be required or allowed to work in any factory.—Sec. 67.

### **Certificate of Fitness and Token**

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless (a) he has been granted a certificate of fitness, which is in the custody of the manager, and (b) such child or adolescent carries a token giving a reference to such certificate—Sec. 68.

The Certificate of Fitness is a certificate granted to a child or adolescent by a Certifying Surgeon after examination. The Certificate is given to a child if the surgeon is satisfied that he has completed his fourteenth year and has attained the prescribed physical standards. The certificate is granted to an adolescent if the surgeon is satisfied that he has completed his fifteenth year and is fit for a full day's work in a factory. The certifying surgeon must have personal knowledge of the intended place of work and of the manufacturing process involved. The certificate is valid only for a period of 12 months. It may be granted subject to conditions (e.g., that of periodical reexamination). The certificate may be renewed and, if necessary, revoked. Any fee payable for the certificate must be paid by the occupier of the factory and must not be recovered from the young person or his parents or guardian.—Sec. 69.

An adolescent who has been granted a certificate of fitness and who carries a token is deemed to be an adult for the purposes of Chs. VI and VIII of the Act. (Ch. VI deals with the hours of work of an adult and Ch. VIII deals with annual leave). But no adolescent who has not attained the age of seventeen years shall be employed or permitted to work in any factory during night. "Night" means a period of at least 12 consecutive hours which shall include an interval of at least seven consecutive hours falling between 10 p.m. and 7 a.m. An adolescent who has not been granted a certificate of fitness, shall be deemed to be a child for the purposes of the Act.—Sec. 70.

Section 70(1A) provides that no female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m.

The State Government may grant exemption from the provision of this sub section in case of serious emergency where national interest is involved.

### Working hours for Children

The law regarding working hours for children are stated below—Sec. 71 :

1. No child shall be employed or permitted to work in any factory—

(a) for more than four and a half hours in any day ;

(b) during the night.

*Explanation* : For the purpose of this sub-section “night” shall mean a period of at least twelve consecutive hours which shall include the interval between 7 p.m. and 8 a.m.

2. The period of work of all children employed in a factory shall be limited to two shifts which shall be not overlap or spread-over more than five hours each, and each child shall employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

3. The provisions of section 52 shall apply also to child workers, and no exemption from the provisions of that section may be granted in respect of any child. (Sec. 52 relates to weekly holidays. See next Section).

4. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

Section 71(5) states that no female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

### Notice and Register

A notice must be displayed showing clearly the periods of work of children.—Sec. 72.

The manager of every factory must maintain a Register of child workers showing the name of each child worker, the nature of his work, the group (if any) in which he is included, the relay to which he is allotted and the number of his certificate of fitness.—Sec. 73.

No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.—Sec. 73 (1A), Factories (Amendment) Act, 1976.

The hours of work of a child must correspond with the Notice and the Register.—Sec. 74.

### Medical Examination

Where an Inspector is of opinion that a person working as an adult is a young person, or that a young person is not fit to work, he may direct the manager of the factory to have the person medically examined by a certifying surgeon.—Sec. 75.

### Other rules regarding the employment of young persons

No young person shall work at any dangerous machine unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and (a) has received sufficient training in work at the machine or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine. The State Government is to prescribe what machines are dangerous for the purpose of this section.—Sec. 23.

Certain restrictions on adolescents and children are stated in Sections 22(2), 27, 34 and 87(b). (See page 852).

The State Government may make rules regarding the forms of the Certificate of Fitness, the procedure relating to their issue, and the physical standards to be attained by children and adolescents.—Sec. 76.

The provisions relating to the employment of young persons shall be in addition to and not in derogation of, the provisions of the Children Act of 1938, 1960 and 1978.—Sec. 77. (see below).

## CHILD-LABOUR

Rules regarding child-labour are contained in the Factories Act, Mines Act etc. There are also two general Acts on the subject. The *Children (Pledging of Labour) Act (Act 11 of 1933)* prohibits the making of agreements to pledge the labour of children and the employment of children whose labour has been pledged. The *Children Act* of 1938, 1960 and 1978 prohibit the employment of a child who has not completed his fifteenth year of age in any occupation connected with the transport of passengers, goods or mails by railway or connected with a port authority within the limits of any port. The Act also prohibits the employment of a child, who has not completed his fourteenth year of age, in the processes set forth in the schedule to the Act. Children between 15 and 17 can be employed subject to certain restrictions as regards their periods of rest etc.

## HOLIDAYS AND LEAVE

The Factories Act provides for the following holidays, viz., Weekly holidays, Compensatory holidays and Annual leave with wages according to certain rules. The provisions are explained below.

### Weekly Holidays

Section 52 provides that an adult worker shall have a holiday on the first day of the week. But the manager of the factory may fix the holiday on any other day which is within three days before or after the first day of the week. In case of such substitution, notice must be given to the Inspector of Factories and displayed in the factory. No substitution can be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day. The State Government may make rules providing for exemption from the above section in certain cases, e.g., for urgent repairs.

*The Weekly Holidays Act (Act XVIII of 1942)* provides for the grant of weekly holidays to persons employed in shops, restaurants and theatres. The Act can be applied to a State by notification of State Government.

### Compensatory Holidays

Where as a result of the exemption of a factory from the operation of the rule regarding weekly holidays, a worker is deprived from any weekly holidays he shall be allowed within the month in which the holidays were due, or within two months immediately following that month, compensatory holidays of equal number to the holidays lost.—Sec. 53.

### Annual Leave with Wages

Sections 78 to 84 provide for the grant of a certain period of leave with wages to workmen.

Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of—

- (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year ;
- (ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

## Rules

Rules regarding the Annual Leave are summarised below :

1. When counting the number of days of work performed by a worker, the following are to be included : (a) days of lay off, (b) maternity leave to a female worker, not exceeding twelve weeks, and (c) the leave earned in the previous year. But the worker shall *not* earn leave for these days.

2. The leave admissible under the aforesaid rule shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

3. A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down above if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

4. If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in sub-section (1) or sub-section (2) making him eligible to avail of such leave. Such payment shall be made—

- (i) where the worker is discharged or dismissed or quits employment—before the expiry of the second working day from the date of such discharge, dismissal or quitting; and
- (ii) where the worker is superannuated or dies while in service—before the expiry of two months from the date of such superannuation or death. (Amended by the Act of 1976.)

5. In calculating the leave period, fraction of leave for half a day or more shall be treated as one day and fractions of less amount shall be omitted.

6. Leave earned, but not taken, can be carried forward to a succeeding year subject to a limit of thirty days in the case of an adult and forty days in the case of a child. But earned leave not allowed because of any scheme for leave in operation, can be carried forward without limit.



7. Application for leave must be submitted to the manager not less than 15 days before the date of commencement of leave. In the case of public utility service it must be made not less than 30 days before such date. If a worker becomes ill and wants to avail himself of the annual leave during the period of illness, he shall be granted leave even though the application is not made before the period specified above.

8. The application for leave may be for the whole of the leave due or part of it. But earned leave cannot be taken more than three times during the same year.

9. For the purpose of ensuring the continuity of work, the occupier or manager of the factory may draw up a Scheme for regulating the grant of leave. The Scheme must be agreed to by the Works Committee, if any, or the representatives of workers. It must be lodged with the Chief Inspector and displayed in the factory.

10. An application for leave submitted in proper time shall not be refused unless the refusal is in accordance with any leave scheme in operation.

11. The unavailed leave of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

12. The State Government may exempt a factory from the operation of the above rules if it is satisfied that its own leave rules provide benefits (the totality of benefits) which are not less favourable to the workers than the statutory leave rules.

13. Where by virtue of any award, agreement (including settlement) or contract of service the worker is entitled to a longer period of leave than that provided by the aforesaid rules, he will be entitled to such longer leave.

14. The rules contained in these sections do not apply to railway factory administered by the Government which are governed by leave rules approved by the Central Government.

15. If an award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourably therein, the provisions of sections 79 to 82, so far as may be, shall apply. (Added by the Amendment of 1976.)

### **Wages during Leave Period**

For the period of leave allowed to a worker according to rules, he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he actually worked during the month immediately preceding his leave. The average rate is to be calculated, exclusive of any overtime and bonus, but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food-grains and other articles. The cash equivalent, referred to above, is to be computed according to the method used when calculating the extra wages payable for overtime work. (See *post*)—Sec. 80.

If the employment of a worker who is entitled to leave is terminated by the occupier of the factory before he has taken the entire leave to which he is entitled, he must be paid wages for the leave period not taken and such wages must be paid before the expiry of the second working day after such termination. Similarly, if the worker quits his service after having applied for and obtained leave, he must be paid wages for the leave period and such wages must be paid on or before the next pay day. The amount of wages payable is to be calculated according to the provisions of Section 80.—Sec. 79(11).

A worker who has been allowed leave for not less than four days in the case of an adult and five days in the case of a child, shall before his leave begins, be paid the wages due for the period of leave allowed.—Sec. 81.

Wages for the leave period, if not paid by an employer, shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936.—Sec. 82. (See Ch. 7).

### **EXTRA WAGES FOR OVERTIME**

(1) Where a worker works in a factory for more than nine hours in any day or for more than 48 hours in any week, he shall in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.—Sec. 59(1).

(2) For the purpose of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.—Sec. 59(2).

(3) Where any workers in factory are paid on a piece rate basis, the time rate of their work will include the following rules :

- (i) if the workers had been paid on the same or identical job during a month immediately preceding a month during which overtime work was done, the time rate shall be deemed to be equivalent to the daily average of their fulltime earnings for the days of the overtime work. Also such time rates shall be deemed to be the ordinary rates of wages of those workers.
- (ii) In the case of a worker who had not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the days on which he actually worked in the week in which the overtime work was done.

*Explanation* : For the purposes of this sub-section in computing the earnings for the days on which the workers actually worked, the allowances include the cash equivalent in order to buy foodgrains and other articles through concessional sale as the worker is for the time being entitled to.

*Exception* : But any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall not be included.—Sec. 59(3).

[Clauses (2) and (3) were substituted from the old Act by the Amendment of 1976].

(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

*Explanation* : 1. "Standard family" means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

2. "Adult consumption unit" means the consumption unit of a male above the age of fourteen years ; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 0.8 and 0.6 respectively of one adult consumption unit. Sec. 59(4).

(5) The State Government may make rules prescribing—

- (a) the manner in which the cash equivalent of the advantage

- accruing through the concessional sale to a worker of food-grains and other articles shall be computed; and
- (b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.—Sec. 59(5).

## ★ UNFAIR LABOUR PRACTICE

### Definition

“Unfair Labour Practice” means any of the practices specified in the Fifth Schedule.—Section 2(a).

### Prohibition of unfair labour practice

No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926) or not, shall commit any unfair labour practice.—Section 25T.

### Penalty for committing unfair labour practices

Any person who commits any unfair labour practice 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 25U.

### Comments<sup>1</sup>

“There is at present no Central Law specifying unfair labour practices on the part of employers, workmen and the trade unions of employers and workmen and for imposing any penalty for resorting to such undesirable practices. Certain State-laws as well as voluntary Codes of Discipline laid down by the Indian Labour Conference specify certain practices as unfair labour practices. The National Commission on Labour which examined this aspect in detail suggested a list of such unfair practices. It is proposed to make suitable provision in the Act to specify certain practices as unfair labour practices on the part of employers, workmen and trade unions and to provide for penalties for those including in such practices.”

### The Fifth Schedule

[See Section 2(ra), above.] *Unfair Labour Practices.*

**I—On the part of employers and trade unions of employees**

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union

<sup>1</sup> *Statement of Objects and Reasons, The Industrial Disputes (Amendment) Act, 1982.*

or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection that is to say—

- (a) threatening workmen with discharge or dismissal, if they join a trade union ;
- (b) threatening a lock-out or closure, if a trade union is organised ;
- (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the union at organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say—

- (a) an employer taking an active interest in organising a trade union of his workmen ; and
- (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.

3. To establish employer sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say—

- (a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union ;
- (b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act) ;
- (c) changing seniority rating of workmen because of trade union activities ;
- (d) refusing to promote workmen to higher posts on account of their trade union activities.
- (e) giving unmerited promotion to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union.
- (f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen—

- (a) by way of victimisation ;
- (b) not in good faith, but in the colourable exercise of the employer's rights ;
- (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence ;

- (d) for patently false reasons ;
- (e) on untrue or trumped up allegations of absence without leave ;
- (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste ;
- (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman *mala fide* from one place to another, under the guise of following management policy.

8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit.

10. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.

13. Failure to implement award, settlement or agreement.

14. To indulge in acts of force by violence.

15. To refuse to bargain collectively, in good faith with the recognised trade unions.

16. Proposing or continuing a lock-out deemed to be illegal under this Act.

## **II—On the part of workmen and trade unions of workmen.**

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.

2. To coerce workmen in the exercise of their right to self organisation or to join a trade union or refrain from joining any trade union, that is to say—

- (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places.
- (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

3. For a recognised union to refuse to bargain collectively in good faith with the employer.

4. To indulge in coercive activities against certification of a bargaining representative.

5. To stage, encourage or instigate such forms of coercive actions as wilful 'go slow', squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or other staff.

6. To stage demonstrations at the residences of the employers or the managerial staff members.

7. To incite or indulge in wilful damage to employer's property connected with the industry.

8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

### WAGES AND SALARY

Both these terms are used to denote payment made for service. In Stroud's *Judicial Dictionary*, the following comments are made; "Where the engagement is for a period, is permanent or substantially permanent in character, and is for other than manual or relative unskilled labour, the remuneration is generally called a salary." ".....in general, the word 'salary' is used for payment of services of a higher class, and 'Wages' is confined to the earnings of labourers and artisans."

The High Court of Madras was of opinion that if the remuneration is to be paid daily or weekly it can be called Wages; but where there is monthly payment and is fairly high, considering the general standard of payment, it is to be called Salary. According to the Payment of Wages Act any amount over Rs. 200 (now Rs. 1000) may be considered as Salary for the purposes of Factories Act. *Re Gemini Studio*<sup>1</sup>. (See ch.7)

<sup>1</sup> L.L.J. (1953) (Jan. p. 29)

“Conceptually there is no difference between salary and wages both being a recompense for work done or services rendered, though ordinarily the former expression is used in connection with services of non manual type while the latter is used in connection with manual services.” *Gestetner Duplicators Pvt. Ltd. v. The Commissioner of Income Tax. W.B.*<sup>1</sup> In this judgment the following cases were cited and approved, *Mohmedalli v. Union of India*<sup>2</sup>; *Gordon v. Jennings*<sup>3</sup>.

In the cases mentioned above, and also in Stroud's dictionary, it was held that there is no basic difference between salary and wages.

### OBLIGATIONS OF WORKERS

Section 111 lays down that no worker in a factory—

- (a) shall wilfully interfere with or misuse any appliance, convenience or other things provided in a factory for the purpose of securing the health, safety or welfare of the workers therein ;
- (b) shall wilfully and without reasonable cause do anything likely to endanger himself or others ; and
- (c) shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

If any worker contravenes any of the provisions of this section or of any rule or order made thereunder he shall be punishable with imprisonment which may extend to 3 months or with fine which may extend to Rs. 100 or with both.

### OTHER PROVISIONS OF THE FACTORIES ACT

A brief summary is given below of the other provisions of the Factories Act.

#### Departments as Factories

The State Government may, upon application, declare that for the purposes of the Act, different departments or branches of a factory shall be treated as separate factories or that two or more factories of the occupier shall be treated as the same factory—Sec. 4.

<sup>1</sup> AIR (1979) Supreme Court 607    <sup>2</sup> AIR (1964) Supreme Court 1980  
<sup>3</sup> (1882) 51 LJQB 417



### **Exemption during Public Emergency**

Factories or any class of factories may be exempted from the operation of any of the provisions of the Act during a public emergency (except that of Sec. 67, employment of children) for such periods and subject to such conditions as the Government may think fit. The exemption is to be made by notification in the official Gazette for a period not exceeding three months at a time.—Sec. 5.

\* *Explanation* : For the purpose of this section “public emergency” means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.—Amendment of 1976.

### **Exemption of Public Institutions**

The State Government may exempt subject to such conditions as it may consider necessary, any workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education, training, research or reformation from all or any of the provisions of the Act. But no exemption is to be granted from the provisions relating to hours of work and holidays unless there is a scheme relating to such matters containing rules not less favourable to the workers than the provisions of the Act.—Sec. 86.

### **Dangerous Operations**

The State Government is empowered to make special rules for the purpose of controlling and regulating factories which carry on manufacturing process or operation exposing workers to a serious risk of bodily injury, poisoning or disease.—Sec. 87. Rules have been made providing for medical examination protection of workers; restricting and controlling the use of particular materials and processes; payment of fees for medical examination by the occupier; welfare amenities; sanitary amenities; measures to avoid imminent danger of poisons or toxicity.

Section 87A (1) provides that where it appears to the Inspector that conditions in a factory may cause serious hazard by way of injury or death to the persons employed therein, or

to the general public in the vicinity, he may by order in writing prohibit the occupier of the factory from employing any person in the factory other than the minimum number of persons necessary to attend to the minimum tasks till the hazard is removed.

According to Section 87A (2) these orders will be effective for three days unless it is extended by the inspector.

Section 87A (3) states that any person aggrieved by an order of the Inspector under sub-Section (1) and the Chief Inspector under sub-Section (2) shall have the right to appeal to the High Court.

Section 87A (4) provides that any person whose employment has been affected by an order issued under sub-Section (1) shall be entitled to wages and other benefits and the occupier must provide alternative employment to him whenever possible and in the manner prescribed.

Section 87A(5) states that the provision of sub-Section (4) shall be without prejudice to the rights of the parties under the Industrial Disputes Act (1947).

### **Notifiable Accidents**

(1) The manager of a factory must send a notice to the authorities whenever an accident occurs which causes death or which causes bodily injury preventing the worker from working for a period of 48 or more hours or other types of injury which may be specified by rules.

(2) Where a notice given under sub-Section (1) relates to an accident causing death, the authority to whom the notice is sent shall make an inquiry into the occurrence within one month of the receipt of the notice or, if such authority is not the Inspector, cause the Inspector to make an inquiry within the said period.

(3) The State Government may make rules for regulating the procedure at inquiries under this section.—Sec. 88.

[Paras 2 and 3 had been added by the Amendment of 1976].

### **Notice of certain dangerous occurrences**

Where in a factory any dangerous occurrence of such nature as may be prescribed occurs, whether causing any bodily injury or disability or not, the manager of the factory shall send notice

thereof to such authorities, and in such form and within such time, as may be prescribed.—Sec. 88A, Factories (Amendment) Act, 1976.

### **Notifiable Diseases**

The manager of a factory must send notice to the authorities whenever a worker contracts of the any diseases mentioned in the Schedule to the Act. Section 89(1) provides that for the word "The Schedule" shall be substituted for the word, "The Third Schedule."

Section 89 (4) provides that "if any medical practitioner fails to comply with the provisions of sub-Section (2), he shall be punishable with fine which may extend to one thousand rupees."

#### *Examples :*

These are known as Occupational Diseases. Poisoning by lead, mercury, phosphorus etc. ; anthrax; silicosis ; cancer of the skin ; toxic anaemia or jaundice ; etc.

The medical parctitioner attending the person, if any, shall without delay send a report to the Chief Inspector in writing, stating the name of the person affected and other particulars.—Sec. 89.

### **Enquiry into Accidents and Diseases**

The State Government may appoint a competent person to enquire into the causes of any accident occurring in a factory or of a notifiable disease, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such enquiry. The person appointed to enquire can call witnesses like a Civil Court and exercise any of the powers of an Inspector. He must submit a report to the State Government, together with his observations. The report or extracts therefrom may be published.—Sec. 90.

### **Safety and Occupational Health Survey**

The State Government or the Director General of Factory Advice Service and Labour Institutes etc.. can employ the Chief Inspector and certain other persons to undertake safety and occupational health surveys. The occupier and manager and all other persons shall afford all facilities for such survey, including examination, testing of plant and machinery, collection of samples, other data, medical examination of persons, calculation of wages and extra wages for overtime work.—Sec. 91A, added by The Factories (Amendment) Act, 1976.

## PENALTIES AND PROCEDURES

Sections 92 to 106 lay down the rules regarding penalties for offences against the Act.

*Owner* : The owner of any premises, let out for use as different factories, is responsible for the provision and maintenance of common facilities and services, e.g., approach roads, drainage, water supply, latrines etc.

*Occupier* : In most cases the occupier of the factory is responsible for offences committed against the Act. But the occupier is exempted from liability if he can show that he has used due diligence to enforce the execution of the Act and that some other person committed the offence without his knowledge, consent or connivance.

*Penalties* : The penalties for some of the offences are mentioned below.

<i>Offence</i>	<i>Imprisonment</i>	<i>Fine</i>
Obstructing Inspector	Up to 6 months and/or up to	Rs. 10,000
Wrongfully disclosing results of analysis of sample	Up to 6 months and/or up to	Rs. 10,000
Using false certificate of fitness	Up to 2 months and/or up to	Rs. 1,000
Permitting double employment of child	nil	Rs. 1,000
Cases not otherwise provided for	Up to 3 months and/or up to	Rs. 2,000
Second offence for above	Upto 3 years and/or up to	Rs. 10,000 maximum Rs. 2,00,000

Where contravention of any of the provisions of Chapter IV or any rule made thereunder or under Section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than one thousand rupees in the case of an accident causing death, and five hundred rupees in the case of an accident causing serious bodily injury.

Section 92 of the amending Act provides that subject to the provision of Section 93 if in respect of, any factory there is any contravention of any of the provisions of this Act, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both. If the contravention is continued after conviction

the fine may be extended to one thousand rupees for each day on which the contravention is so continued.

If any such contravention has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty five thousand rupees in the case of an accident causing death and five thousand rupees in the case of an accident causing serious bodily injury.

Section 95 of the amending Act provides that who willingly obstructs an Inspector in the exercise of any power conferred on him by or under this Act, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

Section 96A(1) states that who fails to comply with any of the provisions of Sections 41B, 41C or 41H or the rules made thereunder, shall in respect of such failure be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees. In case the contravention continues additional fine may be imposed. The additional fine may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure.

If the failure continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

Section 97(1) of the amending Act, provides that subject to the provision of Section 111, if any worker employed in a factory contravenes any provision of this Act, and any rules made under the Act, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.

Section 99 of the Act states that, if a child works in factory on any day on which he has already been working in another factory the parent or guardian of the child or the person having custody of or control over him or securing any direct benefit from his wages, shall be punishable with fine which may extend to one thousand rupees unless it seems to court that the child so worked without the consent of such parent, guardian or person.

*Explanation* : In this section and in section 94 "Serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury

to sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.—Sec. 92 added in the Amendment of 1976.

**Cognizance** : No court can take cognizance of an offence under the Act except on a complaint by or with the previous sanction of an Inspector in writing. Only a Presidency Magistrate or a Magistrate of the first class can try offences under the Act. The complaint must be filed within 3 months of the date when the commission of the offence came to the knowledge of an Inspector. For disobeying a written order of an Inspector, complaint may be filed within 6 months of the date when the offence was committed.

Section 104A states that in any proceeding for an offence for the contravention of any provision of this Act or rules made under it consisting of a failure to comply with a duty, it shall be for the person who is alleged to have failed to comply with such duty, to prove that it was not reasonably practicable or all practicable measures were taken to satisfy the duty.

Section 106A provides that for the purpose of conferring jurisdiction on any Court in relation to an offence under this Act, the place where the plant is situated shall be deemed to be the place where such offence has been committed.

**Presumption** : A person found in the factory when the factory is going on or the machinery is in motion, except during the time of meal or rest, is presumed to be employed in the factory until the contrary is proved.

When in the opinion of the Court a person is *prima facie* under-age, the burden shall be on the accused to show that such person is not under-age.

### Appeals

The manager or the occupier of a factory on whom an order in writing has been served by an Inspector can appeal against it to the prescribed authority within thirty days.—Sec. 107.

### Notice

In certain cases (prescribed by the rules) abstracts of the Act and the rules are required to be displayed in the factory. All notices under the Act must be displayed in English and in a language

understood by the majority of the workers employed therein. They must be displayed in a conspicuous and convenient place at or near the main entrance of the factory and must be maintained in a clean and legible condition. The Chief Inspector may require the display of posters relating to the health, safety and welfare of workers.—Sec. 108.

### **Returns**

The owners, managers and occupiers of factories are required by rules to submit various returns and reports.—Sec. 110.

Section 111A provides that every worker shall have the right to—

(1) obtain from the occupier, information relating to workers' health and safety at work.

(2) get trained within the factory when possible, or at a training centre duly approved by the Chief Inspector where training is imparted for workers' health and safety at work.

(3) represent to the Inspector in the matter of inadequate provision for protection of his health or safety in the factory.

### **Power of the Central Government**

The Central Government may give directions to a State Government as to the carrying into execution of the provisions of the Act.—Sec. 113.

Section 115(1) states that all rules made under this Act shall be published in the official Gazette.

Section 115 (2) provides that every rule made by the State Government under this Act shall be laid before the State Legislature.

### **Abolition of Contract Labour**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Contract Labour (Regulation and Abolition) Act, 1970.—Sec. 119, added by the Factories (Amendment) Act, 1976.

## EXERCISES

1. State the meaning of the following terms as defined in the Factories Act of 1948 :
  - (a) Factory. (Pages 811-812)
  - (b) Worker. (Pages 814-815)
  - (c) Adult. (Page 816)
  - (d) Prime Mover. (Page 816)
  - (e) Manufacturing Process. (Pages 813-814)
  - (f) Adolescent. (Page 816)
  - (g) Child. (Page 816)
  - (h) Young Person. (Page 816)
  - (i) Wages and Salary. (Page 865)
2. Does the Factories Act apply to factories belonging to the Central Government ? (Page 866)
3. Can the State Government exempt from all provisions of the Factories Act an institution of education in a work-place or reformation ? (Page 812)
4. Discuss the circumstances under which the occupier or the manager may be exempted from liability under the Factories Act, 1948. (Page 870)
5. Are book-binding and constructing ships manufacturing processes ? (Pages 812-813)
6. Enumerate briefly the provisions of the Factories Act, 1948, relating to the health of workers. (Page 822)
7. Briefly mention the provisions laid down in the Factories Act for the purpose of securing the safety of young persons, women and children. (Pages 852-857)
8. Discuss the provisions of the Factories Act, 1948 relating to
  - (i) employment of Young Persons on dangerous machines and
  - (ii) artificial humidification. (Pages 829 ; 838)
9. Enumerate the provisions relating to safety of workers under the Factories Act, 1948. (Pages 828-842)
10. Briefly summarise the different provisions of the Factories Act, 1948, for the welfare of workers in a factory. (Pages 845-848)
11. What are the provisions on the Factories Act regarding the fencing of machinery for the safety of workers ? (Page 828)
12. Discuss the provisions in the Factories Act, regarding precautions in case of fire. (Pages 838-840)
13. Discuss the safety measures provided for in the Factories Act, 1948, relating to dangerous machines. (Pages 829-830)
14. What are the precautions stipulated against dangerous fumes in a Factory ? (Pages 836-837)



15. What are the obligations of the employer regarding ; (i) Dust and Fumes (ii) Overcrowding (iii) Creche ? (Pages 823 ; 824 ; 847)
16. Discuss the provisions of the Factories Act relating to artificial humidification. (Pages 823-824)
17. Define the term Certifying Surgeons. What are the duties of Certifying Surgeons ? (Page 821)
18. State the effect of certificate of fitness granted to the adolescent. (Page 854)
19. Discuss the rules relating to Approval, Licensing and Registration of factories. What is notice by occupier ? State the contents of the notice by occupier. (Page 818)
20. State the rules regarding annual leave with wages. (Pages 857-859)
21. What are the working hours for children in a factory ? (Page 855)
22. What are provisions in the Factories Act, 1948, regarding the payment of extra wages for overtime ? (Pages 860-862)
23. Is it compulsory on the employees to do overtime work ? When can it be claimed ? (Pages 860-862)
24. What are the rules regarding the powers of the Inspector of Factories to require medical examination of young person ? (Page 852)
25. Discuss the provisions of the Factories Act regarding employment of women and children in factories. (Pages 853-856)
26. State the provisions regarding employment of young persons.
27. State the law relating to working hours of adults and children employed in a factory. (Pages 849, 855)
28. Explain the provisions relating to notice of periods of work for adults. (Page 851)
29. What is the consequence of double employment of a child under the Factories Act ? (Page 855)
30. What are the restrictions in the Factories Act, 1948, relating to employment of women workers ? (Pages 852-853)
31. What are the restrictions in the Factories Act, 1948, relating to employment of child and women workers ? (Pages 852-853)
32. Problems :
  - (1) The working hours (including the rest interval) of a woman employed in a factory has been fixed from 2 p.m. to 11 p.m. Is this working hour valid ? Give reasons. (Page 852)
  - (2) The manager of a factory asks a worker to work for seventy hours (including overtime) in a particular week. Discuss with reasons whether the worker is bound to work for such long hours in a week. (Page 849)

33. State the provisions of the Factories Act, 1948, relating to registration of factories. (Pages 818-819)
34. Objectives questions. Give short answer :
- (i) Who is a Certifying Surgeon as defined in the Factories Act, 1948 ? (Page 821)
  - (ii) State the circumstances when compensatory holiday will be granted to the workers. (Page 857)
  - (iii) State whether a person under 15 years of age can be appointed in a factory. (Page 853)
  - (iv) Does the Factories Act apply to factories belonging to the Central Government ? (Page 811)
  - (v) What are the working hours for children in a factory ? (Page 853)
  - (vi) Mention the time within which the notice will be sent to the Inspector of Factories in case a new manager is appointed in the factory. (Page 819)
  - (vii) State with reason whether a child of 13 years can be employed in the factory. (Page 853)
  - (viii) Define manufacturing process. (Page 813)

**SOCIAL INSURANCE**

The Employees' State Insurance Act represents a landmark in the sphere of social-welfare legislations in India. The object of the Employees' State Insurance Act is to ensure social insurance by offering certain benefits to employees in case of sickness, maternity, employment injury, disablement etc.

**Reasons**

Persons who can earn income from work (for example, industrial and agricultural workers) find themselves in great difficulty when their earning power is affected by sickness, disablement, maternity, old age or unemployment. It is not possible for workmen individually to make an adequate provision against these risks. Hence they suffer from economic insecurity. The system of social insurance has been developed to eliminate the economic insecurity of the working classes.

Social insurance can be described as a system under which specified groups of people are compulsorily insured against certain specified risks like sickness, disablement or maternity. Whenever any of these contingencies occur, the insured person is paid certain benefits (by cash or otherwise) out of a fund created by contributions from the insured person, his employer, and the State. The coverage, *i.e.*, the persons insured and the contingencies insured against, the rates of contribution and the methods of administering the system, differ from country to country.

As a method of eliminating economic insecurity, social insurance has been found to be highly successful. With a view to adopting the system in India, the Employees' State Insurance Act of 1948 was passed. The Act has been extensively amended in 1966 and 1975.

**Object**

The object of the Employees' State Insurance Act, 1948 is to introduce social insurance in India by gradual stages. The Act creates a statutory corporation, called the Employees' State

Insurance Corporation which is in charge of the scheme of insurance.

The objective of S. 72—See p. 908, para 8.

### APPLICATION OF THE ACT

The Employees' State Insurance Act extends to the whole of India, including the State of Jammu and Kashmir<sup>1</sup>.—Sec. 1(2).

The Act will come into force on such date or dates as the Central Government may decide and different dates may be appointed for different provisions of the Act and for different States or for different parts thereof.—Sec. 1(3).

The Act shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories.—Sec. 1(4).

The appropriate Government may, in consultation with the Corporation and (where the appropriate Government is a State Government, with the approval of the Central Government), after giving six months' notice through the official Gazette, extend the provisions of this Act or any of them to any other establishment or class of establishments industrial, commercial, agricultural or otherwise.—Sec. 1(5).

The insurance scheme contained in the Act has, up till date, been applied to a few selected industries in certain selected localities.

The Act of 1948 was amended by the Amendment Acts of 1966, 1975 and 1984.

### Exemptions

1. A factory or establishment or a class of factories or establishments can be exempted from the operation of the Act. This can be done by the appropriate Government by notification for one year at a time.—Sec. 87.

The following seasonal processes have secured exemption under section 87 of the Act : (i) Redrying unmanufactured leaf tobacco, (ii) Salt manufacture, (iii) Rice milling, (iv) oil mills (provided the process of oiling is subsidiary to any other manufacturing process, and mill has employed less than 50 employees, (v) Ice manufacture and (vi) wool processing with or without cotton pressing and ginning.

<sup>1</sup> Applied to Jammu and Kashmir by an Act of 1970. See p. 5, footnote.

2. The appropriate Government can similarly exempt any persons or class of persons employed in a factory or class of factory from the operation of the Act.—Sec. 88.

3. The appropriate Government may by notification in the official Gazette, and subject to conditions, exempt factories or establishments belonging to the Government or any local authority from the operation of the Act if the employees there are in receipt of benefits substantially similar or superior to the Act.—Sec. 90.

4. The appropriate Government may exempt any employee of any factory, establishment or class of factory and establishment from the operations of the Act, with the consent of the Corporation and notification in the official Gazette.—Sec. 91.

## DEFINITIONS UNDER THE EMPLOYEES' STATE INSURANCE

### Factory

“Factory means any premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952, or a railway running shed.”—Sec 2(12) para 1.

### Seasonal Factory

“A seasonal factory means a factory which is exclusively engaged in one or more of the following processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes.”—Sec. 2(12), para 2.

The term Seasonal Factory, “includes a factory which is engaged for a period not exceeding seven months in a year—

- (a) in any process of blending, packing or repacking of tea or coffee ; or
- (b) in such other manufacturing process as the Central Government may, by notification in the official Gazette, specify.”

## Employee

“Employee” means “any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies.” The term includes (i) persons directly employed by the principal employer, (ii) persons employed by or through an immediate employer, and (iii) persons whose services are temporarily lent or let on hire to an employer.—Sec. 2(9).

The term Employee *includes*, “any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof, or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment.”

The term Employee *does not* include, “(a) any member of the Indian naval, military or air forces; (b) any person—whose wages (excluding remuneration for overtime work) exceed Rs. 1,600 a month.” If a person’s wages are within the aforesaid limits at the beginning of the contribution period, he will be deemed to be an employee till the end of the period, even if his wages exceed the limit in the meantime.

### Case Law :

The Supreme Court has held that the partner of a firm is not an employee of the firm for the purposes of the Act, merely because he gets salary or other remuneration.

*Employees’ State Insurance Corporation v. Ramanuja Match Industries.*<sup>1</sup>

**Apprentices :** When under the terms and conditions of agreement under which apprentices are engaged by a company, they are mere trainees for a particular period for a distinct purpose and the company is not bound to employ them in their work after the training period is over, such apprentices cannot be said to be employed in the work of the company or in connection with the work of the company, more so when they are not given wages within the meaning of that term as defined in Sec. 2(22). Thus an apprentice is not an employee within Sec. 2(9) of the Act.

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<sup>1</sup> L. L. N. 249 (1985)

**Case Law :**

- (1) Such a person remains a learner and is not an employee. It is inherent in the word "apprentice" that there is no element of employment as such in a trade or industry. *Employees' State Insurance Corporation and another v. Tata Engineering & Locomotive Co. Ltd. and another*.<sup>1</sup>
- (2) The definition of "employees" in section 2(9) is an exhaustive one. Employees, who are working in the registered office or head-office of the Company at Calcutta, come within the definition of the Act, even though such employees are not actually working in the factory premises situated at other places. *Sen-Raleigh Ltd. v. E.S.I. and others*<sup>2</sup>; *India Jute Company Ltd. v. E.S.I. and another*.<sup>3</sup>
- (3) Persons employed in the Zonal Offices and Branch Offices of a factory and concerned with administrative work or the work of canvassing sale would be covered by the provisions of Sec. 2(9) of the Act. *Hydrabad Asbestos Cement Products Ltd. v. Employees Insurance Court and another*<sup>4</sup>; *Union Carbide (India) Ltd. v. E.S.I.*<sup>4</sup>; *Food Fats and Fertilisers, Ltd. v. E. S. I.*<sup>4</sup>
- (4) The reach and range of the definition of "employee" in S. 2 (9) is apparently wide and deliberately transcends pure contractual relationships. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. An arrangement was made in between the manager of a cinema hall and a person to run a canteen and a cycle stand in the hall for the better amenities of the customers. Held, the employees of the canteen and the cycle stand will be entitled to get the benefit of E.S.I. *Royal Talkies, Hyderabad and others v. E.S.I.*<sup>5</sup>

**Family :**

"Family" means the spouse and minor legitimate and adopted children dependent upon the insured person and where the insured person is a male, his dependent parents.—Sec. 2(11).

**Insurable Employment**

"Insurable Employment means an employment in a factory or establishment to which this Act applies."—Sec. 2(13A).

**Insured Person**

"Insured Person means a person who is or was an employee in respect of whom contributions are or were payable under this

<sup>1</sup> AIR (1976) Supreme Court 66      <sup>2</sup> AIR (1977) Cal 165

<sup>3</sup> AIR (1977) Cal 258      <sup>4</sup> AIR (1978) Supreme Court 256

<sup>5</sup> AIR (1978) Supreme Court 1478

Act and who is, by reason thereof, entitled to any of the benefits provided by this Act.”—Sec. 2(14).

### Managing Agent

“Managing Agent means any person appointed or acting as the representative of another person for the purpose of carrying on such other person’s trade or business, but does not include an individual manager subordinate to an employer.”—Sec. 2(14A).

### Wages

“Wages means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leaves, lock-out, strike which is not illegal or lay off and other additional remuneration, if any, paid at intervals not exceeding two months but does not include—

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act ;
- (b) any travelling allowance or the value of any travelling concession ;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or
- (d) any gratuity payable on discharge.”—Sec. 2(22).

The term wages, as defined in this Act, includes compensation for lay-off and also bonus. Wages must be a payment for service, given or to be given to the employee by the employer.

### Case Law :

Incentive bonus could be wages within the third part of wages under S. 2 (22) of the Act. The house rent allowance paid by the employer to its workmen under the settlement would constitute ‘wages’ within the meaning of S. 2 (22) of the Act. *Employees’ State Insurance Corpn. Hyderabad v. Andhra Pradesh Paper Mills Ltd., Rajahmundry.*<sup>1</sup>

### Principal Employer

Principal Employer means—

- (a) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier.

<sup>1</sup> AIR (1978) A. P. 18 (Full Bench)



the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named ;

- (b) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department ;
- (c) in any other establishment, any person responsible for the supervision and control of the establishment.—Sec. 2(17).

#### Case Law :

The director of a Company, by virtue of being a director is not principal employer. He is therefore not personally liable to pay employer's contribution under the Act. *Suresh v. Collector of Bombay*.<sup>1</sup>

#### Immediate Employer

Immediate Employer, in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer.—Sec. 2(13).

#### Case Law :

"Work is undertaken by contractors through their labour in their factory, forming preliminary part of the work of the principal factory. Both factories were on the same leased land. Contractors held Immediate Employers" *B. M. Lakshmanamurthy v. The Employees' State Insurance Corporation, Bangalore*.<sup>2</sup>

#### Appropriate Government

Appropriate Government means, in respect of establishments under the control of the Central Government or a railway

<sup>1</sup> Lab. I. C. 1615 (1984)

<sup>2</sup> AIR (1974) Supreme Court 759

administration or a major port or a mine or an oil field, the Central Government, and in all other cases the State Government.—Sec. 2(1).

Rules of the different States and also the Central Regulations provide for the following—Declaration Form ; Temporary Identification Certificate ; Allotment of Insurance Number ; Contribution Cards ; and Identity Card.

### POWERS OF THE CENTRAL GOVERNMENT

The Central Government can give directions to the State Governments as to the carrying into execution of this Act in any State.—Sec. 92.

The Central Government may order such provision and direction, not inconsistent with the Act, to remove difficulties. The order must be published in the official Gazette.—Sec. 99A.

### DUTIES OF EMPLOYER

1. The employer must keep the Contribution Cards under his safe custody. In case of destruction, loss or mutilation, it must be replaced through the Regional Office.

2. The employer must produce all books, Returns, Registers and cards for inspection by an Inspector.—Secs. 44, 45.

3. The employee must be allowed to inspect his card at reasonable hours.

4. The employer must pay employer's and employees' contributions to the local office of State Insurance.

#### Case Law :

The Corporation itself should, in a case where there is omission on the part of the employer to maintain records in accordance with S. 44 of the Act, determine the amount of contributions on the strength of such information as it may collect and can then make the demand under S. 45A. If the employer refuses to comply with the demand so made, the matter can come up before the Employees' Insurance Court under S. 75 of the Act. The Court should give the Corporation a direction to perform its duty where it considers that this should be performed by the Corporation. It cannot decline to perform its own duty because the Corporation has failed to discharge its function. *The E. S. I. Corporation, Bhopal v. The Central Press and another.*<sup>1</sup>

<sup>1</sup> AIR (1977) Supreme Court 1351

### WHO IS AN INSURABLE WORKMAN ?

Section 38 of the Act states that, "Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act." So every "employee" of a "factory or establishment" to which the Act applies is an insurable workman. Definitions of the terms employee and factory have been given above. On the basis of these definitions it can be concluded that an insurable workman is one who is employed directly or through an intermediate employer or is let on hire to an employer. The factory or establishment must be one to which the Act applies. It also follows that the following persons are not insurable and the Act confers no benefit on them :

1. Workers in seasonal factories.
2. Workers in mines, subject to the Mines Act, 1952.
3. Workers in railway running sheds.
4. Members of the naval, military and air forces of the Government.
5. Workmen whose total monthly wages (excluding overtime remuneration) exceed Rs. 1600.

Seasonal factories, mines and railway running sheds [items 1, 2 and 3 above] are not included within the term factory as defined in the Act. Workmen coming under the last two items [4 and 5] are not included within the term employee as defined in the Act.

### REGISTRATION

The amending Act of 1966 provides that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.—Sec. 2A.

### THE EMPLOYEES' STATE INSURANCE CORPORATION

#### Administration

The administration of the scheme of insurance contained in the Act is vested in the Employees' State Insurance Corporation created by Sec. 3 of the Act. The Corporation is a body corporate having perpetual succession and a common seal. It can sue and be sued by its name.

**Members**

According to Sec. 4 of the Act, the Corporation consists of the following members :

- (1) a Chairman to be nominated by the Central Government ;
- (2) a Vice-Chairman to be nominated by the Central Government ;
- (3) not more than five persons to be nominated by the Central Government ;
- (4) one person each representing each of the States in which this Act is in force to be nominated by the State Government concerned ;
- (5) one person to be nominated by the Central Government to represent the Union territories ;
- (6) five persons representing employers to be nominated by the Central Government in consultation with such organisation of employers as may be recognised for the purpose by the Central Government ;
- (7) five persons representing employees to be nominated by the Central Government in consultation with such organisation of employees as may be recognised for the purpose by the Central Government ;
- (8) two persons representing the medical profession to be nominated by the Central Government in consultation with such organisation of medical practitioners as may be recognised for the purpose by the Central Government ;
- (9) three members of Parliament of whom two shall be members of the Lok Sabha and one shall be a member of the Rajya Sabha elected respectively by the two houses ; and
- (10) the Director General of the Corporation, *ex-officio*.

The term of office of members is ordinarily 4 years but nominated members hold office during the pleasure of the Government nominating them.—Sec. 5.

**Authentication**

Orders and decisions of the Corporation are to be authenticated by the signature of the Director General ; other instruments by the signature of the Director General or any other authorised officer of the Corporation.—Sec. 7.

### Principal Officers

The Principal Officers of the Corporation are : (a) a Director General of Employees' State Insurance ; (b) an Insurance Commissioner ; (c) a Medical Commissioner ; (d) a Chief Accounts Officer ; and (e) an Actuary. The Director General is the Chief Executive Officer of the Corporation.—Sec. 16.

The officers are whole time officers and cannot undertake any work unconnected with their office without the sanction of the Central Government or of the Corporation.

### Meetings

Meetings of the Members, the Standing Committee and the Medical Benefit Council, must be held according to the Regulations.—Sec. 20.

### Supersession

The Central Government may supersede the Corporation or the Standing Committee if it persistently makes default in performing its duties or abuses its powers. After supersession the Central Government may appoint new members or create an agency to exercise the powers and functions of these bodies.—Sec. 21.

### Delegation

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner and delegate to them such powers and functions as may be provided by the regulations.—Sec. 25 and Sec. 94A.

### Status

All Officers and the Servants of the Corporation shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.—Sec. 93.

### Powers

#### 1. Staff—

- (i) The Corporation may employ such other staff of officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Government shall be obtained for the creation of any post the maximum monthly salary of which exceeds Rs. 1200.

(ii) The Corporation shall, with the approval of the Central Government, make regulations regarding the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of the members of its staff.—Sec. 17.

2. *Measures for health, etc.*: The Corporation may, in addition to the scheme of benefits specified in this Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.—Sec. 19.

3. *Holding of property*: The Corporation may, subject to such conditions as may be prescribed by the Central Government, acquire and hold property both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and do all things necessary for the purposes for which the Corporation is established.—Sec. 29(1).

4. *Investments*: Subject to such conditions as may be prescribed by the Central Government, the Corporation may from time to time invest any moneys which are not immediately required for expenses properly defrayable under this Act and may, subject as aforesaid, from time to time re-invest or realise such investments.—Sec. 29(2).

5. *Loans*: The Corporation may, with the previous sanction of the Central Government and on such terms as may be prescribed by it, raise loans and take measures for discharging such loans.—Sec. 29(3).

6. *Benefits of staff*: The Corporation may constitute for the benefit of its staff or any class of them, such provident or other benefit fund as it may think fit.—Sec. 29(4).

7. It may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act.

8. It may, under Section 45 A, on the basis of information available to it, by order, determine the amount of contributions payable in respect of employees of a factory or establishment in respect of which no particulars, registers or records are submitted or maintained.

## Duties

1. *Budget estimates* : The Corporation shall in each year frame a budget showing the probable receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the Central Government before such date as may be fixed by it in that behalf. The budget shall contain provisions adequate in the opinion of the Central Government for the discharge of the liabilities incurred by the Corporation and for the maintenance of a working balance.—Sec. 32.

2. *Accounts* : The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.—Sec. 33.

3. *Audit* :

- (i) The accounts of the Corporation shall be audited, at such times and in such manner as may be prescribed, by auditors appointed by the Central Government.
- (ii) The auditors shall at all reasonable times have access to the books, accounts and other documents of the Corporation and may, for the purposes of the audit, call for such explanation and information as they may require or examine any principal or other officer of the Corporation.
- (iii) The auditors shall forward to the Central Government a copy of their report together with an audited copy of the accounts of the Corporation.
- (iv) The cost of the audit as determined by the Central Government shall be paid out of the funds of the Corporation.—Sec. 34.

4. *Annual report* : The Corporation shall submit to the Central Government an annual report of its work and activities.—Sec. 35.

5. *Placement to Parliament* : The annual report, the audited accounts of the Corporation, and the budget as finally adopted by the Corporation shall be placed before and published in the official Gazette.—Sec. 36.

6. *Valuation of assets and liabilities* : The Corporation shall, at intervals of five years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government : Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.—Sec. 37.

## THE STANDING COMMITTEE

### Constitution

Section 8 provides for the creation of a Standing Committee from among the members of the Corporation. The Standing Committee is constituted as follows : a Chairman, nominated by the Central Government ; 3 members of the Corporation nominated by the Central Government ; representatives of 3 of the State Governments ; 3 members from the employer's representatives ; 3 members from the employees' representatives ; one member from the medical representatives ; one member from the representatives elected by the Parliament ; and the Director General of the Corporation, *ex-officio*.

### Powers and Duties

Section 18 provides that subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.

The Standing Committee shall submit for the consideration and decision of the Corporation such cases and matters as may be provided by regulations made in this behalf. The Committee may submit any other case or matter to the Corporation at its discretion.

## MEDICAL BENEFIT COUNCIL

### Constitution

Section 10 provides for the creation of a Medical Benefit Council constituted as follows : (a) the Director General, Health Services, *ex-officio* chairman ; (b) a Deputy Director General, Health Services to be nominated by the Central Government ; (c) the Medical Commissioner of the Corporation, *ex-officio* ; (d) one member from each State in which the Act is in force, to be nominated by the State Government concerned ; (e), (f) and (g) nine members to be nominated by the Central Government in consultation with the appropriate organisations—3 to represent employers, 3 the employees and 3 the medical profession (one of the medical members must be a woman). The Deputy Director General, Health Services and the representatives of the State hold



office during the pleasure of the Government. The other members hold office for a term of four years.

### **Powers and Duties**

The powers and duties of the Medical Benefit Council are laid down in Section 22. The Council may

- (a) advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for the purpose of the grant of the benefits, and other connected matters ;
- (b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance ; and
- (c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

### **RULES REGARDING MEMBERSHIP**

Certain general provisions regarding the Corporation, the Standing Committee and the Medical Benefit Council are enumerated below :

1. *Eligibility* : Outgoing members eligible for re-election or re-nomination.—Sec. 6.

2. *Resignation* : A member may resign, by notice in writing to the Central Government. It will be effected when the resignation is accepted.—Sec. 11.

3. *Cessation of membership* : A member ceases to be a member if he fails to attend three consecutive meetings. But he may be reappointed. A member ceases to be a member if he ceases to represent the persons he was nominated to represent. A member elected by the Parliament ceases to be a member when he ceases to be a member of the Parliament.—Sec. 12.

4. *Disqualifications* : A person is disqualified for being chosen or being a member if (a) he is declared to be of unsound mind by a competent court ; (b) he is an undischarged insolvent ; or (c) if he has directly or indirectly by himself or by his partner any interest in any subsisting contract with, or any work being done for, the Corporation except as a medical practitioner or as shareholder (not director) of a company ; or (d) if before or

after commencement of this Act, he has been convicted of an offence involving moral turpitude.—Sec. 13.

5. *Remuneration* : Members are entitled to receive such fees and allowances as may be fixed by the Government.—Sec. 15.

## **EMPLOYEES' STATE INSURANCE FUND**

### **Insurance Fund**

All contributions paid and moneys received by the Employees' State Insurance Corporation are to be paid into a fund called the Employees' State Insurance Fund. The Corporation is entitled to receive (i) contributions from employers, (ii) contributions from employees and (iii) donations from the Central Government, the State Governments, local authorities etc.—Sec. 26.

### **Purposes for which the Fund may be expended**

Section 28 of the Act provides that subject to the provisions of the Act and of the rules framed under it, the Employees' State Insurance Fund shall be expended only for the following purposes—

- (i) payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith ;
- (ii) payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils ;
- (iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act ;
- (iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families, their families ;

- (v) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation ;
- (vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities ;
- (vii) defraying the cost (including all expenses) of the Employees Insurance Courts set up under the Act ;
- (viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf ;
- (ix) payment of sums under any decree, order or award of defending any civil or criminal proceeding out of any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation ;
- (x) defraying the cost and other charges of instituting or defending any civil or criminal proceeding out of any action taken under this Act ;
- (xi) defraying expenditure, within the limits, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured ; and
- (xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

### **Enhancement of benefits**

At any time when its funds so permit, the Corporation may enhance the scale of any benefit admissible under the Act and the period for which such benefit may be given and provide or contribute towards the cost of medical care for the families of insured persons.—Sec. 99.

## INSPECTORS

Inspectors may be appointed under Sec. 45. They shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations. Inspectors and other authorised officers of the Corporation may exercise the powers stated below for the purpose of checking the correctness of any return submitted to the Corporation or for the purpose of ascertaining whether any of the provisions of the Act has been complied with :

- (a) Require any principal or immediate employer to furnish necessary information.
- (b) Enter the relevant office, establishment etc. and examine account books, documents etc.
- (c) Examine the employer, his agents, servant etc. with respect to any relevant matter.
- (d) Make copies of or take extracts from registers, account books etc.
- (e) Exercise such powers as may be prescribed.

Every principal employer must maintain the Inspection Book. He must produce the book on demand by an Inspector.

## CONTRIBUTIONS

### Definition

The term Contribution means the sum of money payable by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act.—Sec. 2(4).

### Time and Period

Insured workers and their employers are required to pay contributions to the Corporation on a weekly basis. The sum payable by the employer is called the Employer's contribution and the sum payable by the employee is called the Employee's contribution.

The period during which contributions are paid is called the Contribution Period. Its length is fixed by the rules framed under the Act. According to the Act, the Contribution Period must be between 25 and 27 consecutive weeks, or 6 consecutive months; In the case of the first Contribution Period, a longer or shorter period may be fixed by the regulations.—Sec. 2(5).

### Rate of Contribution

The amount of weekly contribution payable in respect of an employee is calculated with reference to his average daily wage. The period in respect of which wages are ordinarily payable, by contract express or implied, or otherwise, is called the Wage Period.

Where the wage period is a day, the average daily wage is the amount of wages earned during the week divided by the number of days worked in that week. For other wage periods, the average daily wage means the total wages earned in the period divided by the number of days worked. Where the employee works on any other basis, the average daily wages means the wages paid on the day the contribution falls due or such day as may be specified.

For the purpose of calculating the rates of contribution, employees are divided into nine classes. The rate of contribution for each class is given in The First Schedule to the Act, e.g. workmen earning between Rs. 3 and Rs. 4 per day have to contribute 50 paise per week. The employer's contribution is approximately twice that of the employee (See Table, p. 911).

### RULES REGARDING CONTRIBUTION

1. *The Employer is responsible for contribution*: The employer is required to transmit to the Corporation both the employer's and the employee's contribution in the manner prescribed by the rules. The contribution payable by the employee can be deducted from his wages by the employer. But the contribution payable by the employer cannot be deducted from the wages of the employee.—Sec. 39(1) & (2).

2. *Time of paying the contribution*: Contributions ordinarily fall due on the last day of the week. Other days may be prescribed for workers employed part of the week or employed under two or more employers during the same week.—Sec. 39(4).

3. *Principal employer to pay the dues of an immediate employer*: Where there is a principal employer and an immediate employer under him, the former is required to pay the contribution in the first instance. He may later on recover the money from the latter.—Secs. 40, 41.

4. *The limit of contribution*: No contribution is payable by the employee if his average daily wage is less than Rs. 6.—Sec. 42(1). (Amendment Act of 1984.)

5. *Liabilities of principal employer*: Contributions, both employer's and employee's are payable by the principal employer for each week in respect of the whole or part of which wages are payable to the employee and not otherwise.—Sec. 42(2).

Where wages are payable for a portion of the week, the employer is liable to pay the full contribution for the week, but can recover the employee's contribution from his wages.—Sec. 42(3).

6. *Framing Regulations*: The Corporation can frame regulations regarding the method of payment of contributions.—Sec. 43.

7. *The Certificate Procedure*: Any contribution payable under this Act may be recovered as an arrear of land revenue.—Sec. 45B.

8. *Priority of Contribution*: Contribution and other payments due under this Act are deemed to be included in the list of debts which have priority over other debts in case of insolvency or winding up.—Sec. 94.

## BENEFITS

The Act provides for six types of benefits to insured workmen : (a) Sickness Benefit (b) Maternity Benefit (c) Disablement Benefit (d) Dependant's Benefit (e) Medical Benefit and (f) Funeral Benefit.—Sec. 46.

Benefits are receivable during the Benefit Period, which is defined as follows. Benefit Period means such period, being not less than 25 but not more than 27 consecutive weeks or 6 consecutive months corresponding to the contribution period as may be specified in the regulations framed under the Act. For the first Benefit Period a shorter or longer period may be fixed.—Sec. 2(2).

The rules regarding each of the aforesaid benefits are stated below.

## SICKNESS BENEFIT

### Definition of Sickness

Sickness means a condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds.—Sec. 2(20).

### **Conditions for Sickness benefit**

The recipient of sickness and disablement benefit must observe the following conditions. (Sec. 64) :

1. He must carry out the instructions of the medical officer or of the medical attendant and must be under medical treatment at a dispensary, hospital, clinic or other institution provided under the Act.

2. While under treatment, he must not do anything which will aggravate, or prejudice the chances of, recovery.

3. He must not leave the area where the medical treatment is provided under the Act.

4. He must allow himself to be examined by any duly appointed officer or a sick visitor authorised by the Corporation.

### **When person eligible for sickness benefit**

A person shall be qualified to claim sickness benefit for sickness occurring during any benefit period, if during the corresponding contribution period, weekly contributions in respect of him were payable for not less than thirteen weeks ;

Provided that a person shall be qualified to claim sickness benefit for sickness occurring during the first benefit period, if during the corresponding contribution period weekly contributions in respect of him were payable for not less than half the number of weeks of that contribution period, ending in that period.—Sec. 47.

The claim for sickness benefit must be certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations specify in this behalf.—Sec. 46(1)(a).

### **The rate of sickness benefit**

The rate of sickness benefit is laid down in Sec. 49 and the first Schedule, to the Act. In a Chart given in the First Schedule, employees have been classified into nine groups according to the wages earned. Against each wage group is laid down what is called the Standard Benefit Rate. For example, for an employee earning between Rs. 8 and Rs. 12 daily the Standard Benefit Rate is Rs. 5 per day. He will receive this amount for sickness, if otherwise qualified. Sec. 49 further provides as follows : An insured person shall not be entitled to sickness benefit for the first two days of sickness except in the case of

a spell of sickness following, at an interval of not more than fifteen days, the spell of sickness for which sickness benefit was last paid. Also sickness benefit shall not be paid to any person for more than fifty-six days in any two consecutive benefit periods. (See Table, p. 911).

### **New Sickness Benefit Rates**

With effect from 1st April 1976, the sickness benefit rate has been increased by 25% from the standard benefit rate. This rate is admissible to all cases of this category which arise on or after that date.

From 1978, the Corporation has taken up a number of steps to provide medical facilities to workers. The sickness benefit period has been raised from 56 days to 91.

### **Sick Leave :**

Scheme of benefits admissible under the Employees' State Insurance Act cannot be said to cover the workmen's demand for sick leave. S 61 of the Act cannot thus be said to be applicable. *Alembic Glass Industries Ltd., Baroda v. The Workmen*<sup>1</sup>.

## **MATERNITY BENEFIT**

### **Definition**

Maternity Benefits are periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations.—Sec. 46(1)(b).

“Confinement” means labour resulting in the issue of a living child, or labour after 26 weeks of pregnancy resulting in the issue of a child, whether alive or dead.—Sec. 2(3). The term “miscarriage” as defined in this Act does not include any miscarriage, the causing of which is punishable under the Indian Penal Code.—Sec. 2(14B).

### **Claim**

An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur in a benefit period if during the corresponding contribution period,

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<sup>1</sup> AIR (1976) Supreme Court 2091



weekly contributions in respect of her were payable for not less than 13 weeks. But benefit can be claimed during the benefit period, if contributions were payable for half the number of weeks of the corresponding contribution period.—Sec. 50(1)

To obtain maternity benefit, the insured woman must get certificates of pregnancy, of the expected date of confinement and of actual confinement and send them to the Local Office to which she is attached.

### **Rate and Amount**

The daily rate of maternity benefit is twice the Standard Benefit Rate as given in the Chart in the First Schedule. Thus an insured woman in the wage group Rs. 8 to Rs. 12 will get Rs. 10 daily.—First Schedule, para 5. (See Table, p. 911.)

The insured woman is entitled to receive benefit for all days on which she does not work for remuneration during a period of twelve weeks of which not more than six shall precede the expected date of confinement. If the insured woman dies during her confinement or within six weeks thereafter, leaving the child, maternity benefit shall be paid during the whole of the period. If the child dies, maternity benefit up to and including the date of the death of the child shall be paid to a person nominated by the woman for the purpose. If there is no nominee, the money is to be paid to her legal representative.—Sec. 50(2).

In case of miscarriage, the insured woman will get, on production of necessary proof, maternity benefit at the usual rate for all days during which she does not work for remuneration during a period of six weeks immediately following the date of her miscarriage.—Sec. 50(3).

In case of sickness arising out of pregnancy, confinement, premature birth or miscarriage maternity benefit is payable, subject to the usual rules, for an additional period not exceeding one month.—Sec. 50(4).

### **DISABLEMENT BENEFIT**

When an insured person is disabled by an injury suffered during employment, he is entitled to receive benefits. The rate of benefit differs according to the nature of disablement. Definitions of the terms used in this connection and the rules relating to disablement benefit are given in the next page.

## Employment Injury

Employment Injury means a personal injury to an employee caused by accident or an occupational disease arising *out of and in the course of* his employment<sup>1</sup>, being an insurable employment, whether the accident occurs or occupational disease is contracted within or outside the territorial limits of India.—Sec. 2(8).

*Presumption* : For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.—Sec. 51A.

*Actions in breach of regulations etc.* : Accidents happening while the insured worker is acting in breach of regulations, or contrary to the law applicable to him or without instructions, come within the definition of the term Employment Injury, if (a) the accident would have been deemed to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer and (b) the act is done for the purpose of and in connection with the employer's trade or business.—Sec. 51B.

*Accidents while travelling in employer's transport* : If an accident takes place while an insured person, with the implied or express, permission of his employer, is travelling as a passenger by any vehicle to or from his place of work shall be deemed to arise out of and in the course of his employment, notwithstanding the fact that he is under no obligation to his employer to travel by that vehicle. But this rule shall be applied under such conditions, if,

- (a) the accident would have been deemed so to have arisen had he been under such obligation, and
- (b) at the time of the accident, the vehicle (i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and (ii) is not being operated in the ordinary course of public transport service. The term Vehicle includes also a vessel and an aircraft.—Sec. 51C.

*Accidents while meeting emergency* : If an accident happens to an insured person in or about any premises at which he is

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<sup>1</sup> See Ch. 5, Workmen's Compensation Act, for case laws regarding the phrases "out of" and "in the course" of employment.

for the time being employed for the purpose of his employer's trade or business he shall be deemed to *arise out of and in the course of his employment*, provided it happens, while he is taking steps on an actual or supposed emergency at those premises,

- (i) to rescue, succor or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or,
- (ii) to avert or minimise serious damage to property.—

Sec. 51D.

**Occupational Diseases :** Some employments tend to produce particular kind of diseases. For example, cancer of the skin occurs to workers handling tar, pitch etc. Such diseases are called Occupational Diseases. They are considered employment injuries and the sufferers are given disablement benefits. The Third Schedule to the Act contains a list of employments and the corresponding occupational disease. Sec. 52A provides for additions to the list by notification.

### **Temporary Disablement**

Temporary Disablement means a condition resulting from an employment injury which requires medical treatment and renders an employee as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury.—Sec. 2(21).

### **Permanent Partial Disablement**

This means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. Every injury specified in Part II of Second Schedule to the Act shall be deemed to result in permanent partial disablement. (*Example* : Loss of one eye, the other being normal).—Sec. 2(15A).

### **Permanent Total Disablement**

This means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.—Sec. 2(15B).

Part I of the Second Schedule to the Act contains a list of injuries which are deemed to produce permanent *total* disablement e.g., loss of both hands or both eyes. Part II of the same Schedule

contains a list of injuries which are deemed to result in permanent *partial* disablement. In the case of Part II injuries the Schedule lays down what is the percentage loss of earning capacity in each case of injury. For example if one eye is lost, the other being normal, the employee will be deemed to have lost 40% of his earning capacity. If, however, the employee suffers from two or more injuries and the sum total of the loss of earning capacity amounts to 100% or more, he is deemed to have permanent *total* disablement. For example, loss of one eye (40% loss) together with loss of a hand (60% loss) amounts to permanent total disablement, although either of these injuries by itself would only be permanent partial disablement.

### **The Rates of Disablement Benefit**

The First Schedule to the Act states what is the daily Standard Benefit Rate for each wage group of workers. For example, Rs. 5 daily is the Standard Benefit Rate for workers in the wage group Rs. 8 to Rs. 12 (See Table, p. 911). Twentyfive per cent more than the Standard Benefit Rate (rounded off to next highest 5 P.) is the Full Rate of Disablement Benefit. Thus, for the wage group mentioned above, the Full Rate of Disablement Benefit is Rs. 5 plus 25% of Rs. 5 = Rs. 6.25.

For temporary disablement and for permanent total disablement, the insured person gets benefit at the Full Rate as defined above. For permanent partial disablement, the rate of benefit is proportional to the degree of disablement or loss of earning capacity. Thus, loss of one eye is deemed to produce 40% loss of earning capacity and the rate of benefit in this case is 40% of the Full Rate. If two or more injuries are sustained, the percentage losses are to be added together and benefit given on the basis of the total loss of earning capacity. But the insured person will not in any case get more than the Full Rate. For injuries not mentioned in the Second Schedule, the loss of earning capacity is to be calculated according to the regulations framed under the Act.

### **Disablement Benefit**

Benefit for temporary disablement is payable only when the disablement is for not less than 3 days, excluding the day of accident.—Sec. 51.

Disablement Benefit is payable from the first day of disablement. In case of permanent disablement, the payment continues for life. In cases of temporary disablement it continues so long as the disablement lasts. There is no condition of previous contribution.

Notice of injury must be given to the employer by the injured employee or any of his friends or relatives. The employer is required to record the notice in an Accident Book to be kept by him and to send a report of the accident to the nearest Local Office of the Corporation and the nearest dispensary. The injured employee must obtain a medical certificate from the Medical Insurance Officer who attends him for treatment.

The rate of disablement benefit can be reviewed subsequently because the degree of disablement may change in course of time.—Sec. 55.

#### **Increase of pension rates in 1978**

The Employees State Insurance Corporation has increased the pension by 20% of those permanently disabled, and to the dependents of those insured, who had died owing to injuries received while on duty on or before March 31, 1974. It has also enhanced the pension by 10% if disablement or death has occurred between April 1, 1974 and March 31, 1976. These payments are payable from October 1, 1977.

**Disablement Question.** Any question—

- (a) whether the relevant accident has resulted in permanent disablement ; or
- (b) whether the extent of loss of earning capacity can be assessed provisionally or finally ; or
- (c) whether the assessment of the proportion of the loss of earning capacity is provisional or final ; or
- (d) in the case of provisional assessment, as to the period for which such assessment shall hold good ;  
shall be determined by a medical board constituted in accordance with the provisions of the regulations and any such question shall hereafter be referred to as the "disablement question".—Sec. 54.

The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a medical board

for determination of the disablement question and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.—Sec. 54A(1).

If the insured person or the Corporation is not satisfied with the decision of the medical board, the insured person or the Corporation may appeal in the prescribed manner and within the prescribed time to—

- (a) the medical appeal tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees' Insurance Court, or
- (b) the Employees' Insurance Court directly.—Sec. 54A(2).

## DEPENDANTS' BENEFIT

### Definition of Dependant

Dependant means any of the following relatives of a deceased insured person.—Sec. 2(6A) :

- (a) a widow, a minor legitimate or adopted son, unmarried legitimate or adopted daughter or a widowed mother ; and
- (b) if wholly dependent on the earnings of the insured persons who has attained the age 18 years and is infirm ;
- (c) if wholly or in part dependent on the earnings of the insured person at the time of his death,—(i) a parent other than a widowed mother, (ii) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted illegitimate if married and a minor or if widowed and a minor, (iii) a minor brother or an unmarried sister of a widowed sister if a minor, (iv) a widowed daughter-in-law, (v) a minor child or a pre-deceased son, (vi) a minor child of a pre-deceased daughter where no parent of the child is alive, or (vii) a paternal grandparent if no parent of the insured person is alive.

### Rules regarding Dependant's Benefit

If an insured person dies as a result of an employment injury his dependants are entitled to get benefit, whether the deceased

was getting disablement benefit or not. The benefit given to the dependants is equal to what the employee would have got had he been alive with a temporary disablement. This money is distributed among the dependants in the following manner :

- (a) To the widow during her life or until remarriage an amount equal to  $\frac{3}{5}$ ths of the full rate. If there are two or more widows, the benefit is equally divided among them.
- (b) To each legitimate or adopted son an amount equal to  $\frac{2}{5}$ ths of the full rate until he attains 11 years of age. If any such son is infirm and wholly dependent on the earnings of the deceased, the benefit shall continue to be paid while the infirmity lasts.
- (c) To each legitimate or adopted unmarried daughter an amount equal to  $\frac{2}{5}$ ths of the full rate until she attains 18 years of age or is married whichever is earlier. If any such daughter is infirm and wholly dependent on the earnings of the deceased, the benefit shall continue to be paid while the infirmity lasts and she continues to be unmarried.

If the sum-total of the benefits to the dependants distributed as above exceeds the full rate, the share of each dependant will be proportionately reduced, so that the total payment does not exceed the full rate of temporary disablement benefit.

In case the deceased person does not leave a widow or legitimate or adopted child, dependants' benefit shall be payable to the other dependants as follows :

- (a) to a parent or grandparent for life at an amount equivalent to three-tenths of the full rate and if there are two or more parents or grandparents, the amount payable to them shall be equally divided among them ;
- (b) to any other male dependant, until he attains 18 years of age, and female dependant, until she attains 18 years of age or until marriage whichever is earlier or if widow until she attains 18 years of age—at an amount equivalent to two-tenths of the full rate. But if there are more than one female dependant under this clause, the amount payable shall be equally divided among them.

The aforesaid rules regarding dependants' benefit are contained in Sec. 92 and paras 8 and 9 of the First Schedule to the Act.

For obtaining dependants' benefit, a claim must be submitted to the appropriate Local Officer, either jointly or severally by the dependants, in the prescribed form, together with the Death Certificate from the Medical Insurance Officer.

Any decision awarding dependants' benefit under the Act may be reviewed subsequently and the benefit given may be continued, increased, reduced or discontinued. The grounds of review are non-disclosure or misrepresentation of a material fact, any birth, death, marriage, remarriage, attainment of the age of 18 years by a claimant etc.—Sec. 55A.

### **MEDICAL BENEFIT**

Sections 46(1)(e) and 56 to 58 of the Act provide that medical benefit may be given to an insured employee in the form of outpatient treatment (in a hospital, dispensary, clinic or any other institution) or by a visit at his home or as in-patient in a hospital or any other institution. Medical benefit may be extended to the family of an insured person. (Definition of Family—See p. 881).

Arrangement for the provision of medical benefit under the Act will be made by the State Governments and the standard and scale of such benefits will be determined by agreement between the Corporation and the State Governments.

An insured person will be entitled to claim medical benefit during any week for which contributions are payable by him or in his behalf or for which he is qualified to claim sickness benefit or maternity benefit or during which he is in receipt of disablement benefit for temporary disablement. For obtaining medical benefit an employee must present himself at the appropriate dispensary with his identity card. Scale of medical benefit. An insured person and his family (where medical benefit is extended to his family) shall be entitled to get medical benefit only of such kind and on such scale as may be provided by the State Government or the corporation.—Sec. 57.

Sec. 59 makes provision for the establishment and maintenance of hospitals, dispensaries and other medical and surgical services by the Corporation.

### **FUNERAL BENEFIT**

The amending Act of 1997 provides for the payment of a Funeral Benefit. When an insured person dies the Corporation



will contribute towards his funeral expenses a sum not exceeding Rs. 1000. The claim for such payment must be made within three months of the death of the person or within such extended time as may be allowed. The payment will be made to the eldest surviving member of the family of the deceased. Where the deceased had no family or was not living with his family at the time of his death the payment will be made to the person who actually incurs the funeral expenditure.—Sec. 46 (2)(f).

### **RULES REGARDING BENEFIT**

There are certain general provisions regarding benefits. They are enumerated below :

#### **1. Review**

The decisions of the Medical Board and the Medical Appeal Tribunal can be reviewed.—Sec. 55.

#### **2. Transfer or assignment**

The right to receive any payment of any benefit is not transferable or assignable. No cash benefit is liable to attachment or sale in execution of a decree or order.—Sec. 60.

#### **3. Double Benefits**

- (a) A person entitled to receive benefit under this Act shall not be entitled to receive benefit under any other Act.—Secs. 61 and 53.
- (b) No person is entitled to receive sickness, maternity or disablement benefit for any day on which he works and receives wages.—Sec. 63.
- (c) Benefits of the following kinds cannot be combined :  
(1) sickness benefit and maternity benefit (2) sickness benefit and temporary disablement benefit, and (3) maternity benefit and temporary disablement benefit. If a person is entitled to receive more than one of the above benefits he must choose which to receive.—Sec. 65.

#### **4. Arrears**

Arrears of employers' contribution can be recovered as arrears of land revenue, with penalties in certain cases.—Sec. 68.

#### **5. Excessive Sickness**

Where the incidence of sickness among insured persons is excessive because of the neglect or non-observance of health

regulations by the owner of a factory or of the residential place of the worker, the Corporation is entitled to receive compensation from such owner. The amount of such compensation is determined by a summary procedure under the regulations.—Sec. 69.

### 6. Repayment of benefit

Benefits improperly received by an insured person are repayable and recoverable.—Sec. 70.

### 7. Death of insured person

Cash benefits payable to a person who has died are to be paid to the person's nominee, or if there is no nominee to the person's legal representative.—Sec. 71. Benefit is payable up to and including day of death.

### 8. Bar to reduction of wages or discontinuance of benefit

An employer must not reduce, directly, or indirectly the wages of a workman on the ground that he is paying an insurance contribution. He must not reduce or discontinue any benefit which the workman was receiving under the contract of service except in cases provided for in the regulation.—Sec. 72.

*Objective* : The object of S. 72 Employees' State Insurance Act is evidently to discourage employers from using the benefits provided under the E.S.I. Act as an excuse or justification for reducing or discontinuing the benefits available to the workmen under their Conditions of service on the ground of similarity between the two types of benefits.

Under the proviso to Regulation 97 the employer can deduct wages of those days only from the employees' sick leave wages for which the workman has actually availed of the sickness benefits. A workman cannot use the benefits under the E.S.I. as substitutes for the benefits which he already avails out of the conditions of his service. *Bareilly Holdings Ltd. v. Their Workmen*.<sup>1</sup>

### 9. Dismissals etc. are invalid

No employer can dismiss, discharge, reduce or otherwise punish an employee during the period he is receiving sickness benefit, maternity benefit or a temporary disablement benefit.—Sec. 73.

<sup>1</sup> AIR (1979) Supreme Court 1211

## EMPLOYEES' INSURANCE COURT

The Act empowers the State Governments to establish Courts for the purpose of deciding questions and disputes arising from the insurance of workmen. Such courts are known as Employees' Insurance Courts.—Secs. 74-83

*Constitution of Employees' Insurance Court*: The State Government, by notification in the Official Gazette, shall appoint the judges of the Employees' Insurance Court and their jurisdiction.—Sec. 74.

*Matters to be decided by Employees' Insurance Court (Sec. 75)*: The Court shall decide any question or dispute regarding the following :

- (a) Whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
- (b) the rate of wages or average daily wages of an employee for the purposes of this Act, or
- (c) the rate of contribution payable by a principal employer in respect of any employer, or
- (d) the person who is or was the principal employer in respect of any employee, or
- (e) the right of any person to any benefit and as to the amount and duration thereof, or
- (ee) any direction issued by the Corporation under Section 55A on a review of any payment of disablement or dependants' benefits ;
- (f) the actual present value of the periodical payment referred to in Section 66, or
- (g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act.

The Employees' Insurance Court shall decide the following claims :

- (a) claim for the recovery of contributions from the principal employer ;

- (b) claim by a principal employer to recover contributions from any immediate employer ;
- (c) claim under Section 66 or 67 made by the Corporation against the employer or other person liable thereunder ;
- (d) claim against a principal employer under Section 68 ;
- (e) claim under Section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereof ; and
- (f) any claim for the recovery of any benefit admissible under this Act. [Sec. 75(2)].

*Institution of proceedings, etc.* : The State Government shall make rules regarding the proceedings of the Court. The proceedings before the Court shall commence by application. Such an application shall be in such form and shall contain such particulars and accompanied by such fee as may be prescribed by rules framed by State Government.—Secs. 76 and 77.

*Powers of Employees' Insurance Courts* : The Employees' Insurance Court has all the powers of a Civil Court. It shall follow such procedure as may be prescribed by rules framed by the State Government. An order of the Court shall be enforceable as if it was a decree of the Civil Court.—Sec. 78(u).

*Appearance* : Legal Practitioner or an office of a Registered Trade Union can appear or act, before an Employees' Insurance Court authorised in writing by the applicant.—Sec. 79.

*Benefit* : A benefit under the Act is not admissible unless he has made a claim for such benefit in accordance with the regulations made in this behalf, within 12 months after the claim became due. The Court can allow claim after the time is over, if the Court is satisfied that there was reasonable excuse for the delay.—Sec. 80.

*Reference* : An Employees' Insurance Court may submit any question of law for the decision of the High Court.—Sec. 81.

*Appeal* : An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law. No other appeal shall lie from an order of an Employees' Insurance Court. The period of limitations for an appeal under this section shall be 60 days. The provisions of Sections 5 and 12 of the Indian Limitation Act, 1908, shall apply to appeals under this section.—Sec. 82.

*Stay* : Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that court may, and if so directed by the High Court shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.—Sec. 83.

**Table : First Schedule**  
(See pp. 894, 896, 898, 901-902)

Average Daily Wages		Employee's	Employer's	Total Con-	Corresponding
Above	Below	weekly	weekly	tribution	daily standard
		contri-	contri-	Col. 2+3	benefit rate
		butions	butions		
1	2	3	4	5	
Rs.	Rs.	Paise	Paise	Paise	Paise
1. Below	2	nil	75	75	100
2. 2	3	40	80	120	130
3. 3	4	50	100	150	175
4. 4	6	70	140	210	250
5. 6	8	95	190	285	350
6. 8	12	125	250	375	500
7. 12	16	175	350	525	700
8. 16	24	275	550	825	1000
9. 24 and above		375	750	1125	1500

### PENALTIES<sup>1</sup>

#### Punishment for false statement (Section 84)

Whoever, for the purpose of causing any increase in payment or benefit under this Act, or for the purpose of causing any payment or benefit to be made where no payment or benefit is authorised by or under this Act, or for the purpose of avoiding any payment to be made by himself under this Act or enable any other person to avoid any such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment up to three months, or fine up to Rs. 500 or both.

<sup>1</sup> In 1975, The Employees' State Insurance Act was amended, adding the penal clauses of Section 85 and new sections 85A, 85B, 85C and 93A. By the same amendment a para was added to the Section 405 of the Indian Penal Code.

**Punishment for failure to pay contributions etc. (Section 85)**

If any person—

(a) fails to pay any contribution which under this Act he is liable to pay, or

(b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or

(c) in contravention of Section 72 reduces the wages or any privileges or benefits admissible to an employee, or

(d) in contravention of Section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or

(e) fails or refuses to submit any return required by the regulations, or makes a false return, or

(f) obstructs any inspector or other official of the corporation in the discharge of his duties, or

(g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided, he shall be punishable—

(1) where he commits an offence under clause (a), with imprisonment for a term which may extend to six months but—

(a) which shall not be less than three months in case of failure to pay the employees' contribution which has been deducted by him from the employee's wages ;

(b) which shall not be less than one month, in any other case, and shall also be liable to fine which may extend to two thousand rupees ;

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment ;

(2) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

**Enhanced punishment in certain cases after previous conviction (Section 85A)**

Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence shall, for

every such subsequent offence, be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees or with both :

Provided that where such subsequent offence for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for term which may extend to one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees.

#### **Power to recover damages (Section 85B)**

(1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer such damages not exceeding the amount of arrears as it may think fit to impose :

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard.

(2) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue.

#### **Power to Court to make orders (Section 85C)**

(1) Where an employer is convicted of an offence for failure to pay any contribution payable under this Act, the court may, in addition to awarding any punishment, by order, in writing require him within a period specified in the order (which the court may if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution in respect of which the offence was committed.

(2) Where an order is made under sub-section (1) the employer shall not be liable under this Act in respect of the contribution of the offence during the period or extended period, if any, allowed by the Court. Where on the expiry of such period or extended period, as the case may be, the orders of the Court have not been fully complied with, the employer shall be deemed to have committed a further offence. According to the law, he shall be punishable with imprisonment in respect thereof under Section 85 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with.

**Prosecutions (Section 86)**

- (1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner or of such other officer of the corporation as may be authorised in this behalf by the Central Government.
- (2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try to any offence under this Act.
- (3) No court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof, within 6 months of the date on which the offence is alleged to have been committed.

**Amendment of Section 405 of the Indian Penal Code**

A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 shall be deemed to have been entrusted with the amount of the contribution so deducted by him if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law aforesaid.

**TRANSFER OF ESTABLISHMENT****Liability in case of transfer of establishment (Section 93A)**

Where an employer, in relation to a factory or establishment transfers that factory or establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the period up to the date of such transfer :

Provided that the liability of the transfers shall be limited to the value of the assets obtained by him by such transfer.



## EXERCISES

1. Explain the following terms as used in the Employees' State Insurance Act, 1948 :
  - (a) Seasonal Factory. (Page 879)
  - (b) Employee. (Page 880)
  - (c) Family. (Page 881)
  - (d) Employment injury. (Page 900)
  - (e) Dependant. (Page 904)
  - (f) Immediate employer. (Page 883)
  - (g) Principal employer. (Page 882)
  - (h) Insurance Fund. (Page 892)
  - (i) Disablement benefit. (Page 899)
  - (j) Dependant's benefit. (Page 904)
  - (k) Factory. (Page 879)
  - (l) Insured person. (Page 881)
2. What do you mean by Employees' State Insurance Fund and how is it constituted? What are the purposes for which the said fund may be expended? (Pages 892-894)
3. State the purposes of the Employees' State Insurance Fund. (Pages 892-893)
4. State what is meant by "insurance fund" as mentioned in the Employees' State Insurance Act. What are the purposes for which the fund may be expended? (Pages 892-893)
5. Give an outline of the composition and functions of the Employees' State Insurance Corporation. (Pages 885-889)
6. What is the term of office of members of the Corporation? (Pages 886)
7. State the rules in the Employees' State Insurance Corporation regarding the following—Constitution, Term of office of the members and Re-election and Eligibility for Re-nomination. (Pages 885-890)
8. How the Medical Benefit Council is constituted? (Page 890)
9. How the Employees' State Insurance Corporation and the standing committee are constituted? (Page 890)
10. What are the different types of benefits provided by the Employees' State Insurance Act, 1948? (Page 896)
11. Is the right to receive payment of any benefit under the Act transferable or assignable? (Page 906)
12. Are any of the benefits payable under the Employees' State Insurance Act liable to attachment in execution of any decree of a Court? (Pages 909-911)
13. If the injured employee dies, are his dependants entitled to benefits? (Pages 904-906)

14. Who are entitled to get dependant's benefit in case of death arising out of employment injury ? (Page 904)
15. When may a person become eligible for sickness benefit under the Employees' State Insurance Act ? (Pages 896-898)
16. What are the provisions of the Employees' State Insurance Act, 1948 regarding disputes and claims ? (Pages 909-911)
17. To whom is disablement benefit payable under Employees' State Insurance Act ? (Page 899)
18. Who are entitled to get dependants' benefit in case of death arising out of employment injury ? (Pages 899)
19. What are the Medical and Maternity benefits to which the insured persons are entitled under the said Act ? (Pages 898, 906)
20. Can an insured woman be entitled to sickness benefit and maternity benefit together for the same period ? (Pages 896, 898)
21. What are the different kinds of benefits to which injured persons are entitled under the Employees' States Insurance Act, 1948. (Page 896)
22. State the rules regarding payment of contribution under the Act. Is an employee earning Rupee one per day liable to pay contribution under the said Act ? (Pages 895-897)
23. Discuss the powers of Employees' Insurance Court under the Employees' State Insurance Act, 1948. What matters can this Court decide ? (Pages 909-911)
24. Describe the benefits available to an employee in case of sickness or disablement under the Employees' State Insurance Act, 1948. (Pages 896-898, 899)
25. Under Section 46-(a) Who are entitled to certain benefits and (b) what are these benefits ? (Page 898)
26. State the purposes for which the Employees' State Insurance Fund can be expended. (Pages 892-893)
27. (a) Enumerate the matter to be decided by Employees' Insurance Court. (Pages 909-911)  
(b) Discuss the condition to be observed by the recipients of sickness or disablement benefit. (Pages 896-899)
28. Discuss the provisions of the Employees' State Insurance Act, 1948 relating to sickness benefit. (Pages 896-898)
29. How is the Employees' State Insurance Corporation constituted ? (Page 885)
30. State the circumstances under which the Corporation can claim from the owner of the factory the amount of extra expenditure incurred by the Corporation as sickness benefit under the Employees' State Insurance Act, 1948. (Pages 896-898)

31. Objective questions. Give short answers.

- (i) What is meant by "total disablement" as per Employees' State Insurance Act, 1948 (Pages 901-902)
- (ii) State the exact number of persons to be sent from the Parliament : to act as members of the Employees' State Insurance Corporation. (Page 885)
- (iii) What is meant by "Occupational disease" as per Employees' State Insurance Act, 1948 ? (Page 869)
- (iv) What is the term of office of members of the Corporation ? (Page 886)
- (v) Are any of the benefits payable under the Employees' State Insurance Act liable to attachment in execution of any decree of a Court ? (Pages 909-910)
- (vi) Can an insured woman be entitled to sickness benefit and maternity benefit together for the same period ? (Pages 907-908)
- (vii) Who is an insured person according to be the Employees' State Insurance Act ? (Pages 881-882)

**Object**

Under the English Common Law a suit for damages for a personal injury can only be brought by the person injured. If he dies as a result of injury, the right to sue does not pass on to his heirs or legal representatives. This principle is known as, "actio personalis moritur cum persona" ("A personal action dies with the person injured"). This rule resulted in much hardship to poor persons dying from accidents. This rule was modified in England by the Fatal Accidents Act of 1846. The Indian Act is based on the English Act. This enables certain heirs of the deceased person to sue for damages when death is caused by an actionable wrong.

**Application**

The Fatal Accidents Act, (XIII of 1855) applies to the whole of India, including Jammu and Kashmir<sup>1</sup>.—Sec. 1.

*Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong* : Whenever a death of a person is caused by wrongful act, neglect or default a suit for damages can be brought by the executor, administrator or legal representative of the deceased. Such a suit must be for the benefit of wife, husband, parents and child, if any, of the deceased. In every such action the Court may give such damages as it may think proportional to the loss resulting from such death to the parties respectively. The amount so recovered, after deducting all costs and expenses, shall be divided amongst the parties as the Court will decide.—Sec. 1A.

The measure of damages is the actual pecuniary loss suffered, but reasonable expectation of a pecuniary benefit must be taken into account. *Taff Vale Railway Company v. Jenkins*<sup>2</sup> ; *Secretary of State v. Gopal Singh*<sup>3</sup>. In estimating the amount of damages the Court must take into account the chances of life, the chances of any improved conditions, and the standard of living of the dependent family. *Nanibala v. Auckland Jute Company*<sup>4</sup>. No

<sup>1</sup> See p. 5, footnote

<sup>3</sup> 20 I. C. 425

<sup>2</sup> (1913) A. C. 1

<sup>4</sup> 52 Cal. 602

compensation can be allowed for mental sufferings. No sum can be awarded for ceremonial or funeral purposes. *Narayan Jetha v. Commissioners and Corporations of Bombay*.<sup>1</sup>

*Not more than one suit to be brought. Claim for loss to the estate may be added*: Not more than one action or suit shall be brought for, and in respect of the same subject matter of complaint.—Sec. 2.

*Plaintiff shall deliver particulars etc.*: The plaintiff shall give full particulars for the person or persons for whom and on behalf of the action or suit shall be brought and of the nature of the claim in respect of which damages shall be sought to be recovered.—Sec. 3.

*Interpretation clause*: The terms used above are interpreted as follows—“person” includes bodies politic and corporate; “parent” include father and mother; “child” includes son, daughter, grandson, grand daughter, step son and step daughter.—Sec. 4.

*Calculation of damages*: As a mode of calculation of damages in favour of the parents on account of the death of their minor child in a motor (truck) accident, the guiding principles are: Firstly, the parents are entitled to recover the cash value of the services of the deceased minor. Secondly, they are further entitled to have compensation for the loss of pecuniary benefits that can reasonably be expected after the child might have attained the majority.

The capitalised value of the reasonable services rendered to the dependants can be given under Section 1-A, while the award can be made for the loss of fairly happy and healthy life under Section 2. The conditions in a given family of the child should be taken note of. The judicial approach to the death of a child below the age of ten upon proof of normal family conditions is to assess damages within the range of Rs. 5000/- to Rs. 6000/- during the period till about 1970. That is how reasonable desideratum on quantum itself is furnished and once basic facts are established, that would constitute fair quantification. Every case may have, however, its own facts either requiring increase or decrease in this ratio.

Under the scheme of the Fatal Accidents Act the life that is lost has to be treated as “an economic unit”. *Shriram Hari Tambey v. Diwakar Ramchandra Kharabe and others*.<sup>2</sup>

<sup>1</sup> 16 Bom. 254

<sup>2</sup> AIR (1975) Bom. 227

**Object and reasons**

Under the Common Law of England, in civil suits for damages for injuries sustained by workmen, it is open to the employer to plead : (i) *the doctrine of common employment*, by which the employer is not normally liable to pay damages to a workman for an injury resulting from the default of another workman ; and (ii) *the doctrine of assumed risk*, by which an employee is presumed to have accepted risk if it is such that he ought to have known it to be part of the risk of his occupation.

The Employers' Liability Act (Act XXIV of 1938) declares that the above defences of the employers shall not be raised in suits for damages in respect of injuries sustained by workman.

**Defence of common employment barred**

Section 3 of the Act provides that the defence of Common Employment cannot be pleaded when personal injury is caused under any of the following circumstances :

- (a) the omission of the employer (or of anybody in his service) to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business ;
- (b) the negligence of any person in the service of the employer who has been entrusted with any superintendence ;
- (c) the negligence of any person in the service of the employer to whose order and direction the workman had to conform and did conform ; or
- (d) any act or omission of any person in the service of the employer done or made (i) in the normal performance of his duties (ii) in obedience to any rule or bye-law of the employer, or (iii) in obedience to any particular instructions given by any person to whom the employer has delegated authority in that behalf.

**Contracting out**

Section 3A makes void any agreement by which the provisions of Section 3 are contracted out.

**Risk not to be assumed**

Section 4 provides that in any suit for damages, the workman shall not be deemed to have undertaken any risk attaching to his employment unless the employer proves that the risk was fully explained to and understood by the workman and that the workman voluntarily undertook the same.

According to Section 3(a) the employer is bound to maintain good and safe condition of any way, works etc. Some examples are given below : A staircase, *Pegram v. Dixon*<sup>1</sup> ; workshop floor, *Willets v. Watt & Co.*,<sup>2</sup> a 'horse' in the plant, *Yarmonth v. France*.<sup>3</sup>

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<sup>1</sup> (1886) 55 L.J.Q.B. 447

<sup>2</sup> (1892) 2. Q.B. 92

<sup>3</sup> (1887) 19 Q.B.D. 647

**OBJECT AND SCOPE****Application**

The Workmen's Compensation Act (Act VIII of 1923) came into force from 1st July, 1924. It applies to the whole of India, including the State of Jammu and Kashmir.<sup>1</sup> The Act provides for the payment of compensation by certain classes of employers to their workmen, for injury by accidents.

The Workmen's Compensation Act does not apply to factories covered by the Employees' State Insurance Act.

*The Amendment of 1976.* The Workmen's Compensation (Amendment) Act, 1976, was passed with the object of providing suitable scales of compensation for the higher wage levels beyond Rs. 500. The reason is that all wages have been increased. Before the amendment, the Act covered workmen whose wages did not exceed Rs. 500 per month. (See, Schedule, pp. 928-929).

The latest amendment to the Act was made in 1984.

**Defences of the Employer**

Prior to the passing of this Act, the employer was liable to pay compensation only if he was guilty of negligence. Even in case of proved negligence, the employer could get rid of his liability by using any of the following defences :

1. *The Doctrine of Assumed Risks* : If the employee knew the nature of the risks he was undertaking when working in a factory, the employer had no liability for injuries. The court assumed in such case that the workman had voluntarily accepted the risks incidental to his work. The doctrine followed from the rule *Volenti Non Fit Injuria*, which means that one, who has volunteered to take a risk of injury, is not entitled to damages if injury actually occurs.

2. *The Doctrine of Common Employment* : Under this rule, when several persons work together for a common purpose and

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<sup>1</sup> See p. 5, footnote



one of them is injured by some act or omission of another, the employer is not liable to pay compensation for the injury.

3. *The Doctrine of Contributory Negligence* : Under this rule, a person is not entitled to damages for injury if he was himself guilty of negligence and such negligence contributed to the injury.

The three aforesaid defences and the rule "no negligence no liability" made it almost impossible for an employee to obtain relief in cases of accident. The Workmen's Compensation Act of 1923 radically changed the law. According to this Act, the employer is liable to pay compensation irrespective of negligence. The Act looks upon compensation as relief to the workman and not as damages payable by the employer for a wrongful act or tort. Hence contributory negligence by the employee does not disentitle him from relief. For the same reason, it is not possible for the employer to plead the defence of common employment or assumed risks for the purpose of avoiding liability. Thus the Act makes it possible for the workman to get compensation for injuries, unimpeded by the legal obstacles set up by the law of Torts.

### **Two ways of claiming compensation**

An injured workman may, if he wishes, file a civil suit for damages against the employer. Section 3(5) of the Workmen's Compensation Act, however, provides that if such a suit is filed, compensation cannot be claimed under the Act and if compensation has been claimed under the Act, or if an agreement has been entered into between the employer and the workman for the payment of compensation, no suit can be filed in the civil court. Thus the workman has to choose between two reliefs (i) civil suit for damages and (ii) claim for compensation under the Act. He cannot have both.

In a civil suit for damages, it is open to the employer to plead all the defences provided by the law of Torts. Therefore, a civil suit is a risky procedure for a workman and is rarely adopted. The legal position of workmen has, however, been improved by two Acts, viz., The Indian Fatal Accidents Act of 1855 and the Employers' Liability Act of 1938. The provisions of these Acts were summarised in the previous chapters.

## DEFINITIONS UNDER WORKMEN'S COMPENSATION ACT

### Dependant

Section 2(d) gives a list of persons who come within the category of "dependant" of a workman. In ordinary language the dependant of a person is one who lives on his earnings. Under Section 2(d) there are *three* categories of dependants.

1. The following relations are dependants, whether actually so or not—widow, minor legitimate son, unmarried legitimate daughter, a widowed mother.—Sub-sec. (i).

2. The following relations come within the category if any were *wholly* dependant on the earnings of the deceased workman at the time of his death—a son or daughter who has attained the age of 18 years and who is infirm.—Sub-sec. (ii).

3. The following relations are dependants if they were *wholly* or partially so at the time of the workman's death—widower; parent, other than widowed mother; minor illegitimate son; unmarried illegitimate daughter, or a daughter legitimate or illegitimate if married and a minor or if widowed and a minor, a minor brother or an unmarried sister or widowed sister if minor; a widowed daughter-in-law, a minor child from a predeceased son; a minor child from a predeceased daughter where no parent or child is alive; or a paternal grand parent if no parent of the workman is alive.—Sub-sec. (iii).

*Parent, other than widowed mother* : Calcutta High Court held that the term 'step-mother' *does not* include this phrase. *Manada Devi v. Bengal Bone Mill*.<sup>1</sup> But Nagpur High Court held that the term includes an adoptive widowed mother. *Additional Dy. Commissioner Simbhum v. Smt. Lakhmibai Naidu*.<sup>2</sup>

### Minor

Minor means a person who has not attained the age of 18 years.—Sec. 2(ff).

### Employer

Sec. 2(e) provides that the term Employer "includes" the following : (i) any body of persons, whether incorporated or not (ii) any managing agent of an employer (iii) the legal representatives of a deceased employer, and (iv) any person to whom the

<sup>1</sup> AIR (1940) Cal 285

<sup>2</sup> AIR (1945) Nag. 238

services of a workman are temporarily lent or let out, while the workman is working for him. The definition is not exhaustive.

*Examples :*

- (i) The Government hired out some lorries with drivers to a contractor. Held, the contractor was the employer of the lorry drivers with the meaning of the Act. *Krishna Aiyar v. The Superintending Engineer, P.W.D., Madras.*<sup>1</sup>
- (ii) The owner of a boat hired it out to another. The latter engaged the crew. One of the crew died while on duty. The widow of the deceased claimed compensation from the owner of the boat. Held, he was not the employer and not liable to pay compensation. *Malenu v. Narasama.*<sup>2</sup>

### Partial Disablement

Disablement, in ordinary language, means loss of capacity to work or move. Such incapacity may be partial or total and accordingly there are two types of disablement, partial and total. In the Act both types of disablement are further subdivided into two classes, temporary and permanent. By Section 2(1)(g) Temporary Partial Disablement means such disablement as reduces the earning capacity of a workman in *any employment in which he was engaged* at the time of the accident, and Permanent Partial Disablement means such disablement as reduces his earning capacity *in every employment he was capable of undertaking* at that time. The Act is not limited only to physical capacity of disablement, but extends to the reduction of earning capacity as well. *Sukkai v. Hukum Chand Jute Mills Ltd.*<sup>3</sup>

In a case of Partial Disablement it is necessary that (a) there should be an accident, (b) as a result of the accident the workman should suffer injury, (c) which should result in permanent disablement and (d) as a result whereof his earning capacity must have decreased permanently. In the proportion in which his earning capacity has been decreased permanently he is entitled to compensation.

The medical evidence showing loss of physical capacity is a relevant factor but it is certainly not the decisive factor as to the loss of earning capacity. It is the loss of earning capacity that has to be determined. *Commrs. for Port of Cal. v. A. K. Ghosh.*<sup>4</sup>

<sup>1</sup> I.L.R. (1949) Mad. 578

<sup>2</sup> (1951) M. W. N. 807

<sup>3</sup> AIR (1957) Cal 601

<sup>4</sup> (1972) 76 C.W.N. 639

The type of disablement suffered is to be determined from the facts of the case. But it is provided that every injury specified in Schedule I to the Act shall be deemed to result in permanent partial disablement. The schedule also mentions the percentage loss of earning capacity which is to be presumed in each such case.

*Examples : (From Schedule I)*

<i>Description of Injury</i>	<i>Percentage loss of earning capacity</i>
Loss of both hands	100
Severe facial disfigurement	100
Absolute deafness	100
Loss of thumb	30
Loss of one eye	40
Middle finger of left hand (whole)	14

(There are 54 items listed in the Schedule with percentage loss of earning capacity for each item mentioned.)

### **Total Disablement**

According to Section 2(1) total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity as specified in that schedule against those injuries, amounts to one hundred per cent.

### **Case Law :**

There was a personal injury to a carpenter in course of the employment. His left hand was amputated above the elbow. The Supreme Court of India held that since a carpenter cannot work with one hand his disablement is total and not partial. *Pratap Narain Singh Deo v. Srinivas Sabata and another.*<sup>1</sup>

### **Wages**

Wages include any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by

<sup>1</sup> AIR (1976) Supreme Court 222

the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.—Sec. 2(1)(m).

The definition of wages is important because an employee whose monthly wages exceed Rs. 1000 is not a workman for the purpose of the Act. The Amendment Act of 1984 has abolished this limit.

The definition of wages is not exhaustive. Wages include all payment which can be calculated in terms of money, e.g., ordinary wages, extra payment for overtime, bonus and other inducements in the shape of payment for idle time, free meals, allowances for grain and clothing, free or cheap housing, etc., offered to the workman to enter into a contract with the employer. *Godavari Sugar Mills v. Sakuntala*.<sup>1</sup> But travelling expenses or employer's provident fund contributions are excluded. Local allowance to a workman for cost of living in a particular place forms part of wages. Share of profit or bonus under a profit sharing scheme is wages. *Chitra Tanti v. Tata Iron & Steel Co.*<sup>2</sup> This sub-section read with section 5 indicates that payments made by a third party, e.g., tips by customers to boys in restaurants are not wages. Tips may be included within the terms wages if they were received by the workman with the knowledge of the employer. *Penn v. Spiers & Pond*.<sup>3</sup>

### Monthly Wages

Section 5 of the Act defines "monthly wages" and states the methods of calculating it. "Monthly" wages means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rate). Monthly wages are calculated as follows :

(a) Where the workman was in service for a continuous period of 12 months immediately preceding the accident monthly wages shall be one-twelfth of the total wages due for the last twelve months of the period.

(b) Where the whole of the period of continuous service was less than one month, monthly wages shall be the average monthly amount which during the twelve months immediately preceding the accident was being earned by a workman employed on the

<sup>1</sup> AIR (1948) Bom. 158

<sup>2</sup> AIR (1946) Pat 437

<sup>3</sup> (1908) 1. K. B. 766

same work by the same employer, or if there was no workman so employed, by a workman employed on similar work in the same locality.

(c) In other cases, including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b) the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period.

A period of service is deemed to be continuous which has not been interrupted by a period of absence exceeding 14 days.

### Workman

The definition of the term workman is important because only a person coming within the definition is entitled to the reliefs provided by the Workmen's Compensation Act. "Workman" is defined in Section 2(1)(n) read with Schedule 11 to the Act.

In Schedule II, a list (consisting of 32 items) is given of persons who come within the category of workmen. *Examples* : Persons employed otherwise than in a clerical capacity or in a railway to operate or maintain a lift or a vehicle propelled by steam, electricity or any mechanical power ; person employed otherwise than in a clerical capacity in premises where a manufacturing process is carried on ; seamen in ships of a certain tonnage ; persons employed in constructing or repairing building or electric fittings ; persons employed in a circus or as a diver ; etc.

Subject to the exceptions noted below, the term workman means :

(a) a railway servant as defined in Section 3 of the Indian Railways Act of 1890 who is *not* permanently employed in any administrative, district or sub-divisional office of a railway and *not* employed in any capacity as is specified in Schedule II or

(b) employed in any such capacity as is mentioned in Schedule II.

From 1st April 1976, the limit of monthly wages for purposes of this Act, was raised from Rs. 500 to Rs. 1000. (The Amendment of 1976. See p. 922).

The contract of employment may be expressed or implied, oral or in writing.

The Act provides that the following categories of persons are *not* to be deemed as workmen for the purposes of the Act :

- (a) Persons working in the capacity of a member of the Armed Forces of the Union.
- (b) A person whose employment is of a *casual nature* and who is employed otherwise than for the purposes of the employer's trade or business.

The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of the Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

The State Government has been given power to add to the list in Schedule II any hazardous occupation or specified injuries in such an occupation. The addition may be made by notification in the official Gazette, with not less than 3 months' notice.

There are legal decisions regarding the question who is a workman. The general rule is that there must be the relationship of master and servant between the employer and the workman. *Smith v. General Motor Cab Co.*<sup>2</sup> Workman is a person whom the employer can command and control in the manner of performing the work. *Yewen v. Noakes.*<sup>3</sup> According to Wills,<sup>4</sup> the following points are to be taken into consideration in determining the question whether a person is a workman : (a) the term of engagement (b) the payment of wages (c) the power of control over the work (d) the power to dismiss.

### What is employment of a casual nature ?

Employees of a casual nature, if not employed in the employer's trade or business, do not come within the definition of the term workman as used in the Act.

Generally speaking, casual work is one which is not regular or continuous. A person doing odd jobs was employed by the occupier of a private premises to clean windows. Held, his work was of a casual nature. *Hill v. Begg.*<sup>5</sup> A person officiating in a leave vacancy is not a casual worker. *In the matter of Alam Singh.*<sup>6</sup>

<sup>1</sup> AIR (1938) Bom. 110

<sup>2</sup> (1911) A. C. 188

<sup>3</sup> (1880) 6 Q. B. D. 530

<sup>4</sup> Wills, *Workmen's Compensation Act*

<sup>5</sup> (1908) 2 K. B. 802

<sup>6</sup> AIR (1936) All 690

Whether the employment is for the purpose of the employer's trade or business depends on whether the contract of service entered into by the employer was in his capacity as businessman or in a private capacity. When a coal mine employs workers to dig for coal it is for his trade or business. But a mine owner engaging workers for building his residence, is not engaging them for his trade or business.

A person who does service which is illegal and void cannot be a workman and cannot claim compensation. *Kemp v. Lewis*.<sup>1</sup>

## RULES REGARDING WORKMEN'S COMPENSATION

### When is employer liable to pay compensation ?

Section 3(1) lays down that if personal injury is caused to a workman by accident arising out of and in course of employment, his employer shall be liable to pay compensation.

From the above it follows that the employer is liable when (a) injury is caused to a workman by *accident* and (b) the accident arises *out of and in course of employment*. An occupational disease is deemed to be an injury by accident and the employer is liable to pay compensation. The section itself provides that in certain cases of injury, no compensation is payable.

### What is an accident ?

Lord Macnaughten in *Fenton v. Thorley & Company*<sup>2</sup> defined an accident as "an unlooked for mishap or untoward event which is not expected or designed". Thus a self-inflicted injury is not an accident ordinarily. In *Grime v. Fletcher*<sup>3</sup> a person became insane as a result of accident and then committed suicide. It was held that death was the result of the accident and compensation was awarded. But where insanity was not the direct result of the accident compensation cannot be awarded, e.g., where suicide was due to brooding over the accident. *Withers v. L. B. & S. C. Railways*.<sup>4</sup> A series of tiny accidents, each producing some unidentifiable result and operating cumulatively to produce the final condition of injury, would constitute together an accident to furnish a proper foundation for a claim under the Act. *Chillu Kahar v. Burn & Co. Ltd.*<sup>5</sup> following *Burrell & Sons Ltd. v. Silvage*.<sup>6</sup>

<sup>1</sup> (1914) 3 K. B. 543

<sup>3</sup> (1915) 1 K. B. 734

<sup>5</sup> AIR (1953) Cal 516

<sup>2</sup> (1903) A. C. 443

<sup>4</sup> (1916) 2 K. B. 772

<sup>6</sup> 126 L. T. R. 49 H. L.



### Personal Injury

A personal injury is not necessarily confined to physical or bodily injury. Injury includes psychological and physiological injury such as nervous shock, insanity etc. *Yates v. South Kirkby Collieries*.<sup>1</sup> The injury must be personal. An injury to the belongings of a workman does not come within the Act.

A workman had to go into a heating room and from there to a cooling plant. The changes of temperature caused pneumonia and the workman died. Held, the death was due to personal injury. *The Indian News Chronicle Ltd. v. Mrs. Luis Lazarus*.<sup>2</sup> Death was the result of heat-stroke. Held that dependant was entitled to compensations. *Santon Fernandez v. B. P. (India) Ltd.*<sup>3</sup>

### Arising out of and in the course of employment

This phrase has been copied from the English Act on the subject. The phrase has been interpreted in a large number of cases, English and Indian. But difficulties still remain.

*In the course of employment* : This part of the phrase covers the period of time during which the employment continues. Compensation is payable if the accident occurs within the period of employment. Generally speaking employment commences when the employee reaches his place of work and ceases when he leaves the place. But there are several exceptions to the above rule.

(1) When the workman uses transport provided by the employer for the purpose of going to and from the place of work, the time during which he uses the transport, is included in the course of his employment. *Holmes v. Great Northern Railway*.<sup>4</sup>

(2) The time during which the workman is upon the premises of the employer should be included in the period of employment. An employee of the E. I. Railways was knocked down and killed by a train while returning from duty by crossing the platform area. Held, the accident arose out of and in course of employment. *Ranibala Seth v. East Indian Railway*.<sup>5</sup>

(3) If the workman reaches the place of employment before the time when the employment begins, if it was necessary and not too early, or if at the time of accident he was doing something to equip himself for the work, he is in course of employment. *Sharp v. Johnson*.<sup>6</sup>

<sup>1</sup> (1910) 2 K. B. 538

<sup>3</sup> 8 Bom. L. R. 149

<sup>5</sup> AIR (1951) Cal. 501

<sup>2</sup> (1951-52) 3 F. J. R., 190

<sup>4</sup> (1900) 2 Q. B. 409

<sup>6</sup> (1905) 2 K. B. 139

(4) If the workman with the knowledge and permission of the employer lives at some distance from the place where he is called upon to work and if in the course of proceeding at a reasonable time and in a reasonable manner from his place to the place of work, he meets with fatal accident then his accident must be held to arise out of and in course of employment. *Vishram v. Dadabhoy*.<sup>1</sup>

(5) The period of rest during the period of employment is in the course of employment. But if the workman goes outside the employer's premises during the rest period and meets with an accident, it is not in course of employment. *Pruce v. Davey*.<sup>2</sup>

*Arising out of the employment* : In *Dennis v. White*,<sup>3</sup> it was observed that, "When a man runs a risk incidental to his employment and is thereby injured, then the injury arises out of the employment." In *L & Y Railway v. Highley*,<sup>4</sup> Lord Sumner set the test as follows : "Was it a part of the injured person's employment to hazard, to suffer or to do that which caused his injury ? If yea, the accident arose out of his employment, if nay, it did not." The dictum of Lord Sumner was followed in several Indian cases e.g., *Sheikh Nawab Ali v. Sree Hanuman Jute Mills*.<sup>5</sup>

A worker was stabbed to death on the way to work. The accident arose out of the employment. *Bhayabhai v. Central Rly., Bombay*.<sup>6</sup> A boy served tea in his usual round. While returning to the factory canteen he was struck by a bullet and died. The death of the boy was held to be an accident arising out of and in the course of employment.

*Notional Extension* : "As a rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is subject to the theory or notional extension of employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work." *Saurashtra Salt Mfg. Co. v. Bai Valu Raja and others*.<sup>7</sup> In order to prove that injury arises out of employment, two conditions must be fulfilled.

<sup>1</sup> AIR (1942) Bom. 175

<sup>3</sup> (1917) A. C. 479

<sup>5</sup> AIR (1933) Cal. 513

<sup>7</sup> AIR (1958) Supreme Court 881

<sup>2</sup> (1926) 20 B. W. C. C. 237

<sup>4</sup> (1917) A. C. 352

<sup>6</sup> AIR (1955) Bom. 105

(i) Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature or condition of employment, and

(ii) The worker at the time of injury must have been engaged in the business of the employer and must not engage in any work for his personal benefit.

### Occupational Diseases

Persons employed in certain occupations are liable to be attacked by certain diseases. For example, a person engaged in an employment involving exposure to dust containing silica is liable to contract silicosis, telegraph operators are liable to have what is called Telegraphist's Cramp. Such diseases are known as Occupational Diseases. Schedule III to the Workmen's Compensation Act contains a list of occupational diseases divided into three parts, Part A, Part B and Part C. Part A includes Anthrax, Compressed Air Sickness, Poisoning by lead tetra-ethyl and nitrous fumes. Part B includes poisoning by lead compounds, phosphorus, mercury etc., cancer of the skin, telegraphist's cramp etc. Part C includes Silicosis, Asbestosis etc.

Section 3(2) of the Act provides that an occupational disease, "shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment."

For diseases included in Part A of Schedule III, the employer is liable to pay compensation when a workman employed by him contracts the disease. For the diseases included in Part B, the employer is liable if a workman contracts it while in his service and if the workman has been in his service for a continuous period of six months, which period shall not include a period of service under any other employer in the same kind of employment. For diseases included in Part C of Schedule III, the workman is entitled to compensation if he has been in the service of one or more employers for such continuous period as the Central Government may specify. In these cases, the compensation is to be paid by all the employers in such proportions as the Commissioner of Workmen's Compensation may deem just.—Sec. 3(2A).

This list of occupational diseases and the employments producing them as contained in Schedule III may be extended

(by notification) by the State Government in the case of Parts A and B and by the Central Government in the case of Part C.

Section 3(4) lays down that save as provided above, no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of, and in the course of his employment.

#### **When is employer not liable to pay compensation ?**

Section 3 of the Act provides that the employer is not liable to pay compensation in the following cases :

- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days,
- (b) in respect of any injury not resulting in death, caused by an accident which is directly attributable to—
  - (i) the workman having been at the time thereof under the influence of drink or drugs, or,
  - (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or,
  - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

As regards exception clause (b)(ii) a workman would not lose his right to compensation only by reason of the fact that he had acted thoughtlessly or foolishly. *Urmila Dasi and another v. Tata Iron and Steel Co. Ltd.*<sup>1</sup>

From sec. 3 it follows that the employer is not liable to pay compensation under the Workmen's Compensation Act, in the cases also :

- (i) when the accident did not arise out of or in the course of the employment ;
- (ii) when the workman filed a suit for damages in the Civil Court ; and
- (iii) where disablement lasted 3 days or less (that is, injuries were not significant).

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<sup>1</sup> AIR (1928) Patna 528

### The Amount of Compensation

The Act provides for compensation for—(1) Death, (2) Permanent total disablement, (3) Permanent partial disablement, and (4) Temporary disablement.

For determining the amount of compensation payable under the Act, Section 4 has to be read with Schedule IV to the Act. In Schedule IV, there is a table having four columns. The first column gives the possible monthly wages earned by the injured workman, divided under 13 heads. The amount payable for death or permanent total disablement to workmen of each group is mentioned in the corresponding entry in column 2 and column 3 respectively. Column 4 gives the amount of half monthly payment to be made for temporary disablement. Schedule IV<sup>1</sup> is reproduced below :

#### SCHEDULE IV

(See Section 4)

#### COMPENSATION PAYABLE IN CERTAIN CASES

Monthly wages of the workman injured	Amount of compensation for			Half-monthly payment as compensation for temporary disablement
	Death	Permanent total disablement		
	1	2	3	4
More than Rs.      But not more than Rs.		Rs.	Rs.	Rs. P. Half his monthly wages
0	60	7,700	10,080	
60	90	9,720	14,608	36.00
90	120	11,520	16,128	42.00
120	150	13,500	18,900	48.75
150	200	16,800	25,520	60.00
200	300	18,000	25,200	82.50
300	400	19,200	26,880	100.00
400	500	21,600	30,240	118.75
500	600	21,000	29,400	135.00
600	700	23,100	32,340	148.75
700	800	24,000	33,600	160.00
800	900	27,000	37,800	168.75
900	1000	30,000	42,000	175.00

<sup>1</sup> Schedule IV was changed by the Workmen's Compensation (Amendment) Act, 1976 (No. 65 of 1976)

The rules regarding the amount of compensation, as laid down in Section 4, are stated below :

*For Death* : The employer must pay the amount mentioned in column 2 of Schedule IV.

*For Permanent Total Disablement* : The employer must pay the amount mentioned in column 3 of Schedule IV.

*For Permanent Partial Disablement* : Schedule I to the Act contains a list of injuries deemed to result in permanent partial disablement together with the percentage loss of earning capacity which is presumed to occur in each case. When permanent partial disablement occurs from an injury specified in Schedule I, the amount of compensation is to be calculated by finding out from Schedule IV the compensation payable for permanent total disablement to the workman concerned and multiplying it with the percentage loss of earning capacity as stated in Schedule I. Thus, suppose that there is an injury which, according to Schedule I, causes a 30% loss of earning capacity. Suppose that the monthly wage of the workman is Rs. 50. From Schedule IV it is seen that for permanent total disablement he would have obtained Rs. 10,080. Hence for the permanent partial disablement he would get 30% of Rs. 10,080, i.e., Rs. 3,024.

In the case of an injury not specified in Schedule I, the percentage loss of earning capacity permanently caused must be found out. This figure multiplied by the amount of compensation for permanent total disablement gives the amount of compensation payable for the partial disablement.

Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

*For Temporary disablement* : Where as a result of the injury there is a temporary disablement, total or partial, the employer is required to make a half-monthly payment to the workman. The rate of half-monthly payment is given in column 4 of Schedule IV. (There are different rates for different wage groups.)

*Rules regarding Half-monthly Payment* : The first half-monthly payment is to be made on the sixteenth day (i) from the date of the disablement, where such disablement lasts for a period of 28 days or more, or (ii) after the expiry of a waiting

period of three days from the date of the disablement, where such disablement lasts for a period of less than 28 days. Thereafter the payments must be made half-monthly during the disablement or during a period of five years, whichever period is shorter.

From any lump sum payment made for compensation and from any half-monthly payment, any sum which the workman has received from the employer, prior to the receipt of the lump sum or half-monthly payment, may be deducted. But any sum received for medical treatment, cannot be so deducted.—Sec. 4(1)(a).

No half-monthly payment shall in any cases exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.—Sec. 4(1)(b).

On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half month a sum proportionate to the duration of the disablement in that half-month.—Sec. 4(2).

Any half-monthly payment payable to a workman may be reviewed by the Commissioner on the application of either the employer or the workman on the ground that there has been a change in the condition of the workman. The payment may upon review, be continued, increased, decreased or ended or (in case the injury has resulted in a permanent disablement) converted into a lump sum.—Sec. 6.

A right to receive half-monthly payment may, by agreement or by order of the Commissioner, be redeemed by the payment of a lump sum. This is called commutation of half-monthly payments.—Sec. 7.

### **Distribution of Compensation**

Section 8 lays down the following rules regarding the distribution of compensation :

1. Compensation for death and lump sum payment due to a woman or to a person under a legal disability must be deposited with the Commissioner.
2. But in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees. So much of

such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

3. Any other sum amounting to not less than Rs. 10 which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

4. The receipt of the Commissioner shall be sufficient discharge in respect of any compensation deposited with him.

5. After the deposit of the compensation, the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses to an amount not exceeding Rs. 50 and pay the same to the person by whom the expenses were incurred.

6. The Commissioner may serve notices calling upon the dependants to appear before him for the purpose of determining the distribution of the compensation.

7. If the Commissioner is satisfied that no dependant exists, he shall repay the balance of the money to the employer.

8. The Commissioner shall on application by the employer, furnish a statement showing in detail all disbursements made.

9. The compensation money is to be distributed among the dependants in such proportions as the Commissioner thinks fit. The whole of it may be given to one person.

10. Except in the case of a woman or a person under a legal disability, the compensation money is to be paid to the person entitled thereto.

11. Money payable to a woman or a person under a legal disability may be invested or otherwise dealt with as the Commissioner thinks fit. Half-monthly payments payable to a person under a legal disability may be paid to a dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

12. The orders of the Commissioner regarding the distribution of compensation may be varied later if necessary.

13. Notice must be given to the parties affected.

14. Where under the previous para, the Commissioner varies an order on the ground that the payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid may be recovered by the procedure laid down for the recovery of arrears of land revenue.



## OTHER PROVISIONS REGARDING COMPENSATION

### Payment of Compensation [Sec. 4A]

Compensation shall be paid as soon as it falls due. Where the employer does not accept the liability to the extent claimed, he must make provisional payment based on the extent of liability which he accepts. This is without prejudice to the right of the workman to make any further claim.

If an employer fails to pay the compensation within one month of the date on which it fell due, the Commissioner may direct the payment of simple interest thereon at 6%.

If the Commissioner thinks that there is no justification for the delay, he may direct, the payment of a further sum, not exceeding 50% of the sum due, by way of penalty.

### Protection of Compensation

Save as provided by this Act, no lump sum or half-monthly payment payable under the Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.—Sec. 9.

This section has been framed, to protect as far as possible the workman from moneylenders.

### Notice and Claim

Section 10 of the Act provides that no claim for compensation shall be entertained by the Commissioner unless notice of the accident has been given in the manner provided as soon as practicable. (This is subject to certain exceptions noted below.)

1. The required notice must be served upon the employer or upon any of several employers or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.
2. The notice shall give the name and address of the person injured, the cause of the injury and the date of the accident.
3. The notice may be given by the injured workman or by anybody on his behalf.
4. It may be served by delivering it or sending it by registered post.
5. The State Government may require that any prescribed class of employers shall keep at the place of employment a

notice-book (accessible to all workers or persons acting *bona fide* on their behalf) where the occurrence of accidents may be recorded. An entry in the notice-book is sufficient notice.

The want of notice or any defect or irregularity in it shall not be a bar to a claim in the following cases :

(1) Where a workman dies or an accident occurring in the premises of the employer or while working under the control of the employer or of any person employed by him, and the workman died on the premises or without leaving the vicinity of the premises.

(2) If the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed, had knowledge of the accident from any other source at or about the time when it occurred.

(3) If the Commissioner is satisfied that the failure to give notice was due to sufficient cause.

A workman is bound to give notice of any accident which is not merely trivial, and it is not for him to decide whether it is likely to give rise to a claim for compensation. *Ahmedabad Victoria Iron Works Ltd. v. Maganlal Keshavlal Panchal*.<sup>1</sup>

Section 10 also provides that a claim for compensation must be preferred before the Commissioner within two years of the occurrence of the accident or the date of death as the case may be. In case the accident is the contracting of a disease the date of its occurrence is the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease.

The Commissioner may entertain a claim, filed after the prescribed time, if he is of opinion that the failure to file it within time, was due to sufficient cause.

### **Fatal Accident**

Section 10A provides that where a Commissioner receives information that a workman has died as a result of an accident arising out of and in course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice,

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<sup>1</sup> AIR (1941) Bom. 296

a statement in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

If the employer is of opinion that he is liable, he shall make the deposit within thirty days of the service of the notice. If he is of opinion that he is not liable, he must state his grounds. In the latter case, the Commissioner, after such enquiry as he may think fit inform any of the dependants of the deceased workman that it is open to them to prefer a claim and may give them such further information as he may think fit.

Section 10B provides that where by any law for the time being in force, notice is required to be given to any authority by or on behalf of an employer, or any accident resulting in death or serious bodily injury, the person required to give the notice shall also send a report to the Commissioner. The report may be sent alternatively to any other authority prescribed by the State Government.

The State Government may extend the scope of the provision requiring report of fatal accidents to any class of premises. But Sec. 10B does not apply to factories to which the Employees' State Insurance Act applies.

### **Medical Examination (Sec. 11)**

1. After a workman gives notice of an accident, the employer may, within three days of the service of the notice, offer to have him examined free of charge by a qualified medical practitioner.

2. Any workman in receipt of half-monthly payments may also be required to submit for examination from time to time.

3. The Examination must be in accordance with the rules framed for the purpose.

4. If the workman refuses, without sufficient cause, to submit to the examination or if he leaves the vicinity of the place in which he was employed, his right to receive compensation shall be suspended during the continuance of the refusal or until his return to the vicinity and examination.

5. In case the workman, who refused medical examination, subsequently dies, the Commissioner has discretionary powers of direct payment of compensation to the dependants of the deceased workman.

6. The condition of an injured workman may be aggravated by refusal to submit to medical examination or refusal to follow the instructions of the medical examiner or failure to be attended by or follow the instructions of a qualified medical practitioner.

7. In such a case he would get compensation, not for the aggravated injury, but for what the injury would have been had he been properly treated.

### **Employment by contractors (Sec. 12)**

When an employer engages contractors who engage workmen, any workman injured may recover compensation from the employer if the following conditions are satisfied :

- (a) the contractor is engaged to do a work which is part of the trade or business of the principal,
- (b) the engagement is in the course of or for the purposes of his trade or business, and
- (c) the accident occurred in or about the vicinity of the employer's premises.

The workman may also proceed against the contractor. So he has alternative remedies. When the employer pays compensation, he is entitled to be indemnified by the contractor.

#### *Example :*

A company was the sole selling agent of a mill. It appointed a firm of transport contractors to remove bales from the mill godown to its shop. The transport contractors hired a lorry from a lorry owner. A Workman who was cleaner of the lorry was accidentally killed while removing bales. Held that the selling agents were liable to pay compensation. *Bai Kokilabai v. Keshavlal Mangaldas & Co.*<sup>1</sup>

### **Remedies of employer against stranger (Sec. 13)**

Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid and any person who has been called on to pay an indemnity under Section 12 shall be indemnified by the person so liable to pay damages as aforesaid.

### **Insolvency of Employer (Sec. 14)**

The liability to pay workmen's compensation can be insured against. If an employer who has entered into a contract of

<sup>1</sup> AIR (1942) Bom. 18

insurance for this purpose, becomes insolvent or enters into a scheme of composition or arrangement or (being a company) is wound up, the rights of the employer as against the insurer shall be transferred to and vest in the workman. The liability to pay compensation to a workman is to be treated as a preferred debt under insolvency and winding up. For this purpose, the liability to pay half-monthly payments is to be taken as equivalent to the lump sum payment into which it can be commuted. This section does not apply where a company is wound up voluntarily merely for the purpose of reconstruction or amalgamation with another company.

#### **Transfer of Assets by Employer (Sec. 14A)**

Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefore accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.

#### **Master and Seamen**

So far as masters and seamen are concerned, the provisions of the Act apply with certain modifications laid down in Section 15.

#### **Returns**

The State Government may, by notification in the official Gazette, direct employers to submit returns regarding compensation paid by them and particulars relating to the compensation. —Sec. 16.

#### **Contracting Out**

Section 17 provides that any contract by which a worker relinquishes his right to receive compensation for injury is null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

#### **Penalties**

Section 18A provides for penalties for failure to perform the duties prescribed under the Act, e.g., failure to send returns or maintain notice books etc.

### Bar to Civil Suits

A Civil Court has no jurisdiction to settle, decide or deal with any question which, because of the provisions of the Act, is required to be decided or dealt with by the Commissioner or to enforce any liability under this Act.—Sec. 19(2).

### Recovery of the amount awarded

Any amount payable under the Act, whether under an agreement or otherwise, shall be recovered as an arrear of land revenue.—Sec. 31.

## COMMISSIONERS

The Act provides for appointment of Officers to be known as Commissioners of Workmen's Compensation. The Commissioners are to determine the liability of any person to pay compensation (including the question whether a person is or is not a workman) and the amount or duration of compensation (including any question as to the nature or extent of disablement). No civil court has jurisdiction to deal with matters which are required to be dealt with by a Commissioner. Certain powers have been given to the Commissioners, e.g., the power to call for further deposits. The Commissioner has the powers of a Civil Court.

*Form of application* : No application for settlement of any matter by a Commissioner shall be made, if the parties have been able to settle it by agreement.

An application to the Commissioner shall be made in the prescribed form according to the rules, and accompanied by a prescribed fee. The following particulars must be given namely—  
(a) concise statement of the circumstances and the relief claimed ;  
(b) in case of claim for compensation against an employer, the date of service of notice of accident, with its due time of notice and the reason why notice was not given ; (c) the names and addresses of the parties ; and (d) except in case of application by dependant for compensation a concise statement of the matter on which, agreement has and of those on which agreement has not been come to. If the applicant is illiterate or for any reason is unable to furnish the required information, the application, if the applicant so desires, shall be prepared under the direction of the Commissioner.—Sec. 22.

*Appearance of parties* : Appearance may be done on behalf of applicant by a legal practitioner or an official of an Insurance Company, or an authorised person of a registered Trade Union, duly authorised.—Sec. 24.

*Appeals and References* : For proceedings under the Act, the High Court of the State is the appellate Court. The Commissioner can refer a question of law to the High Court for decision and he must decide the matter according to such decision.—Sec. 27.

### **Appeals**

An appeal lies to the High Court from the following orders of a Commissioner—

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or an order awarding interest or penalty under Section 4A ;
- (b) an order refusing to allow redemption of a half-monthly payment ;
- (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of person alleging himself to be such dependant ;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Section 12(2) ;
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions.

### **Other Provisions Regarding Appeal**

1. No appeal shall lie against any order unless a substantial question of law, is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than Rs. 300.

2. No appeal lies in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

3. No appeal by employer lies unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the applicant has deposited with him the amount payable under the order appealed against.

4. The period of limitation for an appeal under this section shall be 60 days and the provisions of Section 5 of the Indian Limitation Act, 1908, shall be applicable to appeals under this section.

### EXERCISES

1. Define and explain :
  - (a) Partial disablement and total disablement. (Pages 925-926)
  - (b) Occupational Diseases. (Page 933)
  - (c) Employer. (Pages 924-925)
  - (d) Workman. (Pages 928-929)
2. Define and discuss 'arising out of and in the course of employment' as used in Section 3 of the Workmen's Compensation Act, 1923. (Pages 931-932)
3. State when an employer is not liable to pay compensation to a workman for personal injury, according to the Workmen's Compensation Act. Is negligence or contributory negligence of the workman a valid defence? (Pages 934-935)
4. Discuss the defences available to an employer against a claim for compensation made by a workman under the Workmen's Compensation Act, 1923. (Pages 922-923)
5. A workman in wilful disobedience to an order of the employer, was seriously hurt. Is the employer liable to pay compensation? What will happen if that workman dies? (Pages 930-931)
6. State the rules as to the distribution of compensation under the Workmen's Compensation Act. (Pages 937-938)
7. State the rules regarding the notice of accident and its proper manner. (Pages 939-940)
8. What is the time of payment of compensation? State the penalty for default of it. (Page 939)
9. What are the rules relating to registration of agreements? What is the effect of failure of such registration? (Pages 939-944)
10. There is an agreement between the employer and the employee stating that the latter will have no claim for compensation in the case of accident. Is it valid? (Pages 939-944)
11. State the rules regarding distribution of compensation (for death from injury) and the payment of compensation to a woman, or a person under a legal disability. (Pages 937-938)
12. State the provisions regarding employers' liability for compensation under the Act. (Pages 934-935)
13. The employer becomes insolvent. What remedies of the workman are available under the Workmen's Compensation Act? (Pages 939-940)



14. What is the liability of the principal employer in respect of injury sustained by a workman employed through a contractor ?  
(Page 942)
15. Discuss the method of calculating wages. (Pages 926-928)
16. State the rules regarding penalty for default in payment of compensation in time. (Page 939)
17. Under what circumstances the order of the Commissioner under the Workmen's Compensation Act are appealable ?  
(Pages 945-946)
18. Explain the provisions of the workmen's compensation Act, 1923 relating to the liability of the employer in case of a workman suffering from occupational disease. (Pages 932-933)
19. Problems :
- (a) Are the following persons workmen as defined by the Workers Compensation Act ? Give reasons. (i) A clerk permanently employed in an administrative office of a railway. (ii) A person working in the construction of a building. (iii) A performer in a circus company. (Pages 928-929)
- (b) An employer is in default in paying the compensation within the due time. The commissioner directs him to pay the arrear at a compound interest of 10% per year and 75% of the arrear. Is he bound to pay ? (Page 939)
20. Discuss the provisions of the Workmen's Compensation Act, 1923 relating to notice of accident in connection with presenting claim for compensation to the Commissioner for Workmen's Compensation. (Pages 939-940)
21. (a) (i) Discuss the provisions of the Workmen's Compensation Act, 1923 relating to registration of agreements. (Page 939)  
(ii) What are the effects of failure to register agreements ?  
(Page 939)
- (b) An employer is in default in paying the Compensation due under the Workmen's Compensation Act, 1923. Discuss the course of action to be taken by the Commissioner for Workmen's Compensation against the employer. (Page 939)

**OBJECT AND SCOPE**

The Indian Trade Unions Act (Act XVI of 1926) was passed to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions. The Act applies to the whole of India, including the State of Jammu and Kashmir.<sup>1</sup> By the amending Act of 1964, the word "Indian" has been dropped.

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, provides for the recognition of trade unions, for facilitating collective bargaining for certain undertakings, etc.

**DEFINITIONS UNDER THE TRADE UNIONS ACT****Trade Union**

In ordinary language the term 'Trade Union' means an association of workers. Under the Bombay Industrial Relations Act, 1956, a union of employers is not a trade union.

The Act defines the term as follows. "Trade Unions means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers, or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any Federation of two or more Trade Unions."—Sec. 2(h).

From the above it follows that a Trade Union may be temporary or permanent. A Trade Union may be formed for the purpose of regulating the relations between (i) workmen and employers or (ii) between workmen and workmen or (iii) between employers and employers. It may also be formed for the purpose of imposing restrictive conditions on the conduct of any trade or business. A Federation of Trade Unions also comes within the definition.

*The Trade Unions Act does not affect—*

- (i) any agreement between partners as to their own business :

<sup>1</sup> See p. 5. footnote

- (ii) any agreement between an employer and those employed by him as to such employment ; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft. Proviso to Sec. 2.

*Certain Acts not to apply* : The following Acts do not apply to a registered union, viz., (i) Societies Registration Act, 1860 (ii) The Co-operative Societies Act, 1912 and (iii) The Companies Act. The registration of any such union under any such Act is void.—Sec. 14.

#### Case Law :

1. A union of employees of Raj Bhavan is not a trade union. *Rangswami v. Registrar*.<sup>1</sup>
2. The employees of the Defence Establishment such as cooks, chowkidars, laskars, barbers, carpenters, mechanics, boat makers, tailors etc. in training establishments answer the description of members of the Armed forces and they cannot form trade unions as their fundamental right has been taken away by the Central Government.
3. By virtue of Section 21 of the Army Act, the Central Government was competent by notification to make rules restricting or curtailing their fundamental rights under Act 19(1)(c). *Ous Kutilingal Achudan Nair and others v. Union of India and others*.<sup>2</sup>

#### Trade dispute

“Trade dispute” means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour of any person.—Sec. 2(g).

#### Workman

“Workman” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.—Sec. 2(g).

The term workman has been defined in a wide sense. The Act does not distinguish between officers, clerical persons or unskilled workers. The only requirement is that the person is employed in trade or industry.

It has been held that an assistant editor of a newspaper may be a workman under the act. *V. N. & Ors. v. The Bihar Journals Ltd.*<sup>3</sup>

<sup>1</sup> (1961) 1 L.L.J. 599

<sup>2</sup> AIR (1976) Supreme Court 1179

<sup>3</sup> (1953) 1 L.L.J. 633

### **Appropriate Government**

The term Appropriate Government means that Central Government in the case of Unions whose objects are not confined to one State and the State Government in other cases.

### **Registered Trade Union**

Registered Trade Union means a Trade Union registered under this Act.—Sec. 2(e).

### **Officer**

Officer in cases of a trade union includes any member of the executive thereof, but does not include an auditor.

### **Registered Office**

Registered Office means the office of a trade union which is registered under the Trade Unions Act as the Head Office thereof.

## **LEGAL STATUS OF A REGISTERED UNION**

A registered trade union is a statutory body. It has legal entity. It can own property and can act as an agent. It can acquire and hold both movable and immovable properties, contract and sue and be sued by the name in which it is registered.—Secs. 13, 15.

In English Law the legal status of trade union was clarified in the *Osborne case*.<sup>1</sup>

*The legal status of an unregistered trade union* : If a trade union is not registered it does not get the privileges provided in the Act. For example, a contract with such a union may be unenforceable because of restraint of trade. But an unregistered union *may not be* illegal.

## **REGISTRATION OF TRADE UNIONS**

### **Registrar**

One of the objects of the Act is to provide for the registration of Trade Unions. Section 3 provides that the Appropriate Government shall appoint a person to be Registrar of Trade Unions for each State. It may also appoint Additional or Deputy Registrars of Trade Unions and give them specified powers.

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<sup>1</sup> (1910) A.C. 87

### **Mode of Registration**

Any seven or more members of a Trade Union can apply for registration of the Trade Union. They must subscribe their names to the rules of the Trade Union. They must comply with the provisions of the Act relating to registration.—Sec. 4(1).

Every application for registration shall be made to the Registrar and shall be accompanied with a copy of the rules of the Trade Union and a statement of the following particulars :

- (a) the names, occupations and addresses of the members making the application ;
- (b) the name of the Trade Union and the address of its head office ; and
- (c) the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year before the application for registration is made, the application must be accompanied with a general statement of the assets and liabilities of the Union prepared in the prescribed form.—Sec. 5(2).

A Trade Union shall not be entitled to registration, unless the executive thereof is constituted in accordance with the provisions of the Act.—Sec. 22. (See p. 959, para 4)

Registration will be refused unless the rules of the Union provide for the following matters : Sec. 6,

- (a) the name of the Trade Union ;
- (b) the whole of the objects for which the Trade Union has been established ;
- (c) the whole of the purposes for which the general funds of the Trade Union shall be applicable ;

(Registration will be refused unless the purposes are in accordance with the rules laid down in Section 15. See pages 957-958).

- (d) the maintenance of a list of members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union ;
- (e) the admission of ordinary members who shall be persons actually engaged in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers required under Section 22 to form the executive of the Trade Union :

- (ee)<sup>1</sup> the payment of a subscription by members of a Trade Union which shall be not less than twenty-five *paise* per month per member ;
- (f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members ;
- (g) the manner in which the rules shall be amended, varied or rescinded ;
- (h) the manner in which the members of the executive and other officers of the Trade Union shall be appointed and removed ;
- (i) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union ; and
- (j) the manner in which the Trade Union may be dissolved.

The Registrar may call for further information for the purpose of satisfying himself that the Trade Union complies with the provisions of Sections 5 and 6. If the information is not supplied, registration may be refused.—Sec. 7(1).

If the name under which the Trade Union is proposed to be registered is identical with the name of any other registered Union or resembles it, in the opinion of the Registrar, to such an extent as to be likely to deceive the public or members of either Union, the Registrar may require that the proposed name be altered. If such alteration is not made registration may be refused.—Sec. 7(2).

When the Registrar is satisfied that all requirements have been complied with, he shall register the Trade Union by entering its name and particulars in the Register.—Sec. 8. He shall also issue a certificate of registration in the prescribed form. The certificate shall be conclusive evidence that the Trade Union has been duly registered under the Act.—Sec. 9.

*Example :*

A union named Inland Steam Navigation Workers' Union was refused registration on the ground that it was really a Union (called the I. G. N. Union) which had been declared to be an unlawful body. It was held that the duties of the Registrar, under Section

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<sup>1</sup> This clause was added by The Trade Unions (Amendment) Act, 1960.

8 of the Act, are to see whether the objects of the Union are in accordance with the provisions of the Act and whether all the requirements of the Act have been complied with. If so, the Registrar has no other option but to register the Union. *In Re Inland Steam Navigation Workers' Union*.<sup>1</sup>

### **Cancellation of Registration**

Section 10 gives powers to the Registrar to withdraw or cancel the certificate of registration under the following circumstances :

- (a) on the application of the Trade Union, verified in the prescribed manner, or
- (b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of the Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter required to be provided by Section 6.

In cases coming under (b) two months' previous notice in writing must be given.

If registration is refused or if the certificate of registration is withdrawn or cancelled, the Union can appeal to the Court. Where the registered office of the Union is situated in a Presidency Town, the appeal lies to the High Court. In other cases, it lies to such court, not inferior to the Court of an additional or assistant judge of a principal Civil Court of original jurisdiction, as the appropriate Government may appoint.

The Appellate Court may—

- (a) dismiss the appeal, or
- (b) pass an order for registration or issue a certificate of registration under Section 9, or
- (c) set aside the order for withdrawal or cancellation of the certificate.

The registrar must comply with the order of the Appellate Court.—Sec. 11.

### **The Effect of Registration**

Upon Registration, the trade union becomes a body corporate by the name it is registered.—Sec. 13.

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<sup>1</sup> 40 C. W. N. 97

### **Communication to the registered office**

Communication and notices to a registered Trade Union may be addressed to its registered office. Change of the address of the Head Office of the Trade Union shall be given within 14 days of such change to the Registrar in writing. The changed address shall be recorded in the register maintained in the office of the Registrar.—Sec. 12.

## **RIGHTS AND PRIVILEGES**

A registered Trade Union (and its members) have been given certain rights and privileges. They are enumerated below.

### **1. Incorporation**

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract and shall by the said name sue and be sued.—Sec. 13.

### **2. Immunity from criminal prosecution**

No office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code, in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in Section 15, unless the agreement is an agreement to commit an offence.—Sec. 17.

Section 120B(2) of the Indian Penal Code provides for punishment for the offence of criminal conspiracy. Section 17 of the Trade Unions Act gives immunity to members and office-bearers of registered Trade Unions from criminal conspiracy in connection with trade disputes. The term Trade Dispute is defined in Section 2(g). (See p. 949).

### **3. Immunity from Civil Suit in certain cases**

No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment of some other



person or with the right of some other person to dispose of his capital or of his labour as he wills. Sec. 18(1).

A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.—Sec. 18(2).

#### **4. Enforceability of Agreements**

Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade :

Provided that nothing in this section shall enable any Civil Court to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.—Sec. 19.

#### **5. Right to inspect books**

An office bearer or member of the Union can inspect the account books of the Union at such times as may be provided for by the rules of the Union.—Sec. 20.

#### **6. Right of minors to be member**

Subject to any rule of the Union to the contrary, any person who has attained the age of fifteen years may be a member of a registered Trade Union and enjoy all the privileges of such membership.—Sec. 21. For the purposes of the Trade Unions Act, a Minor means a person who has not attained the age of eighteen years.

#### **7. Change of name**

The name of a registered Trade Union may be changed (i) if two-thirds of the total-number of members agree and (ii) if the proposed new name is not identical with that of any existing registered Union and does not, in the opinion of the Registrar, resemble any such name so nearly as to be likely to deceive the public or members of either union. Notice in writing of the

change of name, signed by the secretary and seven members must be sent to the Registrar. The Registrar shall register the change if satisfied that the provisions of the Act have been complied with. The change takes effect from the date of registration. The change in name does not affect any right or obligation of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.—Secs. 23, 25 and 26.

### **8. Amalgamation of Unions**

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

Notice in writing of the amalgamation, signed by the secretary and seven members of each and every Trade Union which is a party thereto shall be sent to the Registrar of each of the States in which any of the amalgamated unions had a registered office. The Registrar of the State in which the head office of the amalgamated Union is situated shall register it if satisfied that all the provisions of the Act have been complied with. The amalgamation takes effect from the date of registration.—Sec. 25.

An amalgamation of two or more Unions does not prejudice any right of any of the Trade Unions or any right of a creditor of any of them.—Sec. 26.

## **DUTIES AND LIABILITIES**

The Act imposes certain duties and liabilities on registered Trade Unions. They are enumerated below.

### **1. Change of registered office**

If the address of the head office of a Trade Union is changed, notice in writing must be given to the Registrar within fourteen days of the change. The change shall be recorded in the Register.—Sec. 12.

## 2. Objects on which general funds may be spent

Section 15 provides that the general funds of a registered Trade Union shall not be spent on any object other than the following :

- (a) the payment of salaries, allowances and expenses to office-bearers of the Trade Union ;
- (b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union ;
- (c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs ;
- (d) the conduct of trade disputes on behalf of the Trade Union or any member thereof ;
- (e) the compensation of members for loss arising out of trade disputes ;
- (f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members ;
- (g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment ;
- (h) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members ;
- (i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such ;
- (j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time

during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

- (k) subject to any conditions contained in the notification any other object notified by the appropriate Government in the official Gazette.

### 3. The Political Fund

Section 16 empowers a registered Trade Union to constitute a separate Fund to be used for political purposes. Contributions to the Political Fund must be separately collected on a voluntary basis. No member can be compelled to contribute. No member can be excluded from any benefit or deprived of any privilege by reason of his not contributing to it. The Political Fund can be used for the following purposes :

- (a) The payment of any expenses incurred, directly or indirectly, by a candidate or prospective candidate for election to a legislative body under the Constitution or to a local body. The expenses might have been incurred before, after or during the election.

- (b) The holding of any meeting or the distribution of any literature or documents in support of such a candidate.

- (c) The maintenance of a person who is a member of a legislative body under the Constitution or of a local body.

- (d) The registration of electors or the selection of a candidate for election to a legislative body under the Constitution or a local body.

- (e) The holding of political meetings of any kind or the distribution of political literature or political documents of any kind.

The conditions for the creation of a political fund are as follows :

- (i) Such fund can be created only from contributions separately levied or made to that fund. [Sec 16(1)]
- (ii) Members must not be compelled to contribute to the fund.
- (iii) A member who does not contribute to the fund must not be excluded from any benefits of the Trade Union.
- (iv) Contribution to the political fund must not be made a condition for admission to the Trade Union. [16(3)]

#### **4. Proportion of office-bearers to be connected with the industry**

Not less than one-half of the total number of the office-bearers of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected. The appropriate Government may by a special or general order exempt any Union or class of Unions from this provision.—Sec. 22.

#### **5. Dissolution**

A registered Trade Union may be dissolved according to the rules of the Union. Notice of the dissolution must be given signed by the Secretary and seven members within fourteen days of the dissolution. The dissolution takes effect from the date it is registered. If the rules of the Union do not provide how the funds of the Union shall be distributed, the Registrar shall distribute the funds among the members in the manner prescribed by the rules framed under the Act.—Sec. 27.

#### **6. Returns**

Section 28 provides as follows :

(a) By a prescribed date, every registered Trade Union must send to the Registrar a general statement showing its receipts and expenditure during the year ending 31st December of the previous year audited in the prescribed manner. It must also send a statement of assets and liabilities as on the 31st December.

(b) Along with the aforesaid statements must be sent a statement showing all changes of office-bearers made during the aforesaid year and a copy of the rules of the Trade Union corrected up to date.

(c) A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within 15 days of the making of the alteration.

#### **7. Penalties**

Certain penalties are provided under Sections 31 and 32 of the Act, for failure to send any notice or return required under the Act and for supplying false information.

#### **8. Disqualifications of office-bearer of Trade Unions**

By section 21A added by the amending Act of 1964, it is provided that a person shall be disqualified for being chosen as

or being a member of the executive committee or an office-bearer of a Trade Union under the following circumstances :

- (i) if he has not attained the age of 18 years ;
- (ii) if he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment (unless a period of 5 years has elapsed since his release).

Any such member or office-bearer, who has been imprisoned for such an offence before the commencement of the amending Act of 1964, shall on the date of commencement of the amending Act cease to hold office, unless a period of 5 years has elapsed since his release before that date.

## 9. Audit

According to Regulation 13 of the Central Trade Union Regulations of 1938, the annual audit of account of any registered Trade Union shall be conducted by an Auditor authorised under Sec. 276 of the Companies Act, 1956. This rule applies to Trade Unions who have members exceeding 2500 members. There are provisions for the audit of Trade Unions which have members less than 2500 but exceeding 750 and between 750 to 2500 members.

## EXERCISES

1. What are the objects on which the general funds of a registered Trade Union may be spent ? (Pages 956-958)
2. State whether the provisions of (i) the Societies Registration Act, 1860, or (ii) The Co-operative Societies Act, 1912, or (iii) The Companies Act, 1956, may be applied to any registered trade union. (Pages 949-950)  
A trade union wants to get itself registered under any one of the aforesaid Acts. Will the registration be valid ? (Pages 949-950)
3. State the procedure of the registration of a Trade Union and its dissolution (Pages 950-951, 959)
4. Is the registration of a Trade Union obligatory ? State the effect of the registration of a Trade Union. State the rights and privileges of a registered Trade Union and its members. (Pages 950-951, 953, 954-955)
5. What are the provisions to be contained in the rules of a Trade Union ? (Pages 950-951)
6. State the rules regarding the constitution of the executive of a registered trade union (Pages 950-951)

7. State when a Registrar can refuse to register a Trade Union.  
(Pages 950-951)
8. What are the rights of minors to membership of Trade Union?  
(Page 955-956)
9. What are the disqualifications of the office-bearers of Trade Unions?  
(Pages 959-960)
10. What are the rights and privileges enjoyed by registered trade unions and the members thereof?  
(Pages 954-956)
11. State the grounds for cancellation of registration.  
(Page 953)
12. What are the objects for which the fund for political purposes may be spent under the Trade Unions Act.  
(Page 958)
13. Explain the provisions relating to (i) application for registration and (ii) cancellation of registration.  
(Pages 950-953)
14. What are the provisions of the Trade Unions Act relating to change of name and amalgamation of trade unions? Can a minor be admitted to membership of a trade union?  
(Pages 955-956)
15. (a) What is a trade union? When will be a trade union recognised?  
(b) What are the remedies available for the cancellation of the registration of a trade union by the Registrar?  
(Pages 948, 950-951)
16. The Registrar of Trade Unions has cancelled the certificate of registration of a trade union. Discuss the action to be taken by the members of that trade union against the order of the Registrar  
(Page 953)
17. Define "trade union". State the procedure for changing the name of a union.  
(Pages 948, 955-956)
18. Discuss the provisions of the Trade Unions Act, 1926 relating to penalties to be imposed for failure to submit returns and also for supplying false information regarding trade union.  
(Page 959)
19. Problems :
  - (1) One hundred members of a trade union applied for registration. Fifty members out of hundred dissociated themselves from the application. State whether the registration can be granted.  
(Pages 950-951)
  - (2) X, a member of a trade union was convicted and sentenced to imprisonment for a period of two years for breach of trust in 1978. On his release, X intends to contest an election of the office bearer of the union in 1981. Advise X  
(Page 959-960)
  - (3) The name of the trade union has been changed with the consent of the majority of the members. Is this change of name of the trade union valid?  
(Page 955)

20. (a) Define (i) "trade dispute" and (ii) "trade union" as per Trade Unions Act, 1926.
- (b) Discuss the provisions of the Trade Unions Act, 1926 relating to submission of 'returns' to the Registrar.  
(Pages 948, 949, 959)
21. (a) State the provisions of the Trade Unions Act, 1926 relating to the particulars to be mentioned in the rules of a Trade Union.
- (b) State whether the following persons can be chosen as office-bearers of a registered Trade Union :
- (i) A person convicted by a Court of England of an offence involving moral turpitude and sentenced to imprisonment, and a period of five years has not elapsed.
- (ii) A person who has attained the age of sixteen years.  
(Pages 950-951, 959)



**OBJECT AND SCOPE**

The Payment of Wages Act (Act IV of 1936) was passed to regulate the payment of wages to certain classes of persons employed in factories and industrial establishments. The Act ensures regular and prompt payment of wages and prevents the exploitation of wage-earners by prohibiting arbitrary fines and deductions from wages.

The Act applies to the whole of India, including the State of Jammu and Kashmir.<sup>1</sup>

The Act applies to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration either directly or through a subcontractor, by a person fulfilling a contract with a railway administration.

The State Government may after giving three months' notice, by notification in the Gazette, extend the provisions of the Act or any of them to the payment of wages of any class of persons employed in any industrial establishment or class or group of industrial establishments.

In many States, the Act has been extended to various industries, e.g., shops and establishments, omnibus service (in Assam, Maharashtra, West Bengal), tramways (in Tamil Nadu) etc.

**SCOPE OF PAYMENT****History**

The Payment of Wages Act of 1936, was initially made applicable to people drawing less than Rs. 200 a month. In 1967, the limit was raised to Rs. 400 a month. On 12th November 1975, the President of India issued an Ordinance amending the Act to cover workers getting up to Rs. 1000 a month. In 1976, the Ordinance was replaced by an Act, which was passed on 11th February. The effect of the Act was that nothing in this Act applied to wages payment in respect of a wage period, over such

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<sup>1</sup> See p. 5, footnote

wage period, average Rs. 1000 a month or more. This limit was raised from Rs. 1000 to Rs. 1600 by the Payment of Wages (Amendment) Act, 1982.

The Act of 1976 provided for the payment of wages in cash, by cheque or by crediting the wages to the bank account of a worker after obtaining his written authorization. It also permitted authorized deductions from wages for contribution to the Prime Minister's National Relief Fund or such other funds as the Central Government may specify by notification in the official gazette.

### **The present law**

The Payment of Wages Act of 1936, was amended in August 1982. It was passed by both the houses of the Parliament and has received the assent of the President.

The amendment to the Payment of Wages Act covers all industrial establishment. The limit of emoluments of the worker is increased from Rs. 1000 to Rs. 1600. The amendment also authorised deduction from workers' wages for a welfare fund set up by the employer or a registered trade union. The worker can authorise the management to deduct wages to a trade union according to his choice.

The amendment has increased the penalty for nonpayment of wages to a minimum of Rs. 200 and maximum Rs. 1000. If an employer contravenes the provision of the amendment for the second time, the punishment would be imprisonment from one to six months and/or a fine between Rs. 500 to Rs. 3000 or both.

## **DEFINITIONS UNDER THE PAYMENT OF WAGES ACT**

### **Factory**

Factory means a factory as defined in section 2(m) of the Factories Act, 1948.

### **Industrial establishment**

The term industrial establishment means any—(a) tramway or motor omnibus service; (b) dock, wharf or jetty; (c) inland vessel, mechanically propelled; (d) mine, quarry or oil field; (e) plantation; (f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale; (g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, canals or relating to operation connected with

navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.—Sec. 2(ii).

### **Railway administration**

Railway administration has the meaning assigned to it in section 3(6) of the Indian Railways Act, 1890.

### **Wages**

The term 'wages' means all remuneration (whether or by way of salary, allowances or otherwise) capable of being expressed in terms of money, which would be payable, conditionally or otherwise, to the employed person if the terms of the contract of employment were fulfilled.—Sec. 2(vi).

The contract of employment may be expressed or implied. The remuneration payable is called wages even though it is payable conditionally.

The term 'wages' *include* the following :

- (a) any remuneration payable under any award or settlement between the parties or order of a court ;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period ;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name) ;
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made ;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

The term 'wages' *does not include* the following :

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court ;
- (2) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or any

- service excluded from the computation of wages by a general or special order of the State Government ;
- (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon ;
  - (4) any travelling allowance or the value of any travelling concession ;
  - (5) any sum paid to the employed person to defray special expenses entitled on him by the nature of his employment ; or
  - (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

## RULES FOR PAYMENT OF WAGES

### Who is responsible ?

The employer is responsible for the payment of wages. In the case of persons employed (otherwise than by a contractor) the following persons are also responsible for the payment of wages : (Sec. 3).

- (a) the person named as manager in a factory ;
- (b) in industrial establishments the person, if any, who is responsible to the employer for the supervision and control of the establishment ;
- (c) upon railways the person nominated by the railway administration in this behalf for the local area concerned.

### Wage periods

The person responsible for the payment of wages shall fix the wage periods in respect of which, wages shall be payable. No wage period shall exceed one month.—Sec. 4.

### Time of Payment

Section 5 lays down the following rules regarding the time of payment of wages :

- (1) In a railway, factory or industrial establishment in which less than 1000 persons are employed, wages must be paid before the expiry of the *seventh* day after the last day of the wage period in respect of which the wages are payable. In all other factories or industrial establishments, wages must be paid before the expiry of the *tenth* day from the last day of the wage period as aforesaid.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the *second* working day from the day on which his employment is terminated.

(3) The State Government may exempt persons employed in a railway (otherwise than in factory) from the operation of this section, partially or wholly.

(4) All payment of wages must be made on a working day.—Sec. 5(4).

### **The medium of payment**

All wages shall be paid in current coin or currency notes or in both. The employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.—Sec. 6, as amended in 1976. (See p. 963).

By an amendment in Maharashtra it was provided that in the case of a bonus which exceeds one fourth of the annual earnings of the employee the excess may be paid by cheque or invested.

## **AUTHORISED DEDUCTIONS**

### **Deductions from Wages**

Section 7 provides that the wages of an employed person shall be paid to him without deductions of any kind *except* those which are authorised by or under this Act. Every payment made by an employed person to his employer or his agent is deemed to be a deduction.

The following deductions are permitted under the Act :

#### **1. Fines**

Section 8 lays down the following rules regarding fines—

(1) An employed person can be fined only for acts and omissions which are specified in a list which is approved by the State Government or the prescribed authority.

(2) The list must be exhibited in the place of work in the prescribed manner.

(3) Before the fine is imposed on an employed person, he must be given an opportunity of showing cause against the fine.

(4) The total amount of fine which can be imposed on a person in any one wage period must not exceed an amount equal to half an anna in the rupee of the wages payable to him during the wage period.

(5) No fine can be imposed on a person who is below the age of 15.

(6) No fine can be recovered by instalments or after the expiry of 60 days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission for which it was imposed.

(8) All fines and the realisation thereof shall be recorded in a register. All such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority. Where the person employed is part of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole. But such a fund can be applied only to the approved purposes.

## **2. Deductions for absence from duty**

Absence from duty means absence from the place where the employed person is required to work. If the employed person, though present at such place, refuses to carry out his work, in pursuance of a stay-in-strike or for any other cause which is not reasonable, he is deemed to be absent from duty.

Deduction from wages are permitted for absence from duty. Section 9 provides that the ratio between the amount of such deduction and the wages payable must not exceed the ratio between the period of absence and the wage-period. It is however, provided that (subject to any rules made in this behalf by the State Government) if ten or more employed persons acting in concert absent themselves without due notice and without reasonable cause, such deduction from any such person may include such amount (not exceeding his wages for eight days) as may be due to the employer in lieu of notice.

## **3. Deductions for damage or loss**

Deductions from wages are permitted for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or

default. Section 10 provides that a deduction under this rule shall not exceed the amount of damage or loss caused to the employer by the neglect or default of the employed person. Also, before the deduction is made, the employed person must be given an opportunity of showing cause against the deduction and the procedure prescribed for making the deduction must be followed. All deductions and the realisations thereof must be recorded in a register.

#### **4. Deductions for services rendered**

Deductions are permitted for house-accommodation supplied by the employer and for such amenities and services as the State Government may, by general or special order, authorise. The word 'service' does not include the supply of tools and raw materials required for the purposes of employment. Section 11 provides that deductions for services of the aforesaid character can be made only if the services are accepted by the employed person as a term of service or otherwise. Deductions must not exceed the value of the accommodation or other services. As regards services other than house-accommodation, the State Government may impose conditions.

#### **5. Advances and overpayments of Wages**

Deductions are permitted for recovery of advances or for adjustments of overpayments of wages. Section 12 provides that (a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for the travelling expenses; and (b) recovery of advances of wages not already earned shall be subject to any rules made by the State Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

#### **6. Income Tax**

The employer is permitted to deduct income tax payable by an employed person.

#### **7. Orders of Court**

If any deduction is directed by the Court (e.g., in execution of a decree against the employed person) it must be done.

### **8. Provident Fund**

Deductions may be made of the contributions payable by the employed person to the provident fund. The rate of contribution to Provident Fund in all industries and establishments has been increased from 8.33 per cent to 10 per cent with effect from 1st March, 1997, for both employers and employees.

### **9. Co-operative Societies and Insurance Schemes**

Deductions may be made for payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office. The State Government may impose conditions upon such deductions.

### **10. Written authorisation**

(1) Deduction made with the written authorisation of—  
(i) the employed person ; or (ii) the president or secretary of the registered trade union of which the employed person is a member on such condition as may be prescribed, for contribution to the National Defence Fund or any Defence Savings Scheme approved by the State Government.

(2) Deductions, made with the authorisation of the person employed for payment of any premium on his life insurance policy, or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of any such Government.

(3) From the wages of a worker, there may be deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the official Gazette, specify.—Sec. 7(2)(p) as amended in 1976. (See pp. 963-964).

### **11. Insurance Schemes**

Deductions may be made for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.—Sec. 7(2)(q), Payment of Wages (Amendment) Act, 1977.

### **12. Deductions for recovery of loans**

Deduction for loans granted for house building or other



purposes and the interest due in respect thereof approved by the State Government may be made under Sec. 7(2)(fff) and 12-A.

### **Duties of employer**

The employer must maintain separate registers for all deductions from wages, as provided in Section 7.

The employer must also maintain a register of wages showing (i) the gross wages earned by a person (ii) deductions from those wages and (iii) the wages actually paid, the work performed by the workman and the receipt given by them.

### **Limits on Deduction**

The total amount of deductions which may be made under the above heads in a wage period from the wages of an employed person shall not exceed 75 per cent of such wages in cases where such deductions are wholly or partly made for payments to cooperative societies. In any other case, they shall not exceed 50% of such wages.—Sec. 7(3).

## **ENFORCEMENT OF THE ACT**

### **Inspectors**

*Inspectors* may be appointed for the purpose of examining records and documents relating to the payment of wages and to do other work necessary for carrying out the purpose of the Act. Inspectors of Factories, appointed under the Factories Act, are inspectors for the purposes of this Act.—Sec. 14.

### **Authority to hear claims (Sec. 15)**

The State Government may appoint any *Commissioner for Workmen's Compensation*, or any officer having experience as judge or magistrate, as the authority to hear and decide all claims arising out of deductions from wages or delay in payment of wages.

An application before such authority may be filed by the person concerned or any legal practitioner or official of a registered trade union authorised by him in writing or any inspector under this Act or any other person with the permission of the authority appointed as aforesaid.

The application shall be presented within *six months of the date of deduction* or the date when the payment of wages was

due. It may be filed later if the authority is satisfied that there was sufficient cause.

The authority is to enquire into the matter, giving an opportunity to the employer of being heard. The authority may direct refund of deduction or payment of the delayed wages, together with such compensation as he may think fit, not exceeding ten times the deduction in cases of improper deductions and Rs. 10 in cases of delayed wages. No compensation is to be given in cases of *bona fide* error or dispute, the occurrence of an emergency or the existence of exceptional circumstances or the failure of the employed person to apply for or accept payment.

If the authority considers that any application is *malicious or vexatious*, he may direct that a penalty not exceeding Rs. 50 shall be paid to the employer by the person presenting the application. The penalty will be realised as if it was a fine imposed by a magistrate.

"The Authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say to determine the actual wages; but the Authority has no jurisdiction to determine the question of potential wages." *A. V. D'Costa v. B. C. Patel*.<sup>1</sup>

### Single application for several employees

A single application under Section 15 may be presented by a number of employed persons together if they belong to the same unpaid group and in such case the maximum compensation that may be awarded shall be Rs. 10 per head.—Sec. 16.

### Appeal

From the orders of the authority appointed under Section 15 an *appeal* may be preferred within 30 days to the Court of Small Causes in Presidency Towns and the District Court in other cases. An appeal lies (a) by the employer if the total sum payable exceeds Rs. 300, or employer has to incur financial liability exceeding Rs. 1,000, or (b) the employed person if the total wages withheld exceeds Rs. 50 and (c) by any person directed to pay a penalty. In all other cases the direction of the authority is final.—Sec. 17.

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<sup>1</sup> 57 Bom. L. R. 738

### **Powers of a Civil Court**

Every authority appointed under section 15(1) shall have all the *powers of a Civil Court*, under the Code of Civil Procedure, for the purpose of taking evidence and of enforcing the attendance of witness and compelling the production of document. Every such authority shall be deemed to be a Civil Court.—Sec. 18.

### **Power to Recover**

When the Authority or the Court is unable to recover from any person (other than an employer responsible for the payment of wages) the Authority shall recover (any amount directed by such Authority or Court) to be paid by such person, from the employer of the employed person concerned.—Sec. 19.

## **MISCELLANEOUS**

### **Attachment**

*Conditional attachment of property of employer or other person responsible for payment of wages* : Where after making an application or after filing an appeal, the Authority or the Court is satisfied that the employer or other person responsible for the payment of wages is likely to evade payment of any amount that may be directed to be paid, the Authority or the Court, as the case may be, except in cases where the Authority or the Court is of opinion that the ends of justice would be defeated by the delay, after giving an employer or other person an opportunity of being heard, may direct the attachment of so much of the property of the employer or other person responsible for payment of wages as is sufficient to satisfy the amount payable under the direction. These provisions of the Code of Civil Procedure shall apply to such an order for attachment.—Sec. 17 A.

### **Penalty**

Persons violating the provisions of Sections 5 & 7 to 13 can be fined up to Rs. 1000. Persons violating the provisions of Sections 4, 6 and 25 can be fined up to Rs. 500 for each offence.—Sec. 20.

### **Procedure in trial of offences**

Section 21 provides the following :

(1) No Court shall take cognizance against any person for an offence under section 20(1) unless an application in respect

of the fact constituting the offence has been presented under section 15 and has been granted and the authority empowered under section 15 or the appellate court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under section 20(1), the authority or Court shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the Authority or Court that his default was due to—

- (a) an error or a dispute, as to the amount payable to the employed person, or
- (b) the occurrence of an emergency or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) the failure of the employed person to apply for or accept payment.

(3) No court shall take cognizance of a contravention of section 4 or of section 6 or contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under Section 20(1), the court take into consideration the amount of a compensation already awarded against the accused in any proceedings taken under section 15.

### **Bar of Suits**

No court shall entertain any suit for the recovery of wages or deductions from wages if the matter is pending or has been decided under section 15. or 17 or could have been recovered by an application under section 15.—Sec. 22.

### **Contracting Out**

Any contract whereby an employed person relinquishes any right conferred by this Act, shall be null and void in so far as it purports to deprive him of such right.—Sec. 23.

### **Notice**

The person responsible for the payment of wages in a factory shall cause to be displayed in such factory a notice containing

an abstract of the Act and the rules framed under it in English and in the language of the majority of the persons employed in it.—Sec. 25.

### Rule making power

The State Government may make rules to regulate the procedure to be followed by the authorities and courts referred to in Sections 15 and 17 and for the purpose of carrying into effect the provisions of this Act.—Sec. 26.

### Application of Act

The powers of this Act conferred upon the State Government shall, in relation to railways, mines and oil-fields, be powers of the Central Government.—Sec. 24.

## EXERCISES

1. Define and explain :
  - (a) Industrial establishment. (Page 964)
  - (b) Wages. (Page 965)
  - (c) Fines. (Pages 967-968)
  - (d) Deductions for absence from duty. (Page 968)
2. What are the persons to whom the provisions of the Payment of Wages Act are applied? (Pages 963-964)
3. Who is responsible for the payment and time of wages under the Act? (Pages 966-967)
4. State and discuss the provisions for time of payment of wages. (Page 967)
5. The Payment of Wages Act provides that the wages are to be paid in a particular form, at regular interval and without any unauthorised deductions. Explain. (Pages 967-969)
6. What is the procedure for determining claims arising out of deductions from wages? State the powers of the Authority. (Pages 971-973)
7. What are deductions which may be made from the wages of employed persons? (Pages 967-969)
8. State and discuss the provisions relating to (i) deductions for damage or loss, and (ii) deductions for services. (Pages 968-969)
9. State the rules regarding the imposition of fines under the Payment of Wages Act. (Pages 967-968)

10. Explain the rules for the prevention and recovery of wrongful deductions under the Payment of Wages Act. (Pages 971-972)
11. When can the court direct conditional attachment of property of employer or other person responsible for payment of wages?  
(Pages 971-972)
12. State the rules regarding (i) deductions for recovery of advances and (ii) deductions for recovery of loans. (Pages 969-970)
13. Discuss the provisions of the Payment of Wages Act, 1936 relating to deductions for (i) damages or loss, (ii) services rendered, (iii) recovery of advance, and (iv) Payment to Co-operative Societies. (Pages 968-970)
14. State what is meant by wages according to Payment of Wages Act. Who is responsible for payment and time of wages under the Act?  
(Pages 965-966)
15. *Problems :*
  - (1) Twelve employees jointly absent themselves for five days without due notice and without reasonable cause. Can their wages be deducted? (Pages 967-968)
  - (2) An employed Person, whose monthly salary is Rs. 400/-, is paid Rs. 50/- after deducting dues for Co-operative Societies. Is such deduction valid? (Page 970)
  - (3) An employer intends to deduct Rs. 500/- for payment to the Co-operative Society and Rs. 200 for damages to the goods of the employer from the wages of the employed person. The employed person draws monthly wages of Rs. 900. State with reason whether the employer can validly make these deductions.  
(Pages 968-969)
16. Discuss the provisions of the Payment of Wages Act, 1936 relating to responsibility for payment of wages. (Page 966)
17. Discuss the provisions of the Payment of Wages Act, 1936 relating to deductions from wages for absence from duty. (Page 967)
18. Mention the authority to whom application will be made in case of delayed Payment of wages. (Page 971)
19. Who are the Authorities to decide claims arising out of deduction of wages? Who is the Authority for claims of delayed wages? What is the time limit of such application? What are the provisions regarding payment of compensation to aggrieved employees?  
(Pages 971-972)
20. (a) Discuss the provisions of the Payment of Wages Act, 1936 relating to time of payment of wages. (Pages 966-967)
- (b) State whether the loss of wages resulting from the following will be deemed to be, a deduction from wages—(i) the withholding of increment or promotion, (ii) the reduction to a lower post. (Pages 970-971)

- (c) Five employed persons absent themselves without due notice and without reasonable cause. Employer wants to deduct wages from each of those five employed persons for eight days. Is the action of the employer valid? Give reasons for the answer. (Pages 969-970)
21. (a) What is meant by 'wages' as defined in the Payment of Wages Act, 1936? (Pages 965-966)
- (b) An advance of money was given by the employer to a person for travelling expenses before his employment began. The employer wanted to recover the said advance from the first payment of wages of that person in respect of a complete wage-period. Was the action of the employer valid? Give reasons for the answer. (Pages 969-970)
22. Objective questions. Give short answer.
- (1) Mention the period within which the payment of wages will be made in case less than one thousand persons are employed in an industrial establishment. (Pages 967-968)
- (2) Mention the different kinds of persons who can present application under the Payment of Wages Act, 1936 against unauthorised deductions from wages. (Pages 971-972)
- (3) What is meant by "wages" as per Payment of Wages Act, 1936? (Pages 965-966)
- (4) An employer wants to deduct Rs. 300 from the monthly gross wages of Rs. 500 drawn by an employee. Comment on the action of the employer. (Page 967)

### OBJECT AND SCOPE

The Minimum Wages Act (Act XI of 1948) provides for fixing minimum rates of wages in certain employments. The object of the Act is to prevent the exploitation of labour and sweated labour. The Act endeavours to promote the welfare of workers in a competitive market by fixing the minimum rates of wages in certain employments.

The Act extends to the whole of India, including the State of Jammu and Kashmir.<sup>1</sup>

### DEFINITIONS UNDER MINIMUM WAGES ACT

#### Appropriate Government

The Central Government is the appropriate Government in relation to any scheduled employment carried on by or under the authority of the Central Government, by a railway administration, or in relation to a mine, oilfield, or major port, or any corporation established by a Central Act. The State Government is the appropriate Government in any other scheduled employment.—Sec. 2(b).

#### Scheduled Employment

Scheduled Employment means an employment specified in the schedule or any process or branch of work forming part of such employment. The Schedule is divided into two parts. Part I mentions employment in any woollen carpet or shawl weaving, rice mill, flour mill or *dal* mill, tobacco (including bidi making), oil-mill, stone breaking etc. Part II mentions employment in any agriculture, *i.e.*, farming, dairy farming, harvesting, etc.—Sec. 2(g).

The appropriate Government can add to the schedule.—Sec. 27.

#### Schedule, Part I

1. Employment in any woollen carpet making or shawl weaving establishment.

<sup>1</sup> See p. 5 footnote.



2. Employment in any rice mill, flour mill or dal mill.
3. Employment in any tobacco (including bidi making) manufactory.
4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.
7. Employment on the construction or maintenance of roads or in building operations.
8. Employment in stone breaking or stone crushing.
9. Employment in any lac manufactory.
10. Employment in public motor transport.
11. Employment in any mica works.
12. Employment in tanneries and leather manufactory.

#### Schedule, Part II

Employment in agriculture, that is to say, in any form of farming, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry.

#### Examples :

1. Wages less than what is prescribed by the Minimum Wages Act is violative of the article 38 of the constitution of India. Service provided by worker is forced labour. *Sanjit Roy v. State of Rajasthan*.<sup>1</sup>
2. Tube well operators working in District and Taluka Panchayat are entitled to the benefits of Minimum Wages Act. *Patel Ishwerbhai Prahladbhai etc. v. Taluka Development Officer and others*.<sup>2</sup>
3. Workmen employed by owners of ferries are entitled to receive minimum wages. *Ram Kumar Misra v. State of Bihar and others*.<sup>3</sup>

#### Competent authority

Competent authority is the authority appointed by the appropriate Government by notification in its official Gazette to ascertain the cost of living index number applicable to the employee employed in the scheduled employments specified in such notification.—Sec. 2(c).

#### Cost of Living Index Numbers

The appropriate Government can appoint a competent authority to ascertain from time to time the cost of living index

<sup>1</sup> AIR (1983) Supreme Court 328

<sup>2</sup> AIR (1983) Supreme Court 336

<sup>3</sup> AIR (1984) Supreme Court 537

number applicable to the employees employed in the scheduled employments. The Index Numbers are notified in the official Gazette.—Sec. 2(d).

### Wages

The term 'wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment (expressed or implied) were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance. The term *does not include*—

- (i) the value of house accommodation, supply of light, water, medical attendance 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 travel concession ;
- (iv) any sum paid to defray special expenses entailed on him by the nature of his employment ; or
- (v) any gratuity payable on discharge.—Sec. 2(h)

#### Case Law :

The term wages includes remuneration in respect of days of rest.  
*A. C. C. Ltd. v. Labour Inspector.*<sup>1</sup>

### Employer

This term means any person who employs, either directly or through any other person, or whether on behalf of himself or any other person, one or more employees in a scheduled employment where minimum wages have been fixed. The term includes the manager of a factory and other persons in the same position.—Sec. 2(e).

### Employee

This term means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed. The term includes a worker who works

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<sup>1</sup> (1960) 1 L. L. J. 192

outside the factory with materials supplied by the employer, and by another person to be made up, cleaned, altered, finished or otherwise processed for sale for the purposes of trade or business of that other person where the process is to be carried out either in the home of the outworker or in some other premises not being controlled by that other person. It also includes an employee declared to be an employee by the appropriate Government but excludes any member of the Armed forces of the Union.—Sec. 2(i).

### **Adult, Adolescent, Child**

These terms have the same meaning as in the Factories Act.—Sec. 2(a).

## **FIXATION AND REVISION OF MINIMUM WAGES**

### **Fixation of minimum rates of wages (Sec. 3)**

The Act provides that the appropriate Government shall fix the minimum rates of wages payable to the employees of scheduled employments within the dates laid down in the Act. (The dates have been extended by later amendments.)

The appropriate government shall review at such intervals not exceeding five years, the minimum rates of wages so fixed and if necessary, revise the minimum rate.

The minimum rates may be fixed for the whole State or for a part of the State or for a specified class of employment. The rates may be fixed for time-work, piece work and overtime work. If in a scheduled employment, less than 1000 workers are employed, minimum rates need not be fixed until the number reaches 1000.

Minimum rates may be fixed for time-work, piecework and overtime work, and a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time-work basis. The last mentioned rate is called "a guaranteed time-rate."

Different rates of wages may be fixed for different scheduled employment ; different classes of work in the same scheduled employment ; adults, adolescents, children and apprentices ; and different localities.

Minimum rates of wages may be fixed by any one or more of the following wage-periods, namely : (i) by the hour ; (ii) by the day ; (iii) by the month ; or (iv) by such other larger wages-period 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.

As regards the basic minimum wages, there is no difference between men and women workers.

Where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936, minimum wages shall be fixed in accordance therewith.

Section 4 of the Minimum Wages Act provides that any minimum rate of wages fixed or revised by the appropriate Government may consist of the following :

- (i) a basic of wages together with a cost of living allowance to be adjusted in accordance with the variations in the cost of living index number ; or
- (ii) a basic rate of wages with or without the cost of living allowance and the cash value of concessions in respect of supplies of essential commodities where authorised ; or
- (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any.

**Case Law :**

The Appropriate Government can fix the minimum rates of wages for overtime also. *Union of India and another v. B. D. Rathi and others.*<sup>1</sup>

**Procedure for fixing and revising minimum wages**

For fixing minimum wages the appropriate Government shall either (a) appoint a committee (with sub-committees for different localities) or (b) by a notification in the official Gazette published its proposals and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

After considering the advice of the committee in case (a) and the representations received from the parties interested in case (b) the appropriate Government shall fix the minimum rate by notification in the official Gazette. Unless otherwise provided,

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<sup>1</sup> AIR (1963) Bom. 54

the rates shall come into force on the expiry of three months from the date of the notification.—Sec. 5.

For the purpose of revising the minimum rates of wages, the appropriate Government may appoint Advisory Committees and Sub-committees. To co-ordinate the work of the Committee, there may be an Advisory Board. The Central Government shall appoint a Central Advisory Board for the purpose of advising the Central and the State Governments and for co-ordinating the work of the Advisory Boards. The members of the Committees and Boards shall be nominated by the appropriate Government. Each shall consist of an equal number of representatives of employers and employees and independent persons, not exceeding one-third of the total number of members. The Committees and Boards are to be consulted before revising the minimum rates. Revisions of rates are to be notified in the official Gazette. Unless otherwise provided, the revisions come into force on the expiry of three months from the date of issue of the Gazette.—Sections 5 to 10.

#### Case Law :

No procedure has been prescribed in the Act as to the method which the Advisory Board is to adopt before making its recommendations to the State Government. It can devise its own procedure and collect some information by appointment of a sub-committee consisting only of some of its members. But the Advisory Board has no power to appoint a rival sub-committee to the one appointed by the Government and take in such sub-committee persons who are not members of the Board, as was done in this case.

It, however, does not necessarily follow that the report of the Advisory Board is thereby vitiated. Held the irregularity, even characterising it as illegality, committed by the Advisory Board in taking into consideration the report of the sub-committee was not such as to nullify its recommendation contained in its report, or in any event, the final decision of the Government contained in the impugned notification. *State of Rajasthan and another v. Hari Ram Nathwani and others.*<sup>1</sup>

## PAYMENT OF MINIMUM WAGES

### The Rates of wages

Where minimum wages have been fixed as provided above, the employer shall pay wages at a rate not less than the minimum fixed for every category of employees without any deductions

<sup>1</sup> 29 Bom, 373

except such as may be authorised. The provisions of the Payment of Wages Act are not to be affected.—Sec. 12.

### **Wages in Kind**

Minimum wages payable under the Act shall be paid in cash. But where it is customary to pay wages wholly or partly in kind, the appropriate Government may authorise such payment. It may also authorise the supply of commodities at concession rates. The cash value of such concessions and of wages in kind shall be estimated in the prescribed manner.—Sec. 11.

### **Fixing Hour for a Normal Working Day**

In a scheduled employment where minimum wages have been fixed, the appropriate Government may fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals. It may also provide for a day of rest in every period of seven days and for the payment of remuneration in respect of such days.—Sec. 13. It may provide for payment for work on a day of rest at a rate not less than the overtime rate.—Sec. 13(1).

Under section 13, the appropriate Government is to provide the day of rest.

### **Wages of Worker who works for less than Normal Working Day**

An employee working less than the normal working day is entitled to receive wages for the full working day except in the following cases (i) where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and (ii) in such other cases and circumstances as may be prescribed.—Sec. 15.

### **Overtime**

For every hour or part of an hour worked in excess of the normal working day, the employee is entitled to receive remuneration at the rates fixed for overtime work under this Act or under any law of the appropriate Government in force, whichever is higher.—Sec. 14.

### **Wages for two or more classes of work**

Where an employee does two or more classes of work to each of which a different minimum rate is applicable, the

employer shall pay the employee in respect of the time respectively, occupied in each class of work, for each such class of work wages at rates not less than the minimum rate in force in respect of each such class.—Sec. 16.

### **Minimum time rate wages for piece work**

Where an employee is employed on a piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay wages at not less than the minimum time rate.—Sec. 17.

### **Register and Records**

Every employer shall maintain registers and records giving particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and other particulars, in such form as may be prescribed. The employer shall keep exhibited in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of out-workers, in such factory, workshop or place as may be used for giving out work to them, notices in the prescribed form containing prescribed particulars. The appropriate Government may frame rules for the issue of wage books or wage slips to employees employed in any scheduled employment, and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.—Sec. 18.

## **ENFORCEMENT OF THE ACT**

### **Inspectors and their Powers**

The appropriate Government may, by notification in 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 functions. Power of Inspectors is the subject to any rules made by the appropriate Government. An Inspector may (a) enter, at all reasonable hours, with such assistants, if any, as he thinks fit, any premises or place where employees are employed or work is given out to outworkers in any scheduled employment in respect of which minimum rates of wages have been fixed, for the purpose of examining any register, record of wages or notices and require the production

thereof for inspection ; (b) examine any employee ; (c) require any person giving out-work to give any information with regard to the work and the payments made for the work ; (d) seize or take copies of any register, record of wages or notices or portions thereof as he may consider relevant in respect of any offence under this Act which he has reason to believe has been committed by an employer; and (e) exercise such other power as may be prescribed.—Sec. 19(2).

### **Claims : The Authority (Sec. 20)**

The appropriate Government may, by notification in the official Gazette, appoint any Commissioner of Workmen's Compensation and certain officers of the Central Government and the State Governments to exercise the functions of a Labour Commissioner. The Authority, appointed as above, can hear and decide in any specified area from claims any arising out of payment of less than minimum rates of wages, or in respect of payment of remuneration for days of rest or for work such days under Sec. 13 of wages at overtime rate to employees employed or paid in that area.

For the above claims the following persons may apply to the Authority for hearing and deciding the case : (i) the employee himself ; or (ii) any legal practitioner or any official of a registered trade union authorised in writing ; or (iii) any Inspector ; or (iv) any person acting with the permission of the Authority.

The application shall be presented within six months, from the date on which the minimum wages or other amount became payable, unless the Authority is satisfied that he has sufficient cause for the delay.

After hearing the applicant and the employer the Authority and after such further enquiry, if any, as it may consider necessary may, without prejudice to any other penalty to which the employer may be liable under this Act, direct (i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess in any other case ; and (ii) in any other case, the



payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees. The Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

If the Authority is satisfied that the application is malicious or vexatious he may direct a penalty not exceeding Rs. 50 to be paid to the employer.

Any amount directed to be paid under section 20 may be recovered as if it was a fine imposed by the Magistrate.

Every Authority under section 20 shall have all the powers of a Civil Court.

Every direction of the Authority under section 20 shall be final.

#### **Case Law :**

The Labour Court has jurisdiction to entertain a petition for minimum wages due and can determine the money the employee is entitled to. *Anand Oil Industries v. Labour Court, Hyderabad and others.*<sup>1</sup>

#### **Single application in respect of a number of employees**

Section 21 provides that subject to such rules as may be prescribed, a single application may be presented under section 20 on behalf or in respect of any number of employees employed in the scheduled employment. The maximum compensation which may be awarded shall not exceed ten times the aggregate amount of such excess or ten rupees per head, as the case may be. The Authority may deal with any number of separate applications as a single application.

#### **Penalties**

Section 22 provides for penalties for violating the provisions of the Act. An employer who pays less than the prescribed minimum wage or infringes any order or rule made under Section 13, may be punished with imprisonment of either description up to six months and/or fined up to Rs. 500. The section also lays down the procedure for taking cognizance of offences under the Act and/or holding trials for the same. Sec. 22A provides that if there is no other penalty for the contravention by this Act,

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<sup>1</sup> AIR (1979) AP 182 (Full Bench)

any offence under this Act is punishable with fine which may extend to Rs. 500.

### **Cognizance**

Section 22B provides that a complaint of any person under the Act is to be made by or with the sanction of the appropriate Government or of an Inspector.

### **Offences by Companies and Firms**

Section 22C provides that in cases of offences by a company or firm, any person is punishable who is in charge of, and is responsible to the concern. No person is punishable if it was committed without his knowledge or that who exercised all due diligence to prevent it.

## **MISCELLANEOUS**

*Undisbursed amount due to employees* : Section 22D provides that any money payable to an employee under this Act which could not be paid on account of death of the employee, the payment is to be deposited to the prescribed authority who shall deal with the money in the prescribed manner.

*Protection against attachment of assets of an employer with Government* : Section 22E provides that any amount deposited with the appropriate Government by an employer, to secure the due performance of the contract with the Government, shall not be liable to attachment under any decree or order of the Court other than any debt or liability in connection with the contract aforesaid.

*Scheduled Employment* : Section 22F provides that an Inspector appointed under the Payment of Wages Act shall be deemed to be Inspector for the purpose of enforcement of the provisions of the Minimum Wages Act.

*Exemption of employer from liability in certain cases* : Section 23 provides that an employer will be excused from liability if he can show that some other person was responsible for the offence and (a) that he has used due diligence to enforce the execution of the Act, and (b) that the said other person committed the offence in question without his knowledge, consent or connivance. The other shall in such cases be liable to punishment.

*Bar of suits*: Section 24 provides that no court shall entertain any suit for the recovery of wages in so far as the sum so claimed has been dealt with under Section 20 of the Act or might have been recovered under that section.

*Contracting out*: Section 25 provides that any contract whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under the Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

*Exemptions and exceptions allowed*: The following exemptions and exceptions are allowed under Section 26.

- (1) The provisions of the Act shall not apply to disabled employees if the appropriate Government so declares.
- (2) Specified employments may be exempted from all or some of the provisions of the Act by the appropriate Government.
- (3) Nothing in the Act shall apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him. Member of the family of an employer shall be deemed to include his or her spouse or child or parent or brother or sister.

*Powers of Government*: The Central Government can give directions to State Government as to the carrying into execution of this Act in the State.—Sec. 28.

The Central and the State Governments have been given power to frame rules under the Act.—Sec. 29 and Sec. 30.

### EXERCISES

1. Discuss and explain the rule regarding the following : (i) worker who works less than the normal working day ; and (ii) wages to an employee who does two or more classes of work. (Pages 984-985)
2. State how an employee can take action if he is getting less than the minimum wages. What is the procedure for the final determination of the dispute ? (Pages 985-987)
3. State the procedure for fixing and revising minimum wages. State the registers and records to be maintained by the employer. (Pages 982-983)
4. Write notes on :
  - (a) Employee. (Page 980)
  - (b) Employer. (Pages 980-981)
  - (c) Wages. (Page 980)
  - (d) Cost of Living Index Number. (Pages 979-980)

5. What is 'Scheduled Employment' ? State the schedule employments. Can the list of such employments be closed ? (Page 978)
6. Is it possible to pay wages in kind ? (Page 980)
7. What is the composition and role of Advisory Committees and Boards ? (Pages 982-983)
8. (a) The employer could not make payment of minimum wages to the employee since the whereabouts of the employee are not known. State the course of action to be taken by the employer in respect of the amount of money payable to the said employee.
- (b) An employee whose minimum rate of wages has been fixed under the Minimum Wages Act, 1948 works on a day for a period less than the requisite number of hours constituting a normal working day. Will the employee succeed in claiming full wages at the minimum rate of Wages? Give reason for the answer.
- (c) An industrial dispute relating to the rates of wages payable to some of the employees employed in a scheduled employment is pending before an Industrial Tribunal. In the meantime, minimum rate of wages has been fixed by the State Government in that scheduled employment. State with reason whether the minimum rate of wages so fixed is applicable to the employees whose industrial dispute is pending before the Industrial Tribunal. (Pages 988, 983)
9. What are the provisions relating to the composition of Advisory Board and Central Advisory Board ? (Pages 982-983)
10. State the rules regarding overtime wages and wages of workers, who work for less than normal working hours, prescribed by the Minimum Wages Act. (Pages 983-985)
11. Can different rates of wages be fixed for different scheduled employments? (Pages 983-985)
12. (i) State the minimum rate of wages. (Pages 981-982)
- (ii) Examine the following statements :
  - (a) The components of minimum wages may be = basic rate of wages plus cost of living allowance.
  - (b) The components of minimum wages may be = basic rate of wages, plus cost of living allowance plus cash value of concession regarding supplies of essential commodities at concessional rates.
  - (c) The components of minimum wages may be = basic rate of wages minus cost of living allowance plus cash value of concession regarding supplies of essential commodities at concessional rates. (Pages 981-983)

13. Discuss the rules regarding (i) Wages of Worker who works for less than normal working hour. (ii) Wages for two or more classes of work. (Pages 983-984)
14. Discuss the procedure for fixing and revising minimum rate of wages in respect of any scheduled employment. (Pages 981-982)
15. Discuss the circumstances under which an employer who is charged with an offence under the Minimum Wages Act, 1948 can be exempted from his liability. (Page 988)
16. State the procedure to be adopted in order to add any employment to either part of the schedule for the purpose of fixing minimum rate of wages. (Pages 978-979)
17. (a) Define the following according to the Minimum Wages Act, 1948—(i) Employer, (ii) Employee.  
(b) Discuss the provisions of the Minimum Wages Act, 1948 relating to payment of wages for overtime work.  
(c) Minimum wages payable by an employer to an employee cannot be paid on account of his whereabouts not being known. Advise the employer in taking further action in the matter. (Pages 981, 983-985, 988)
18. (a) State the procedure for fixing and revising the minimum rate of wages under the Minimum Wages Act, 1948.  
(b) State the procedure to be adopted by the appropriate Government in order to add to either part of the schedule any employment in respect of which minimum rate of wages may be fixed.  
(c) A, an unmarried daughter living with B, her father, and C, a married daughter living with her husband, are employed by B in a scheduled employment. Both A and C present their claims for payment of minimum rate of wages. Will they succeed? (Pages 981-983, 978-979, 985)