

NOTES ON LABOUR LAW

1. Explain the industrial disputes Act 1947

Answer:

The **Industrial Disputes Act, 1947** extends to the whole of India and regulates Indian labour law so far as that concerns trade unions as well as Individual workman employed in any Industry within the territory of Indian mainland. It came into force 1 April 1947

Objectives

The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication machinery which is provided under the statute. The main and ultimate objective of this act is "Maintenance of Peaceful work culture in the Industry in India" which is clearly provided under the Statement of Objects & Reasons of the statute.

The laws apply only to the organised sector. Chapter V talks about the most important and often in news topic of 'Strikes and Lockouts'. It talks about the Regulation of strikes and lockouts and the proper procedure which is to be followed to make it a Legal instrument of 'Economic Coercion' either by the Employer or by the Workmen. Chapter V-B, introduced by an amendment in 1976, requires firms employing 300 or more workers to obtain government permission for layoffs, retrenchments and closures. A further amendment in 1982 (which took effect in 1984) expanded its ambit by reducing the threshold to 100 workers.

The Act also lays down:

1. The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.
2. The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
3. Unfair labour practices on part of an employer or a trade union or workers.

Applicability

The Industrial Disputes Act extends to whole of India and applies to every Industry and its various industrial establishment carrying on any business, trade, manufacture or

distribution of goods and services irrespective of the number of workmen employed therein.

Every person employed in an establishment for hire or reward including contract labour, apprentices and part-time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act.

This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity and drawing > 10,000 p.m or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison.

Applicability of Parent Act

- Trades Dispute Act

Related Sections Of The Act

- **Section 1** : Short title, and commencement

Important Definitions

- **Section 2A** : Appropriate Government

Any industry carried on by or under the authority of the Central Govt, or by a railway company or a Dock Labour Board, or the Industrial Finance Corporation of India Ltd, or the ESIC, or the board of trustees of the Coal Mines PF, or FCI, or LIC or in relation to any other industrial dispute, the state Government.

- **Section 2J** : Industry

The definition of Industry under the Act is taken from the Supreme Court's judgment in *Bangalore water Supply and Sewerage Board v. A. Rajappa*.^[1]

Triple Test formulae The organization is *Prima Facie* an industry if it is

1. A systematic activity
2. Organized by co-operation between an employer and an employee
3. for the production of goods and services calculated to satisfy human wants and wishes. (not spiritual or pious in nature but inclusive of material things or services geared to seek celestial bliss)

- **Section 2BB:** Banking company
- **Section 2G :** Employer
- **Section 2J :** Industry
- **Section 2K :** Industrial dispute
- **Section 2A :** Industrial dispute between individual and employer
- **Section 2KA:** Industrial establishment or undertaking
- **Section 2KK:** Insurance company
- **Section 2LA:** Major port
- **Section 2LB:** Mine
- **Section 2N :** Public utility service
- **Section 2O :** Railway Company
- **Section 2RR:** Wages
- **Section 2S :** Workmen (Including an Apprentice) industrial act

Related Schedules

- **Schedule II - S7 :** Matters Within The Jurisdiction Of Labour Courts
- **Schedule III - S7A :** Matters Within The Jurisdiction Of Industrial Tribunal
- Schedule IV - NOTICE OF CHANGE
- Schedule V - UNFAIR LABOUR PRACTICE

The Industrial Disputes Act, 1947 (the "ID Act") has been enacted for the investigation and settlement of industrial disputes in any industrial establishment.

The Industrial Disputes Act defines "Industrial dispute" as a dispute or difference between workmen and employers or between workmen and workmen, which is connected with employment or non-employment or the terms of employment or with the conditions of labour. Dismissal of an individual workman is deemed to be an industrial dispute.

The ID Act provides for the constitution of the Works Committee, consisting of employers and workmen, to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, endeavours to resolve any material difference of opinion in respect of such matters.

The ID Act provides for the appointment of Conciliation Officers, Board of Conciliation, Courts of Inquiry, Labour Courts, Tribunals, and National Tribunals for settlement of disputes. Another method recognised for settlement of disputes is through arbitration. The Industrial disputes Act provides a legalistic way of settling disputes. The goal of preventive machinery as provided under the Act is to create an environment where the disputes do not arise at all. The ID Act prohibits unfair labour practices which are defined in the Fifth Schedule—strikes and lockouts (except under certain defined conditions and with proper notice). It also provides for penalties for illegal strikes and lockouts and

unfair labour practices and provisions regarding lay off and retrenchment as well as compensation payable thereof.

The ID Act provides that an employer who intends to close down an industrial establishment shall obtain prior permission at least ninety days before the date on which he intends to close down the industrial establishment, giving the reasons thereof.

Trade Unions Act, 1926

The Trade Unions Act, 1926 (the "Trade Unions Act") seeks to provide for the registration of Trade Unions in India and for the protection of the same. Further, the Trade Unions Act also in certain respects defines the law relating to registered Trade Unions like mode of registration, application for registration, provisions to be contained in the rules of a Trade Union, minimum requirement for membership of a Trade Union, rights and liabilities of registered Trade Unions, etc.

LAWS RELATING TO WAGES IN INDIA

Minimum Wages Act, 1948

The Minimum Wages Act, 1948 (the Minimum Wages Act) provides for fixing of minimum rates of wages in certain employments. The minimum wages are prescribed by States through notifications in the State's Gazette under the Minimum Wages Rules of the specific State.

In terms of the provisions of the Minimum Wages Act, an employee means (i) 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; (ii) an outworker, to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person; and (iii) an employee declared to be an employee by the appropriate Government.

The term "wages" has been defined to mean all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment express or implied were fulfilled, be payable to a person employed in respect of his employment or work done in such an employment and includes house rent allowance but does not include:

- i. The value of:
 - a. Any house accommodation or supply of light, water and medical attendance; or

- b. Any other amenity or any service excluded by general or special order of the appropriate Government;
- ii. Any contribution paid by the employer to any personal fund or provident fund or under any scheme of social insurance;
- iii. Any travelling allowance or the value of any travelling concession;
- iv. Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- v. Any gratuity payable on discharge.

Further, the Minimum Wages Act requires the employer to pay to every employee engaged in schedule employment wages at a rate not less than minimum rates of wages as fixed by a notification without any deduction (other than prescribed deductions, if any).

Payment of Wages Act, 1936

The Payment of Wages Act, 1936 (the Payment of Wages Act) is an Act to regulate the payment of wages to certain classes of employed persons. The Payment of Wages Act seeks to ensure that the employers make a timely payment of wages to the employees working in the establishments and to prevent unauthorized deductions from the wages.

According to the Payment of Wages Act, all wages shall be in current coin or currency notes or in both. It is, however, provided that 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.

Payment of Bonus Act, 1965

The Payment of Bonus Act, 1965 (the "Bonus Act") provides for the payment of bonus to persons employed in certain establishments in India either on the basis of profits or on the basis of production or productivity and is applicable to every establishment in which 20 or more persons are employed and to all employees drawing a remuneration of less than Rs 10,000. Those employees who have worked for less than thirty days are not eligible to receive bonus under the Bonus Act. The Bonus Act provides for the payment of bonus between 8.33% (minimum) to 20% (maximum). However, for the calculation of bonus, a maximum salary of Rs 3,500 is considered.

LAWS RELATING TO SOCIAL SECURITY IN INDIA

Employees Provident Funds and Miscellaneous Provisions Act, 1952

The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (the "EPF Act") provides for the institution of provident funds, pension funds, and deposit-linked insurance funds for employees and applies to all establishments employing 20 or more

persons or class of persons. An establishment to which the EPF Act applies shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time falls below 20.

On account of 2014 Amendment to the said Act, The definition of "excluded employee" has been amended whereby the members drawing wages exceeding Rs 15,000 per month have been excluded from the provisions of the PF Scheme. Accordingly, the wage ceiling for an employee to be eligible for the PF Scheme has been increased from Rs 6,500 per month to Rs 15,000 per month. It further provides that every employee employed in or in connection with the work of a factory or other establishment is required to become a member of the Provident Fund.

The 2014 Amendment further lays down the following changes:

- a. New members (joining on or after 1 September 2014) drawing wages above Rs 15,000 per month shall not be eligible to voluntarily contribute to the Pension Scheme.
- b. The pensionable salary shall be calculated on the average monthly pay for the contribution period of the last 60 months (earlier 12 months) preceding the date of exit from the membership.
- c. The monthly pension for any existing or future member shall not be less than Rs 1,000 for the financial year 2014-2015.
- d. The contribution payable under the Insurance Scheme shall also be calculated on a monthly pay of Rs 15,000, instead of Rs 6,500.
- e. In the event of death of a member (on or after 1 September 2014), the assurance benefits available under the Insurance Scheme has been increased by twenty percent (20%) in addition to the already admissible benefits.

Contributions to the Provident Fund are to be made at the rate of 12% of the wages by the employers with the employee contributing an equal amount. The employee may voluntarily contribute a higher amount but the employer is not obliged to contribute more than the prescribed amount. Further, the EPF Act contains provisions for transfer of accumulations in case of change of employment.

In terms of power conferred under s 143(11) of the Companies Act, 2013, the Central Government has issued the Companies (Auditor's Report) Order, 2015 (CARO), which came into force on 10 April, 2015. Clause (vii) (a) of Paragraph 3 provides that:

The [Statutory] Auditor has to report, inter alia, on the following:

- i. Is the company regular in depositing undisputed statutory dues, eg, Provident Fund, Investor Education and Protection Fund, Employees' State Insurance,

income tax, wealth tax, service tax, sales tax, customs duty, excise duty, cess and any other statutory duties with the appropriate authorities?

- ii. If not paid regularly, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, then it shall be indicated in the report.
- iii. If such non-payment of dues is on account of any dispute, then the amount involved and for the forum where the dispute is pending should also be mentioned.

The CARO is, however, not applicable to a banking company, an insurance company, a company, one person company, small companies and certain class of private companies, as specified under the CARO.

Employees' State Insurance Act, 1948

The Employees' State Insurance Act, 1948 (the ESI Act) is a social welfare legislation enacted with the objective of providing certain benefits to employees in case of sickness, maternity and employment injury. In terms of the provisions of the ESI Act, the eligible employees will receive medical relief, cash benefits, maternity benefits, pension to dependants of deceased workers and compensation for fatal or other injuries and diseases. It is applicable to establishments where 10 or more persons are employed. All employees, including casual, temporary or contract employees drawing wages less than Rs 15,000 per month, are covered under the ESI Act. This limit has been increased from Rs 10,000 to Rs 15,000 w.e.f. May 1, 2010.

The Government enacted as the Employees' State Insurance (Amendment) Act, 2010 (No.18 of 2010). All the provisions of the ESI (Amendment) Act 2010 (except s 18) have come into effect from June 1, 2010. The salient features of the ESI (Amendment) Act are as under:

- facilitating coverage of smaller factories;
- enhancing age limit of dependent children for eligibility to dependants benefit;
- extending medical benefit to dependant minor brother/sister in case of insured persons not having own family and whose parents are also not alive;
- streamlining the procedure for assessment of dues from defaulting employers;
- providing an Appellate Authority within the ESI Corporation against assessment to avoid unnecessary litigation;
- continuing medical benefit to insured persons retiring under VRS scheme or taking premature retirement;
- treating commuting accidents as employment injury;
- streamlining the procedure for grant of exemptions;
- third party participation in commissioning and running of the hospitals;

- opening of medical/ dental/ paramedical/ nursing colleges to improve quality of medical care;
- making an enabling provision for extending medical care to other beneficiaries against payment of user charges to facilitate providing of medical care from under utilised ESI Hospitals to the BPL families covered under the Rashtriya Swasthaya Bima Yojana introduced by the Ministry of Labour & Employment w.e.f. 1.4.2008;
- reducing duration of notice period for extension of the Act to new classes of establishments from six months to one month;
- empowering State Governments to set up autonomous Corporations for administering medical benefit in the States for bringing autonomy and efficiency in the working.

The employer should get his factory or establishment registered with the Employees' State Insurance Corporation (ESIC) within 15 days after the Act becomes applicable to it, and obtain the employer's code number.

The employer is required to contribute at the rate of 4.75% of the wages paid/ payable in respect of every wage period. The employees are also required to contribute at the rate of 1.75% of their wages.

It is the responsibility of the employer to deposit such contributions (employer's and employees') in respect of all employees (including the contract labour) into the ESI account.

Labour Welfare Fund Act (of respective States)

The [State] Labour Welfare Fund Act provides for the constitution of the Labour Welfare Fund to promote and carry out various activities conducive to the welfare of labour in the State so as to ensure full and appropriate utilisation of the Fund.

Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 (the Gratuity Act) applies to (i) every factory, mine, oilfield, plantation, port and railway company; (ii) every shop or establishment within the meaning of any law, for the time being in force, in relation to shops and establishments in a State, in which 10 or more persons are employed or were employed on any day of the preceding twelve months; and (iii) such other establishments or classes of establishments, in which 10 or more persons are employed or were employed on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

The Gratuity Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or

other establishments. The Gratuity Act enforces the payment of "gratuity", a reward for long service, as a statutory retiral benefit.

Every employee, who has completed continuous service of five years or more, irrespective of his wages, is entitled to receive gratuity upon termination of his employment, on account of (i) superannuation; or (ii) retirement; or (iii) death or disablement due to accident or disease. However, the completion of continuous service of five years shall not be necessary where the termination of employment of any employee is due to death or disablement.

The gratuity is payable even to an employee who resigns after completing at least five years of service.

The gratuity is payable at the rate of fifteen days wages for every year of completed service, subject to an aggregate amount of Rupees ten lacs only. However, if an employee has the right to receive higher gratuity under a contract or under an award, then the employee is entitled to get higher gratuity.

LAWS RELATING TO WORKING HOURS, CONDITIONS OF SERVICE AND EMPLOYMENT

Factories Act, 1948

The Factories Act, 1948 (the Factories Act) lays down provisions for the health, safety, welfare and service conditions of workmen working in factories. It contains provisions for working hours of adults, employment of young persons, leaves, overtime, etc. It applies to all factories employing more than 10 people and working with the aid of power, or employing 20 people and working without the aid of power. It covers all workers employed in the factory premises or precincts directly or through an agency including a contractor, involved in any manufacture. Some provisions of the Act may vary according to the nature of work of the establishment.

Some Major provisions of the Factories Act are explained below:

- a. Section 11 of the Act provides that every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance. Section 13 of the Act focuses on ventilation and temperature maintenance at workplace. Every factory should work on proper arrangements for adequate ventilation and circulation of fresh air.
- b. Section 18 of the Act specifies regarding arrangements for sufficient and pure drinking water for the workers.

- c. Section 19 further mentions that in every factory there should be sufficient accommodation for urinals which should be provided at conveniently situated place. It should be kept clean and maintained.
- d. Section 21 of the Act provides for proper fencing of machinery. And that any moving part of the machinery or machinery that is dangerous in kind should be properly fenced
- e. Further s 45 of the said Act specifies that every factory should have a properly maintained and well equipped first aid box or cupboard with the prescribed contents. For every 150 workers employed at one time, there shall not be less than 1 first aid box in the factory. Also in case where there are more than 500 workers there should be well maintained ambulance room of prescribed size and containing proper facility.

Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 (the IESO Act) is applicable to every industrial establishment wherein 100 or more workmen are employed or were employed on any day of the preceding twelve months. The IESO Act aims to bring uniform terms and conditions of service in various industrial establishments. The IESO Act requires every employer in an industrial establishment to clearly define and publish standing orders with respect to conditions of employment / service rules and to make them known to the workmen employed by it. The Act further specifies that every employer is required to submit to the Certifying Officer five draft copies of the standing orders which he intends to adopt for his establishment.

Further, the IESO Act requires display of standing orders in a prominent place for the knowledge of workers.

Shops and Commercial Establishments Act (of respective States)

The Shops and Commercial Establishments Act(s) of the respective States generally contain provisions relating to registration of an establishment, working hours, overtime, leave, privilege leave, notice pay, working conditions for women employees, etc. The provisions of the Shops and Commercial Establishments Act apply to both white collar and blue-collar employees. IT and IT-enabled services have been given relaxations by various State Governments in respect of the observance of certain provisions of their respective Shops and Commercial Establishments Act.

Contract Labour (Regulation & Abolition) Act, 1970

The main objectives of the Contract Labour (Regulations & Abolition) Act, 1970 (the Contract Labour Act) are: (i) to prohibit the employment of contract labour; and (ii) to

regulate the working conditions of the contract labour, wherever such employment is not prohibited.

The Act defines a "worker" as a workman who shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

The Contract Labour Act regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. It applies to every establishment or contractor wherein/with whom 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour. The Government may, however, by notification in the Official Gazette, make the provisions of the Contract Labour Act applicable to establishments or contractor employing less than 20 workmen.

The Contract Labour Act is not applicable to establishments in which work only of an intermittent or casual nature is performed.

The Contract Labour Act prohibits the employment of contract labour on jobs that are perennial in nature. For such jobs, permanent employees need to be employed.

The Contract Labour Act provides that no contractor shall undertake any work through contract labour, except under and in accordance with a licence issued in that behalf by the licensing officer.

In terms of s 7 of the Contract Labour Act, the principal employer has to make an application in the prescribed form accompanied by the prescribed fee payable to the registering officer for registration.

The Employee's Compensation Act, 1923 (formally known as "The Workmen Compensation Act, 1923")

The Employee's Compensation Act, 1923 (the EC Act) aims to provide financial protection to workmen and their dependents in case of any accidental injury arising out of or in course of employment and causing either death or disablement of the worker by means of compensation.

This Act applies to factories, mines, docks, construction establishments, plantations, oilfields and other establishments listed in Schedules II and III of the said Act, but excludes establishments covered by the ESI Act.

The Act provides for payment of compensation by the employer to the employees covered under this Act for injury caused by accident. Generally, companies take insurance policies to cover their liability under the EC Act.

Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (the ISMW Act) is an Act to regulate the employment of inter-state migrant workmen and to provide for the conditions of service and for matters connected therewith.

The ISMW Act applies to (i) any establishment in which five or more inter-state migrant workmen are employed or who were employed on any day of the preceding twelve months; and (ii) every contractor who employs or who employed five or more inter-state migrant workmen on any day of the preceding twelve months.

For the purpose of the ISMW Act, an inter-state migrant workman means any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such an establishment.

Weekly Holiday Act, 1942

The Weekly Holiday Act, 1942 provides for the grant of weekly holidays to persons employed in shops, restaurants and theatres. The Act provides that every shop shall remain entirely closed on one day of the week, which day shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop. Further the state government may require in respect of shops or any specified class of shops that they shall be closed at such hour in the afternoon of one week-day in every week in addition to weekly day off.

The Plantation Labour Act, 1951

The Plantations Labour Act (PLA) seeks to provide for the welfare of labour and to regulate the conditions of workers in plantations. This Act empowers the State Governments to take all feasible steps to improve the lot of the plantation workers. The passing of PLA has helped in creating conditions for organising the workers and the rise of trade unions.

The Act defines an employer as, the person who has the ultimate control over the affairs of the plantation and where the affairs of the plantation are entrusted to any other person, such other person shall be the employer in relation to that plantation.

Plantation: Any plantation to which this Act applies and includes offices, hospitals, dispensaries, schools and any other premises used for any purposes connected with such plantation.

The Act makes it mandatory for every employer to get their plantation registered within 60 days of its coming into existence.

The Mines Act, 1952

The Mines Act, 1952 (**Mines Act**) aims to secure safety and health and welfare of workers working in the mines. "Mine" is defined under the Mines Act as a place where any excavation work is carried on for the searching and obtaining of minerals.

The Mines Act provides that persons working in the mine should not be less than 18 years of age.

The Mines Act lays down provisions for appointment of one chief inspector who would be regulating all the territories in which mining is done and an inspector for every mine who would be sub ordinate to the chief inspector. Moreover, the District Magistrate is also empowered to perform the duties of an inspector subject to the orders of the Central Government. The chief inspector or any of the inspectors may make such inquiry, at any time whether day or night, in order to check whether the law is being abided in the mines or not.

LAWS RELATING TO EQUALITY AND EMPOWERMENT OF WOMEN

Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers for the same work and prevents discrimination, on the ground of sex, against women in the matter of employment, recruitment and for matters connected therewith or incidental thereto. This Act applies to virtually every kind of establishment.

Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 (**Maternity Benefit Act**) regulates the employment of women in certain establishments for a certain period before and after childbirth and provides for maternity benefits and certain other benefits including maternity leave, wages, bonus, nursing breaks, etc, to women employees.

The Maternity Benefit Act, 1961 applies to (a) a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; (b)

every shops or establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed on any day of the preceding 12 months.

Except for s 5A and 5B, the provisions of the Maternity Benefit Act shall not apply to the employees who are covered under the Employees' State Insurance Act, 1948 for certain periods before and after child-birth and for which the ESI Act provides for maternity and other benefits. The coverage under the ESI Act is, however, at present restricted to factories and certain other specified categories of establishments located in specified areas. The Maternity Benefit Act is, therefore, still applicable to women employees employed in establishments which are not covered by the ESI Act, as also to women employees, employed in establishments covered by the ESI Act, but who are out of its coverage because of the wage-limit.

Under the Maternity Benefit Act, an employer has to give paid leave to a woman worker for six weeks immediately following the day of her delivery or miscarriage and two weeks following a tubectomy operation. The maximum period for which a woman shall be entitled to maternity benefit shall be 12 weeks, of which not more than six weeks shall precede the date of her expected delivery.

A pregnant woman is also entitled to request her employer not to give her work of arduous nature or which involves long hours of standing, etc, during the period of one month immediately preceding the date of her expected delivery or any period during the said period of six weeks for which the woman does not avail leave of absence. When a woman absents herself from work in accordance with the provisions of the Maternity Benefit Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence.

PROHIBITIVE LABOUR LAWS

Bonded Labour System (Abolition) Act, 1976

The Bonded Labour System (Abolition) Act, 1976 (**Bonded Labour Abolition Act**) is a prohibiting legislation which provides for the abolition of the bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the society, and matters connected therewith or incidental thereto.

Under the Bonded Labour Abolition Act, the term "bonded labour" has been defined to mean any labour or service rendered under the bonded labour system.

The term "bonded labour system" has been defined to mean the system of, forced or partly forced, labour under which a debtor enters or has, or is presumed to have, entered into an agreement with the creditor to the effect that:

- i. In consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by the document) and in consideration of the interest, if any, due on such advance; or
- ii. In pursuance of any customary or social obligation; or
- iii. In pursuance of any obligation devolving on him by succession; or
- iv. For any economic consideration received by him or by any of his lineal ascendants or descendants; or
- v. By reason of his birth in any particular caste or community.

The debtor would render, by himself or through any member of his family, or any person dependent on him, labour or service, to the creditor, or for the benefit of the creditor, for a specific period or for an unspecified period, either without wages or for nominal wages.

Section 3 of the Bonded Labour Abolition Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Section 20 of the Bonded Labour Abolition Act provides that whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted. For the purpose of this Act, "abetment" has the meaning assigned to it in the Indian Penal Code.

Child Labour (Prohibition & Regulation) Act, 1986

The Constitution of India incorporates provisions to secure labour protection to children. It expressly prohibits the employment of a child below the age of 14 years in work in any factory or mine or engagement in any other hazardous employment.

The policy of the Government is to ban the employment of children below the age of 14 years in factories, mines and hazardous employments and to regulate the working condition of children in other industries.

The Government enacted the Child Labour (Prohibition & Regulation) Act, 1986 (the Child Labour Prohibition & Regulation Act), which prohibits the employment of children who have not completed their 14th year in 16 occupations and 65 processes¹ like cinder picking, cleaning of ash pits, building operation, manufacturing or handling of pesticides and insecticides, and manufacturing of matches, explosives, fireworks, etc.

In addition, the Child Labour Prohibition & Regulation Act regulates the working conditions of children in all employments, which are not prohibited under the Act. It also fixes the number of hours and the period of work and requires the occupiers of

establishments employing children to give notice to the local inspector and maintain the prescribed register.

Apart from the Child Labour Prohibition & Regulation Act, there are other legislations which also protect the interest of child labour. For example, the Factories Act, 1948 and the Mines Act, 1952 prohibit the employment of children below the age of 14 years. The Children (Pledging of Labour) Act, 1933, makes an agreement to pledge the labour of children void.

Directions of the Supreme Court on the Issue of Elimination of Child Labour

In a landmark judgment on 10 December 1996, in the case of *MC Mehta v State of Tamil Nadu* (1996) 6 SCC 756 [Writ Petition (Civil) No. 465/1986], the Supreme Court of India gave certain directions on the issue of elimination of child labour. The main features of the judgment are as under:

- i. Survey for identification of working children;
- ii. Withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions;
- iii. Contribution at the rate of Rs 20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose;
- iv. Employment to one adult member of the family of the child so withdrawn from work and if that is not possible a contribution of Rs 5,000 to the welfare fund to be made by the State Government;
- v. Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs 20,000/25,000 deposited in the welfare fund, as long as the child is actually sent to a school; and
- vi. Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer.

The implementation of the directions of the Hon'ble Supreme Court is being monitored by the Ministry of Labour and Employment and compliance with the directions has been reported in the form of affidavits on 5 December 1997, 21 December 1999, 4 December 2000, 4 July 2001 and 4 December 2003, to the Hon'ble Supreme Court on the basis of the information received from the State Governments/Union Territories.

The Government is committed to eliminate child labour in all its forms and is moving in this direction in a targeted manner.

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

The Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013 (SHW Act) was enacted by the Parliament to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected therewith.

The SHW Act makes it mandatory for every organization having 10 employees and more to constitute an Internal Complaints Committee (ICC) to entertain complaints that may be made by an aggrieved women.

The SHW Act also incorporates provisions for formation of a Local Complaints Committee (LCC) in every district for entertaining complaints of sexual harassment at workplace from organisations where ICC has not been established due to having less than 10 employees.

The SHW Act provides that an aggrieved women may in writing make a complaint of sexual harassment to the ICC or LCC as the case may be within a period of three months from the date of occurrence of such incident. Further, in a case where the aggrieved woman is unable to make a complaint on account of her physical incapacity or Death, a complaint may be filed inter alia by her relative or legal heirs

2. Explain the provision relating to authorities and their powers under the industrial disputes Act 1947

Answer:

Section -11 Procedure and power of conciliation officers, Boards, Courts and Tribunals

1*[(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.]

(2) A conciliation officer or a member of a Board, 2*[or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal] may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(3) Every Board, Court, 3*[Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

(a) Enforcing the attendance of any person and examining him on oath;

(b) Compelling the production of documents and material objects;

(c) Issuing commissions for the examination of witnesses;

(d) In respect of such other matters as may be prescribed,

and every inquiry or investigation by a Board, Court, 4* [Labour Court, Tribunal or National Tribunal] shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A conciliation officer 5*[may enforce the attendance of any person for the purpose of examination of such person or call for] and inspect any document which he has ground

for considering to be relevant to the industrial dispute 6* [or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), 7* [in respect of enforcing the attendance of any person and examining him or of compelling the production of documents].

8* [(5) A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as an assessor or assessors to advise it in the proceeding before it.]

9*[(6) All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).]

10* [(7) Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.]

11*[(8) Every 12*[Labour Court, Tribunal or National Tribunal] shall be deemed to be Civil Court for the purposes of 13*[sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974)].

16* [(9) Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908(5 of 1908).

(10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.]

Section -12 Duties of conciliation officers

1. Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.
2. The conciliation officer shall, for the purpose of bringing about a settlement of the dispute without delay investigate the dispute and all matters affecting the merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
3. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government 1*[or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.
4. no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.
5. If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, 2*[Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore.
6. A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

3*[**Provided** that,4*[subject to the approval of the conciliation officer,] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]

Section -13 Duties of Board

1. Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
2. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.
3. If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting for the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.
4. If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a1*[Labour Court, Tribunal or National Tribunal] under section 10, it shall record and communicate to the parties concerned its reasons therefore.
5. The Board shall submit its report under this section within two months of the date2*[on which the dispute was referred to it] or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate:

Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

Section -14 Duties of Courts

A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

Section -15 1* Duties of Labour Courts, Tribunals and National Tribunals

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall,2*[within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2A) of section

10], submit its award to the appropriate Government.]

STATE AMENDMENT

3*West Bengal

For section 15, substitute the following section, namely:-

"15. Duties of Labour Courts, Tribunals and National Tribunals.-

(1) Where an industrial dispute has been referred to a National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2A) of section 10, submit its award to the appropriate Government.

(2) Where an industrial dispute has been referred to a Labour Court or Tribunal under sub-section (1) of section 10, it shall,-

(a) After the filing of statements and taking of evidence, give day-to-day hearing and

pronounce its award, other determination or decision in the manner specified in section 17AA, and

(b) After hearing the parties to the dispute, determine, within a period of sixty days from the date of the order referring such industrial dispute or within such shorter period as may be specified in such order, the quantum of interim relief admissible, if any:

Provided that the quantum of interim relief shall, in the case of discharge, dismissal or retrenchment of a workman from service or termination of service of workman, be equivalent to the subsistence allowance admissible under the West Bengal Payment of Subsistence Allowance Act, 1969 (West Bengal Act 38 of 1969)."

3. What is Strike? When strike become illegal under the Industrial Dispute Act 1947

Answer:

Industrial Disputes Act, 1947

India recognized strike as statutory right under Industrial Disputes Act, which came into force on April 1, 1947. Prior to Industrial Disputes Act, 1947, India had enacted its first industrial disputes legislation i.e. Employer & Workmen Disputes Act, 1869 and subsequently Trade Disputes Act, 1929 and Rule 81A of Defense of India Rules.

Experiences from Employer & Workmen Disputes Act, 1869 reveal that this act was much against the workers. Trade Disputes Act, 1929 had brought in a special provision of strikes, however, such legislation could not establish peace in the industries due to strike problems and disputes kept on continuing. Further to overcome this, Rule 81A of defense rule was brought in during the Second World War. After the Second World War Industrial Disputes Act, 1947 came into the picture to sort out the disputes in industries. Its applicability is extended to the whole of India. It is applicable to existing industry and not on dead industries.

Meaning of Strike

As per Cambridge Dictionary “Strike is to refuse to continue working because of an argument with an employer about working conditions, pay levels, or job losses”.

General Meaning

A strike is a powerful weapon used by trade unions or other associations or workers to put across their demands or grievances by employers or management of industries. In another way, it is the stoppage of work caused by the mass refusal in response to grievances. Workers put pressure on the employers by refusal to work till fulfilment of their demands. Strikes may be fruitful for workers’ welfare or it may cause economic loss to the country.

Legal Meaning

As per Section 2 (q) of the Industrial Disputes Act, 1947 “strike” means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.

Types of Strikes

Based on the phenomena of strikes around the world, strikes can be categorised into economic strike, sympathy strike, general strike, sit down strike, slow down strike, hunger strike and wildcat strike have been experienced.

Economic Strike – Such strike happens due to economic demands like increment of wages and allowances like house rent allowance, transport allowances, bonus etc.

Sympathy Strike – In such strike union or workers of one industry join the strikes already hailed by other union or workers.

General strike – This strike intended to increase the political pressure in the ruling party by all unions or members in a region or state.

Sit down strike – In such case, workers hold strikes at the workplace and none of the workers stays absent from duty but they all refuse to work till their demands are fulfilled.

Slow down strike – It means workers or unions don't refuse to work but put pressure on industries to get their demand by reducing or restricting the output of the production of an industry.

Hunger strike – It is one of the painful strikes by the striker where workers go on strike without having food/water to redress the grievances. The employees of Kingfisher airlines went on hunger strikes for salary dues of several months.

Wildcat strike – Such strike happens by the workers without the consent of union and authority. In 2004, advocates went on wildcat strike at civil courts in Bangalore to protest the remarks allegedly made by an assistant commissioner against them.

However, if we see the history of strikes, it is found that strikes mostly occur due to issues related to wages by the employers to the workers.

ew Instances of Strikes in India

In March 2012, nurses employed by different hospitals in Chennai went on strike for 7 days demanding from hospital management hike of basic wages to Rs 15000/-, apart from leave benefits and annual increment. All the well-known hospitals like Apollo, Fortis, Max etc.came to a standstill because of the strike.

In January 2014, Kingfisher employees went on hunger strike due to non-payment of salary for 17 months.

In September 2016, tens of millions of Indian workers of public sector had gone on strike demanding higher wages. Banks, power stations were kept shut and public transportation systems froze in some of the states. Later the government considered their demands and increased the wages. It was the world's largest-ever strike.

Role of Industrial Disputes Act

Industrial Disputes Act, 1947 plays a vital role to sort out the above dispute by conciliation or award. It is designed in a way to settle the disputes amicably between employees with the management of industries.

The objective of the act is to investigate and settle industrial disputes in an expeditious and amicable manner. The apex court has refused to entertain fresh cases of industrial disputes as the act empowers the Industrial Disputes Tribunals to address the same.

Section 22 of Chapter V of Industrial Disputes Act clarifies the Prohibitions on right to strike

It states that no person employed in a public utility service shall go on strike in breach of contract –

1. without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
2. within fourteen days of giving such notice; or
3. before the expiry of the date of strike specified in any such notice as aforesaid; or
4. during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Significance of section 22 are as follows

- It must be noted that above regulations for strike are applicable for employees who work for public utility service in Industry.
- It is mandatory to give employer notice with or without strike date.
- In case date of strike is not mentioned in the notice, then such notice will be valid for six weeks only from the date of notice. If the employees do not go on strike within the 6 weeks, then it is necessary to give fresh notice of strike by the employee if they are willing to go on strike.
- In case the date of strike is mentioned in the notice then employees cannot go on strike before the expiry of 14 days from the date of the notice.
- Employee cannot go on strike during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings

Points a) and b) of section 22 clarify that employee who works in public utility service can go on strike at least after 14 days. It is important to note that generally, 14 days is the consideration period in which employer can consider their employee demands.

Section 23 – General prohibition of strikes and lock-outs

Section 23 deals with General prohibitions of strikes it is applicable for public utility services and non-public utility services. It gives the general guidelines for prohibitions of strike however section 22 deals only with services related to public utility.

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—

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

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

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

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

Section 24. Illegal strikes and lockouts

(1) A strike or a lock-out shall be illegal if—

(i) It is commenced or declared in contravention of section 22 or section 23; or

(ii) It is continued in contravention of an order made under sub-section (3) of section 10 or sub-section (4A) of section 10A.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 or sub-section (4A) of section 10A.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Section 24 differentiates between a legal strike and an illegal strike. It states that legal strikes are those strikes in which procedures for going on strikes as laid down in section 22 or section 23 are followed. However, illegal strikes will not be in conformity with sections 22 or 23.

Section 26. Penalty for Illegal strikes and lockouts

This section prescribes penalties for conducting an illegal strike. As per the act any workmen who were involved or interested in strikes which were illegal, will get punishment as well imprisonment for a term and same will be extended to one month, or they have to pay with fine up to fifty rupees, or both. Its main aim is to establish the balancing situation among industries, workers or unions.

Common Reasons for Strike

Strikes generally occur in industries due to disputes between employees and employers, employees and employees or among employers and employers mostly due to the following issues:

- Working hours
- Working Conditions
- Salary, Incentive etc
- Time payment of wages
- Reduction in salary/wages
- Issue related Minimum wages
- Leave/Holidays
- Dissatisfaction with the company policy
- PF, ESI, Profit Sharing etc
- Retrenchment of workmen and closure of establishment
- Any other issue.

Conclusion

It is observed that strike is not a fundamental right in India and government employees have no right to go on strikes. Industrial Disputes Act, 1947 limits the rights of strikers and given the legal right of going on strikes as stipulated in sections 22, 23 and 24, right to strike under Industrial Disputes Act, 1947 is very much limited and regulated.

Il-legal strikes and Lockouts

(1) A strike or lock-out shall be illegal if-

(i) it is commenced or declared in contravention of section 22 or section 23; or

(ii) it is continued in contravention of an order made under sub-section (3) of section 10¹⁰⁷[or sub-section (4A) of Section 10A].

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board,¹⁰⁷[an arbitrator, a]¹¹⁷[Labor Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section(3) of section 10¹⁰⁷[or sub-section (4A) of section 10A].

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

4. When is employer liable and not liable to pay the compensation under the Workmen's Compensation Act 1923?

Answer:

Workmen's Compensation under The Workmen's Compensation Act ,1923

The Workmen's Compensation Act, aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.

It provides for payment by certain classes of employers to their workmen compensation for injury by accident.

WHO IS A WORKMAN

Workman means any person (other than 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) who is-

1. a railway servant as defined in section 3 of the Indian Railways Act, 1890 not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
2. employed in any such capacity as is specified in Schedule II,

Whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing.

The provisions of the Act have been extended to cooks employed in hotels, restaurants using power, liquefied petroleum gas or any other mechanical device in the process of cooking.

EMPLOYEES ENTITLED TO COMPENSATION

Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of employer's business and who suffers an injury in any accident arising out of and in the course of his employment, shall be entitled for compensation under the Act.

Employer's Liability For Compensation

The employer of any establishment covered under this Act, is required to compensate an employee:

1. Who has suffered an accident arising out of and in the course of his employment, resulting into (i) death, (ii) permanent total disablement, (iii) permanent partial disablement, or (iv) temporary disablement whether total or partial, or
2. Who has contracted an occupational disease.

HOWEVER THE EMPLOYER SHALL NOT BE LIABLE

1. In respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding **three days**;
2. In respect of any injury not resulting in death, caused by an accident which is directly attributable to-
 - i. the workmen having been at the time thereof under the influence or drugs, or
 - ii. the willful 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 willful removal or disregard by the workmen of any safeguard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

The burden of proving intentional disobedience on the part of the employee shall lie upon the employer.

- iv. when the employee has contracted a disease which is not directly attributable to a specific injury caused by the accident or to the occupation; or
- v. when the employee has filed a suit for damages against the employer or any other person, in a Civil Court.

CONTRACTING OUT

Any contract or agreement which makes the workman give up or reduce his right to compensation from the employer is null and void insofar as it aims at reducing or removing the liability of the employer to pay compensation under the Act.

What is Disablement

Disablement is the loss of the earning capacity resulting from injury caused to a workman by an accident.

1. Disablement's can be classified as (a) Total, and (b) Partial. It can further be classified into (i) Permanent, and (ii) Temporary, Disablement, whether permanent or temporary is said to be total when it incapacitates a worker for all work he was capable of doing at the time of the accident resulting in such disablement.
2. **Total disablement** is considered to be permanent if a workman, as a result of an accident, suffers from the injury specified in Part I of Schedule I or suffers from such combination of injuries specified in Part II of Schedule I as would be the loss of earning capacity when totaled to one hundred per cent or more. Disablement is said to be permanent partial when it reduces for all times, the earning capacity of a workman in every employment, which he was capable of undertaking at the time of the accident. Every injury specified in Part II of Schedule I is deemed to result in permanent partial disablement.
3. **Temporary disablement** reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident.

Accident Arising Out of and in The Course of Employment

An accident arising out of employment implies a casual connection between the injury and the accident and the work done in the course of employment. Employment should be the distinctive and the proximate cause of the injury. The three tests for determining whether an accident arose out of employment are:

1. At the time of injury workman must have been engaged in the business of the employer and must not be doing something for his personal benefit;
2. That accident occurred at the place where he as performing his duties; and
3. Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature condition of employment.

The general principles that are evolved are:

1. There must be a casual connection between the injury and the accident and the work done in the course of employment;
2. The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury;
3. It is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and
4. Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury it would be enough for the workman to succeed. But where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the workman by his own

conduct exposed himself, which peril was not involved in the normal performance of the duties of his employment, then the employer will not be liable.

Compensation in The Case of Occupational Diseases

Workers employed in certain types of occupations are exposed to the risk of contracting certain diseases, which are peculiar and inherent to those occupations. A worker contracting an occupational disease is deemed to have suffered an accident out of and in the course of employment and the employer is liable to pay compensation for the same.

Occupational diseases have been categorised in Parts A, B and C of Schedule III. The employer is liable to pay compensation:

1. When a workman contracts any disease specified in Part B, while in service for a continuous period of 6 months under one employer. (Period of service under any other employer in the same kind of employment shall not be included),
2. When a workman contracts any disease specified in Part C, while he has been in continuous service for a specified period, whether under one or more employers. (Proportionate compensation is payable by all the employers, if the workman had been in service under more than one employer).

If an employee **has after the cessation of that service contracted any disease** specified in the said Part B or Part C, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of the Act.

Calculation of Compensation

The amount of compensation payable by the employer shall be calculated as follows:

1. In case of death. - 50% of the monthly wages X Relevant Factor or Rs. 50,000, whichever is more. And Rs. 1000 for funeral expenses.
2. In case of total permanent disablement Specified under Schedule I - 60% of the monthly wages X Relevant Factor or Rs. 60,000, whichever is more.
3. In case of partial permanent disablement specified under Schedule I - Such percentage of the compensation payable in case (2) above as is the percentage of the loss in earning capacity (specified in Schedule I)
4. In case of partial permanent disablement not specified under Schedule I .-Such percentage of the compensation payable in case (2) above, as is proportionate to the loss of earning Capacity (as assessed by a qualified medical practitioner).
5. In case of temporary disablement (whether total or partial). - A half-monthly installment equal to 25% of the monthly wages, for the period of disablement or 5 years, whichever is shorter.

When Compensation is to be Deposited With Commissioner

The amount of compensation is not payable to the workman directly. It is generally deposited alongwith the prescribed statement, with the Commissioner who will then pay it to the workman. Any payment made to the workman or his dependents, directly, in the following cases will not be deemed to be a payment of compensation:

1. in case of death of the employee;
2. in case of lump sum compensation payable to a woman or a minor or a person of unsound mind or whose entitlement to the compensation is in dispute or a person under a legal disability.

Besides, compensation of Rs. 10 or more may be deposited with the Commissioner on behalf of the person entitled thereto.

The receipt of deposit with the Commissioner shall be a sufficient proof of discharge of the employer's liability.

AMOUNTS PERMISSIBLE TO BE PAID TO THE WORKMAN/DEPENDENTS DIRECTLY

Following amounts may be paid directly to the workman or his dependents:

1. In case of death of the workman, any advance on account of compensation upto [an amount equal to three months' wages of such workman] may be paid to any dependent.
2. In case of lump sum compensation payable to an adult male worker not suffering from any legal disability.
3. In case of half-monthly payments payable to any workman.

Registration of Agreements of Compensation

1. Where the amount payable as compensation has been settled by agreement a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied about its genuineness, record the memorandum in a registered manner.
2. However where it appears to the Commissioner that the agreement ought not to be registered by reason of the inadequacy of the sum or amount, or by reason that the agreement has been obtained by fraud or undue influence or other improper means he may refuse to record the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.

3. An agreement for payment of compensation which has been registered shall be enforceable under this act notwithstanding anything contained in the Indian Contract Act, or any other law for the time being in force.

EFFECT OF FAILURE TO REGISTER AGREEMENT

When a memorandum of any agreement is not sent to the Commissioner for registration, the employer shall be liable to pay the full amount of compensation, which he is liable to pay under the provisions of this Act.

Filing of Claims

A claim for the compensation shall be made before the Commissioner.

No claim for compensation shall be entertained by the Commissioner unless the notice of accident has been given by the workman in the prescribed manner, except in the following circumstances:

1. in case of death of workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working died on such premises or such place or in the vicinity of such premises or place;
2. in case the employer has knowledge of the accident from any other source, at or about the time of its occurrence;
3. in case the failure to give notice or prefer the claim, was due to sufficient cause.

LIMITATION

Workman, to the Commissioner, may file the claim for accident compensation in the prescribed form, within 2 years from the occurrence of the accident or from the date of death. The claim must be preceded by

1. a notice of accident, and
2. the claimant-employee must present himself for medical examination if so required by the employer.

Attachment and Assignment of Compensation

No compensation payable under this Act, whether in lumpsum or half-monthly payments, can be attached, charged or passed on to any person other than workman by operation of law, nor can it be setoff against any other claim.

Duties of Employer/Employees

1. To pay compensation for an accident suffered by an employee, in accordance with the Act.
2. To submit a statement to the Commissioner (within 30 days of receiving the notice) in the prescribed form, giving the circumstances attending the death of a workman as result of an accident and indicating whether he is liable to deposit any compensation for the same.
3. To submit accident report to the Commissioner in the prescribed form within 7 days of the accident, which results in death of a workman or a serious bodily injury to a workman.
4. To maintain a notice book in the prescribed form at a place where it is readily accessible to the workman.
5. To submit an annual return of accidents specifying the number of injuries for which compensation has been paid during the year, the amount of such compensation and other prescribed particulars.

DUTIES OF EMPLOYEES

1. To send a notice of the accident in the prescribed form, to the Commissioner and the employer, within such time as soon as it is practicable for him. The notice is precondition for the admission of the claim for compensation.
2. To present himself for medical examination, if required by the employer.

Appeal/Bar to Civil Remedy

An appeal against an order of the Commissioner lies to the High Court, within 60 days of the order. The employer is required to deposit the compensation before filing the appeal.

- if he has instituted a claim to compensation in respect of the injury before a Commissioner; or
- if an agreement has come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of his Act

Employers Liability Act, 1938

One of the main objectives of the Act was to declare certain defenses which shall not be raised in suits for damages in respect of the injuries caused by the workmen. The Act makes certain provisions for the safeguard and good condition of work as well. Section 2(b) of the Act defines the term employer as well as certain other provisions of the Act, which provides for certain liabilities of the employer in case of the injury or damages caused to the workmen. The main aim of the Act was ruling out certain defenses to the employer arising out of the injuries and damages sustained by the workmen. The law also

stands for the protection of workmen in safeguarding their interests which bring suits for damages occurred to them during their operation.

Section 3 of the Act provides for defense of common employment barred in certain cases where employee causes personal injuries and its states that:

1. By reason of the omission of the employer to maintain good and safe conditions of work, machinery or plant connected to his trade or business, or the omission on the part of any person in the service of the employer with the duty if seeing that such works, plant, and machinery are in good and safe condition, or
2. Because of negligence of any person in the service of his employer who has any superintendence entrusted in him, while in the exercise of such superintendence; or
3. Because of the negligence of any person in the service of his employer to whose orders or directions the workman at the time of injury was bound to conform and did conform, where the injury resulted on his having so confirmed.

There are certain other provisions of the Act which states that any suit for damages raised by any workman who had suffered from any personal injury due to non-maintenance of healthy conditions of work, good and sound machinery, equipment etc., or by reason of the negligence on the part of the persons employed by the employer, such suit shall not be failed by reason of employment of such workman with the employer.

Employer NOT Liable to Pay Compensation

Employers are not liable to pay any compensation under certain circumstances:

- The injury will not result in a permanent incapacity or incapacitates the workman from doing his normal works.
- The injury is self-inflicted.
- The death or disablement results from the injury were falsely claimed by the employee to be free of to the employer.
- The injury was caused due to the consumption of alcohol or drugs by the employee during the time of his work.[6]

There are notable cases which dealt with the matter of liability of the employer in providing compensation to his/her employee. One among them is *Dhropadabai and Ors v. M/s Technocraft Toolings*, in which the Court stated that the claimant is entitled to compensation as the employee took his last breath during the time of his employment as well as at the place of his work. Even though the cause of death has no connection with his employment, the respondent is liable to pay compensation to the claimant as the death occurred during the employment of the deceased.

5. What are the health and safety measures under the factories Act 1948?

Answer:

A. HEALTH

There are various measures under Factories Act 1948 which are taken by factories for health, safety and welfare of their workers. Such measures are provided under Chapters III, IV and V of the Act which are as follows:

Chapter III of the Act deals with the following aspects.

(i) Section 11 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance. The Act has laid down following provisions in this respect :

1. All the accumulated dirt and refuse on floors, staircases and passages in the factory shall be removed daily by sweeping or by any other effective method. Suitable arrangements should also be made for the disposal of such dirt or refuse.
2. Once in every week, the floor should be thoroughly cleaned by washing with disinfectant or by some other effective method [Section 11(1)(b)].
3. Effective method of drainage shall be made and maintained for removing water, to the extent possible, which may collect on the floor due to some manufacturing process.
4. To ensure that interior walls and roofs, etc. are kept clean, it is laid down that: (i) white wash or color wash should be carried at least once in every period of 14 months; (ii) where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months; (iii) where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
5. All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years.
6. The dates on which such processes are carried out shall be entered in the prescribed register. If the State Government finds that a particular factory cannot comply with the above requirements due to its nature of manufacturing process, it may exempt the factory from the compliance of these provisions and suggest some alternative method for keeping the factory clean. [Section 11(2)]

(ii) Disposal of waste and effluents

Every occupier of a factory shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal. Such arrangements should be in accordance with the rules, if any, laid down by the State Government. If the State Government has not laid down any rules in this respect, arrangements made by the occupier should be approved by the prescribed authority if required by the State Government. (Section 12)

(iii) Ventilation and temperature

Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining :-

1. adequate ventilation by the circulation of fresh air; and
2. such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health. What is reasonable temperature depends upon the circumstances of each case. The State Government has been empowered to lay down the standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof. It may direct that proper measuring instruments at such places and in such position as may be specified shall be provided and prescribed records shall be maintained.

Measures to reduce excessively high temperature: To prevent excessive heating of any workroom following measures shall be adopted:

1. Walls and roofs shall be of such materials and so designed that reasonable temperature does not exceed but kept as low as possible.
2. Where the nature of work carried on in the factory generates excessively high temperature, following measures should be adopted to protect the workers:
 - (a) by separating such process from the workroom; or
 - (b) insulating the hot parts; or
 - (c) adopting any other effective method which will protect the workers.
3. The Chief Inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature. In this regard, he can specify the measures which in his opinion should be adopted. (Section 13)

(iv) Dust and fume

There are certain manufacturing processes like chemical, textile or jute, etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process. Following measures should be adopted in this respect:

- Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms.
- Wherever necessary, an exhaust appliances should be fitted, as far as possible, to the point of origin of dust fumes or other impurities. Such point shall also be enclosed as far as possible.
- In stationery internal combustion engine and exhaust should be connected into the open air.
- In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes there from. (Section 14) It may be pointed that the evidence of actual injury to health is not necessary. If the dust or fume by reason of manufacturing process is given off in such quantity that it is injurious or offensive to the health of the workers employed therein, the offence is committed under this Section. Lastly the offence committed is a continuing offence. If it is an offence on a particular date is does not cease to be an offence on the next day and so on until the deficiency is rectified.

(v) Artificial humidification

Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc., higher degree of humidity is required for carrying out the manufacturing process. For this purpose, humidity of the air is artificially increased. This increase or decrease in humidity adversely affects the health of workers.

Section 15(1) empowers the State Government to make rules (i) prescribing the standards of humidification, (ii) regulating methods to be adopted for artificially increasing the humidity of the air, (iii) directing prescribed tests for determining the humidity of the air to be correctly carried out, and recorded, and (iv) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the work-room.

Section 15(2) lays down that water used for artificial humidification should be either purified before use or obtained from a public supply or other source of drinking water. Where the water is not purified as stated above. **Section 15(3)** empowers the Inspector to order, in writing, the manager of the factory to carry out specified measures, before a specified date, for purification of the water.

(vi) Overcrowding

Overcrowding in the work-room not only affect the workers in their efficient discharge of duties but their health also. Section 16 has been enacted with a view to provide sufficient air space to the workers.

(1) Section 16(1) prohibits the overcrowding in the work-rooms to the extent it is injurious to the health of the workers.

(2) Apart from this general prohibition Section 16(2) lays down minimum working space

for each worker as 14.2 cubic meters of space per worker in every workroom. For calculating the work area, the space more than 4.2 meters above the level of the floor, will not be taken into consideration.

Posting of notice: Section 16(3) empowers the Chief Inspector who may direct in writing the display of a notice in the work-room, specifying the maximum number of workers which can be employed in that room. According to Section 108, notice should be in English and in a language understood by the majority of the workers. It should be displayed at some conspicuous and convenient place at or near, the entrance. It should be maintained in clean and legible conditions.

Exemptions : The chief Inspector may by order in writing, exempt any work-room from the provisions of this section, subject to such conditions as he may think fit to impose, if he is satisfied that non-compliance of such provision will have no adverse effect on the health of the workers employed in such work-room.

(vii) Lighting

Section 17 of the Factories Act makes following provisions in this respect:

- every factory must provide and maintain sufficient and suitable lighting, natural, artificial or both, in every part of the factory where workers are working or passing;
- all the glazed windows and sky lights should be kept clean on both sides;
- effective provisions should be made for the prevention of glare from a source of light or by reflection from a smooth or polished surface;
- formation of shadows to such an extent causing eye-strain or the risk of accident to any worker, should be prevented; and
- the state government is empowered to lay down standard of sufficient and suitable lighting for factories for any class or description of factories or for any manufacturing process.

(viii) Drinking water

Section 18 makes following provisions with regard to drinking water.

- every factory should make effective arrangements for sufficient supply of drinking water for all workers in the factory;
- water should be wholesome, i.e., free from impurities;
- water should be supplied at suitable points convenient for all workers;
- no such points should be situated within six meters of any washing place, urinals, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination, unless otherwise approved in writing by the Chief Inspector;

- all such points should be legible marked Drinking Water in a language understood by majority of the workers;
- in case where more than 250 workers are ordinarily employed, effective arrangements should be made for cooling drinking water during hot weather. In such cases, arrangements should also be made for the distribution of water to the workers; and
- the State Government is empowered to make rules for the compliance of above stated provisions and for the examination, by prescribed authorities, of the supply and distribution of drinking water in factories.
- Latrines and urinals
Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers. These points as stated below, are subject to the provisions of Section 19 and the rules laid down by the State Government in this behalf.

(8) the State Government is empowered to make rules in respect of following:

- prescribing the number of latrines and urinals to be provided to proportion to the number of male and female workers ordinarily employed in the factory.
- any additional matters in respect of sanitation in factories;
- responsibility of the workers in these matters.

B. SAFETY

Chapter IV of the Act contains provisions relating to safety. These are discussed below:

(i) Fencing of machinery

Fencing of machinery in use or in motion is obligatory under Section 21. This Section requires that following types of machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly maintained and kept in position, while the parts of machinery they are fencing are in motion or in use. Such types of machinery or their parts are:

1. every moving parts of a prime-mover and flywheel connected to a prime-mover. It is immaterial whether the prime-mover or fly-wheel is in the engine house or not;
2. head-race and tail-race of water wheel and water turbine;
3. any part of stock-bar which projects beyond the head stock of a lathe;
4. every part of an electric generator, a motor or rotary converter or transmission machinery unless they are in the safe position;
5. every dangerous part of any other machinery unless they are in safe position.

(ii) Safety measures in case of work on or near machinery in motion

Section 22 lays down the procedure for carrying out examination of any part while it is in motion or as a result of such examination to carry out the operations mentioned under clause (i) or (ii) of the proviso to Section 21(1). Such examination or operation shall be carried out only by specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of appointment and while he is so engaged.

No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover or any transmission machinery while the prime-mover or transmission machinery is in motion or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication and adjustment thereof would expose the woman or the young person to risk of injury from any moving part either of that machine or of any adjacent machinery [Section 22(2)].

(iii) Employment of young persons on dangerous machines

Section 23 provides that no young person shall be required or allowed to work at any machine to which this section applies unless he has been fully instructed as to 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.

(iv) Striking gear and devices for cutting off power

Section 24 provides that in every factory suitable striking gears 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 and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley. Further, driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

Suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room in every factory. It is also provided that when a device which can inadvertently shift from 'off' to 'on position in a factory', cutoff power arrangements shall be provided for locking the devices on safe position to prevent accidental start of the transmission machinery or other machines to which the device is fitted.

(v) Self-acting machines

Section 25 provides further safeguard for workers from being injured by self-acting machines. It provides that no traverse part of 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 forty five centimeters from any fixed structure which is not part of the machines.

However, Chief Inspector may permit the continued use of a machine installed before the commencement of this Act, which does not comply with the requirement of this section, on such conditions for ensuring safety, as he may think fit to impose.

(vi) Casing of new machinery

Section 26 provides further safeguards for casing of new machinery of dangerous nature. In all machinery driven by power and installed in any factory

(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 as to be so safe as it would be if it were completely encased.

The section places statutory obligation on all persons who sell or let on hire or as agent of seller or hire to comply with the section and in default shall be liable to punishment with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 500 or with both.

(vii) Prohibition of employment of woman and children near cotton openers

According to Section 27, no child or woman shall be employed in any part of factory for pressing cotton in which a cotton opener is at work. However, if the feed-end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of partition where the feed-end is situated.

(viii) Hoists and lifts

Section 28 provides that in every factory:

(i) every hoist and lift shall be of good mechanical construction, sound material and adequate strength. It shall be properly maintained and 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,

(ii) every hoist way and lift way 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 any fixed structure or moving part,

(iii) the maximum safe working load shall be marked on every hoist or lift and no load greater, than such load shall be marked on every hoist or lift and no load greater than such load shall be carried thereon,

(iv) the cage of every hoist and lift shall be fitted with a gate on each side from which access is afforded to a landing,

(v) such gates of the hoist and lift 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.

(ix) Lifting machines, chains, ropes and lifting tackles

In terms of Section 29, in any factory the following provisions shall be complied with 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, shall be
(i) of good construction, sound material and adequate strength and free from defects;
(ii) properly maintained;
(iii) thoroughly examined – by a competent person at least once in every period of 12 months or at such intervals as Chief Inspector may specify in writing and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine or 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 it 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 that 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 6 meters of that place

(x) Safety measures in case of use of revolving machinery

Section 30 of the Act prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon such shaft or spindle necessary to secure such safe working peripheral-speed. Speed indicated in the notice shall not be exceeded and effective measures in this regard shall be taken.

(xi) Pressure plant

Section 31 provides for taking effective measures to ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at pressure above atmospheric pressure, does not exceed the limits. The State Government may make rules to regulate such pressures or working and may also exempt any part of any plant or machinery from the compliance of this section.

(xii) Floor, stairs and means of access

Section 32 provides that in every factory

(a) all floors, steps, stairs passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstruction and substances likely to cause persons to slip and where it is necessary to ensure safety, steps, stairs passages and gangways shall be provided with substantial handrails,

(b) there shall, be so far as is reasonably practicable, be provided, and maintained safe means of access of every place at which any person is at any time required to work;

(c) 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.

(xiii) Pits, openings in floors etc.

Section 33 requires that in every factory 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 source of danger shall be either securely covered or securely fence. The State Government may exempt any factory from the compliance of the provisions of this Section subject to such conditions as it may prescribe.

(xiv) Excessive weights

Section 34 provides that no person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause him injury. 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.

(xv) Protection of eyes

Section 35 requires the State Government to make rules and require for providing the effective screens or suitable goggles for the protection of persons employed on or in immediate vicinity of any such manufacturing process carried on in any factory which involves (i) risk of injury to the eyes from particles or fragments thrown off in the course of the process or; (ii) risk to the eyes by reason of exposure to excessive light.

(xvi) Precautions against dangerous fumes, gases etc.

Section 36 provides (1) that no person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flu or other confined space in any factory in which any gas, fume, vapor or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapor or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapor and unless:

(a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapor or dust; or

(b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person outside the confined space.

(xvii) Precautions regarding the use of portable electric light

Section 36A of the Act provides that in any factory (1) no portable electric light or any other electric appliance of voltage exceeding 24 volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flu or other confined space unless adequate safety devices are provided; and (2) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flu or other confined space unless adequate safety devices are provided, no lamp or light other than that of flame proof construction shall be permitted to be used therein.

(xviii) Explosive or inflammable dust gas, etc.

Sub-section (1) of section 37 of the Act provides that in every factory where any manufacturing process produces dust, gas, fume or vapor of such character and to such extent 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 vapor, and (c) exclusion or effective enclosure of all possible sources of ignition.

(xix) Precautions in case of fire

Section 38 provides that in every factory all practicable measures shall be taken to outbreak of fire and its spread, both internally and externally and to provide and maintain (a) safe means of escape for all persons in the event of fire, and (b) the necessary equipment and 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 outline to be followed in such case.

(xx) Power to require specification of defective parts or test to stability

Section 39 states that when the inspector feels that the conditions in the factory are dangerous to human life or safety he may serve on the occupier or manager or both notice in writing requiring him before the specified date to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, machinery or plant can be used with safety or to carry out such test in such a manner as may be specified in the order and to inform the inspector of the results thereof.

(xxi) Safety of buildings or machinery

Section 40 provides that the inspectors in case of dangerous conditions of building or any part of ways, machinery or plant requires the manager or occupier or both to take such measures which in his opinion should be adopted and require them to be carried out

before a specified date. In case the danger to human life is immediate and imminent from such usage of building, ways of machinery he may order prohibiting the use of the same unless it is repaired or altered.

(xxii) Maintenance of buildings

Section 40-A provides that if it appears to the inspector that any building or part of it is in such a state of disrepair which may lead to conditions detrimental to the health and welfare of workers he may serve on the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date.

(xxiii) Safety officers

Section 40-B provides that in every factory (i) where 1,000 or more workers are ordinarily employed or (ii) where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with such duties and qualifications and conditions of service as may be prescribed by State

Government.

(xxiv) Power to make rules to supplement this Chapter.

This is vested in the State Government under Section 41 for such devices and measures to secure the safety of the workers employed in the factory.

6. Discuss collective Bargaining with merits and demerits.

Answer:

Definition of Collective Bargaining:

Industrial disputes between the employee and employer can also be settled by discussion and negotiation between these two parties in order to arrive at a decision.

This is also commonly known as collective bargaining as both the parties eventually agree to follow a decision that they arrive at after a lot of negotiation and discussion.

According to Beach, “Collective Bargaining is concerned with the relations between unions reporting employees and employers (or their representatives).

It involves the process of union organization of employees, negotiations administration and interpretation of collective agreements concerning wages, hours of work and other conditions of employees arguing in concerted economic actions dispute settlement procedures”.

According to Flippo, “Collective Bargaining is a process in which the representatives of a labor organization and the representatives of business organization meet and attempt to negotiate a contract or agreement, which specifies the nature of employee-employer union relationship”.

“Collective Bargaining is a mode of fixing the terms of employment by means of bargaining between organized body of employees and an employer or association of employees acting usually through authorized agents. The essence of Collective Bargaining is bargaining between interested parties and not from outside parties”.

According to an ILO Manual in 1960, the Collective Bargaining is defined as:

“Negotiations about working conditions and terms of employment between an employer, a group of employees or one or more employers organization on the other, with a view to reaching an agreement.”

It is also asserted that “the terms of agreement serve as a code defining the rights and obligations of each party in their employment relations with one another, if fixes large number of detailed conditions of employees and during its validity none of the matters it deals with, internal circumstances give grounds for a dispute counseling and individual workers”.

Collective Bargaining Involves:

(i) Negotiations

(ii) Drafting

(iii) Administration

(iv) Interpretation of documents written by employers, employees and the union representatives

(v) Organizational Trade Unions with open mind.

Forms of Collective Bargaining:

The working of collective bargaining assumes various forms. In the first place, bargaining may be between the single employer and the single union, this is known as single plant bargaining. This form prevails in the United States as well as in India.

Secondly, the bargaining may be between a single firm having several plants and workers employed in all those plants. This form is called multiple plants bargaining where workers bargain with the common employer through different unions.

Thirdly, instead of a separate union bargaining with separate employer, all the unions belonging to the same industry bargain through their federation with the employer's federation of that industry. This is known as multiple employer bargaining which is possible both at the local and regional levels. Instances in India of this industry-wide bargaining are found in the textile industry.

The common malady of union rivalry, small firms and existence of several political parties has given rise to a small unit of collective bargaining. It has produced higher labour cost, lack of appreciation, absence of sympathy and economic inefficiency in the realm of industrial relationships. An industry-wide bargaining can be favourable to the economic and social interests of both the employers and employees.

Essential Pre-Requisites for Collective Bargaining:

Effective collective bargaining requires the following prerequisites:

(i) Existence of a strong representative trade union in the industry that believes in constitutional means for settling the disputes.

(ii) Existence of a fact-finding approach and willingness to use new methods and tools for the solution of industrial problems. The negotiation should be based on facts and figures and both the parties should adopt constructive approach.

(iii) Existence of strong and enlightened management which can integrate the different parties, i.e., employees, owners, consumers and society or Government.

(iv) Agreement on basic objectives of the organisation between the employer and the employees and on mutual rights and liabilities should be there.

(v) In order that collective bargaining functions properly, unfair labour practices must be avoided by both the parties.

(vi) Proper records for the problem should be maintained.

(vii) Collective bargaining should be best conducted at plant level. It means if there are more than one plant of the firm, the local management should be delegated proper authority to negotiate with the local trade union.

(viii) There must be change in the attitude of employers and employees. They should realise that differences can be resolved peacefully on negotiating table without the assistance of third party.

(ix) No party should take rigid attitude. They should enter into negotiation with a view to reaching an agreement.

(x) When agreement is reached after negotiations, it must be in writing incorporating all term of the contract.

It may be emphasised here that the institution of collective bargaining represents a fair and democratic attempt at resolving mutual disputes. Wherever it becomes the normal mode of setting outstanding issues, industrial unrest with all its unpleasant consequences is minimised.

Main Features of Collective Bargaining:

Some of the salient features of collective bargaining are:

1. It is a Group Action:

Collective bargaining is a group action as opposed to individual action. Both the parties of settlement are represented by their groups. Employer is represented by its delegates and, on the other side; employees are represented by their trade union.

2. It is a Continuous Process:

Collective bargaining is a continuous process and does not end with one agreement. It provides a mechanism for continuing and organised relationship between management and trade union. It is a process that goes on for 365 days of the year.

3. It is a Bipartite Process:

Collective bargaining is a two party process. Both the parties—employers and employees— collectively take some action. There is no intervention of any third party. It is mutual given-and-take rather than take-it-or-leave-it method of arriving at the settlement of a dispute.

4. It is a Process:

Collective bargaining is a process in the sense that it consists of a number of steps. The starting point is the presentation of charter of demands by the workers and the last step is the reaching of an agreement, or a contract which would serve as the basic law governing labour-management relations over a period of time in an enterprise.

5. It is Flexible and Mobile and not Fixed or Static:

It has fluidity. There is no hard and fast rule for reaching an agreement. There is ample scope for compromise. A spirit of give-and-take works unless final agreement acceptable to both the parties is reached.

6. It is Industrial Democracy at Work:

Collective bargaining is based on the principle of industrial democracy where the labour union represents the workers in negotiations with the employer or employers. Industrial democracy is the government of labour with the consent of the governed—the workers. The principle of arbitrary unilateralism has given way to that of self-government in industry. Actually, collective bargaining is not a mere signing of an agreement granting seniority, vacations and wage increase, by sitting around a table.

7. It is Dynamic:

It is relatively a new concept, and is growing, expanding and changing. In the past, it used to be emotional, turbulent and sentimental, but now it is scientific, factual and systematic.

8. It is a Complementary and not a Competitive Process:

Collective bargaining is not a competitive process i.e., labour and management do not coopt while negotiating for the same object. It is essentially a complementary process i.e., each party needs something which the other party has, namely, labour can put greater

productive effort and management has the capacity to pay for that effort and to organise and guide it for achieving the enterprise's objectives.

The behavioural scientists have made a good distinction between “distributive bargaining” and “integrative bargaining”. The former is the process of dividing up the cake which represents what has been produced by the joint efforts of management and labour.

In this process, if one party wins something, the other party, to continue the metaphor of the cake, has a relatively smaller size of the cake. So it is a win-lose' relationship. The integrative bargaining, on the other hand, is the process where both the parties can win—each party contributing something for the benefit of the other party.

9. It is an Art:

Collective bargaining is an art, an advanced form of human relations.

Means of Collective Bargaining:

Generally, there are four important methods of collective bargaining, namely, negotiation, mediation, conciliation and arbitration for the settlement of trade disputes. In this context R.F. Hoxie said that arbitration is often provided for in collective bargaining under certain contingencies and for certain purposes, especially when the parties cannot reach agreement, and in the interpretation of an agreement through negotiation.

Conciliation is a term often applied to the art of collective bargaining, a term often applied to the action of the public board which attempts to induce collective bargaining.

Mediation is the intervention usually uninvited, of some outside person of body with a view of getting conciliation or to force a settlement, compulsory arbitration is extreme mediation. All these things are aids or supplement to collective bargaining where it breaks down. They represent the intervention of outside parties.

Constituents of Collective Bargaining:

There are three distinct steps in the process of collective bargaining:

- (1) The creation of the trade agreement,
- (2) The interpretation of the agreement, and
- (3) The enforcement of the agreement.

Each of these steps has its particular character and aim, and therefore, each requires a special kind of intellectual and moral activity and machinery.

1. The Creation of the Trade Agreement:

In negotiating the contract, a union and management present their demands to each other, compromise their differences, and agree on the conditions under which the workers are to be employed for the duration of the contract. The coverage of collective bargaining is very uneven; in some industries almost all the workers are under agreement, while in others only a small portion of the employees of the firms are covered by the agreement.

The negotiating process is the part of collective bargaining more likely to make headline news and attract public attention; wage increases are announced, ominous predictions about price increase are reduction in employment are made.

2. The Interpretation of the Agreement:

The administrative process is the day-to-day application of the provisions of the contract to the work situation. At the time of writing the contract, it is impossible to foresee all the special problems which will arise in applying its provisions. Sometimes, it is a matter of differing interpretations of specific clause in the contract, sometimes; it is a question of whether the dispute is even covered by the contract. Nevertheless, each case must somehow be settled. The spirit of the contract should not be violated.

3. Enforcement of the Agreement:

Proper and timely enforcement of the contract is very essential for the success of collective bargaining. If a contract is enforced in such way that it reduces or nullifies the benefits expected by the parties, it will defeat basic purpose of collective bargaining. It may give rise to fresh industrial disputes. Hence, in the enforcement of the contract the spirit of the contract should not be violated.

However, new contracts may be written to meet the problems involved in the previous contract. Furthermore, as day-to-day problems are solved, they set precedents for handling similar problems in future. Such precedents are almost as important as the contract in controlling the working conditions. In short, collective bargaining is not an on-and-off relationship that is kept in cold storage except when new contracts are drafted.

Theories of Collective Bargaining:

There are three important concepts on collective bargaining which have been discussed as follows:

1. The Marketing Concept and the Agreement as a Contract:

The marketing concept views collective bargaining as a contract for the sale of labour. It is a market or exchange relationship and is justified on the ground that it gives assurance of voice on the part of the organised workers in the matter of sale. The same objective rules which apply to the construction of all commercial contracts are invoked since the union-management relationship is concerned as a commercial one.

According to this theory, employees sell their individual labour only on terms collectively determined on the basis of contract which has been made through the process of collective bargaining.

The uncertainty of trade cycles, the spirit of mass production and competition for jobs make bargain a necessity. The trade union's collective action provided strength to the individual labourer.

It enabled him to resist the pressure of circumstances in which he was placed and to face an unbalanced and disadvantageous situation created by the employer. The object of trade union policy through all the maze of conflicting and obscure regulations has been to give to each individual worker something of the indispensability of labour as a whole.

It cannot be said whether the workers attained a bargaining equality with employers. But, collective bargaining had given a new- relationship under which it is difficult for the employer to dispense without facing the relatively bigger collective strength.

2. The Governmental Concept and the Agreement as Law:

The Governmental Concept views collective bargaining as a constitutional system in industry. It is a political relationship. The union shares sovereignty with management over the workers and, as their representative, uses that power in their interests. The application of the agreement is governed by a weighing of the relation of the provisions of the agreement to the needs and ethics of the particular case.

The contract is viewed as a constitution, written by the joint conference of union and management representative in the form of a compromise or trade agreement. The agreement lays down the machinery for making executing and interpreting the laws for the industry. The right of initiative is circumscribed within a framework of legislation.

Whenever, management fails to conform to the agreement of constitutional requirements, judicial machinery is provided by the grievance procedure and arbitration.

This creates a joint Industrial Government where the union share sovereignty with management over the workers and defend their group affairs and joint autonomy from external interference.

3. The Industrial Relations (Managerial) Concept as Jointly Decided Directives:

The industrial relations concept views collective bargaining as a system of industrial governance. It is a functional relationship. Group Government substitutes the State Government. The union representative gets a hand in the managerial role. Discussions take place in good faith and agreements are arrived at. The union joins with company officials in reaching decisions on matters in which both have vital interests. Thus, union representatives and the management meet each other to arrive at a mutual agreement which they cannot do alone.

To some extent, these approaches represent stage of development of the bargaining process itself. Early negotiations were a matter of simple contracting for the terms of sale of labour. Developments of the latter period led to the emergence of the Government theory. The industrial relations approach can be traced to the Industrial Disputes Act of 1947 in our country, which established a legal basis for union participation in the management.

Importance of Collective Bargaining:

The collective bargaining advances the mutual understanding between the two parties i.e., employees and employers.

The role of collective bargaining may be evaluated from the following point of view:

(1) From Management Point of View:

The main object of the organisation is to get the work done by the employees at work at minimum cost and thus earn a high rate of profits. Maximum utilization of workers is a must for the effective management. For this purpose co-operation is required from the side of the employees and collective bargaining is a device to get and promote co-operation. The labour disputes are mostly attributable to certain direct or indirect causes and based on rumors, and misconceptions. Collective bargaining is the best remedial measure for maintaining the cordial relations.

(2) From Labour and Trade Union Point of View:

Labour has poor bargaining power. Individually a worker has no existence because labour is perishable and therefore, the employers succeed in exploiting the labourers.

The working class in united form becomes a power to protect its interests against the exploitation of the employers through the process of collective bargaining.

The collective bargaining imposes certain restrictions upon the employer. Unilateral action is prevented. All employees are treated on equal footings. The conditions of employment and rates of wages as specified in the agreement can be changed only through negotiations with labour. Employer is not free to make and enforce decisions at his will.

Collective bargaining can be made only through the trade unions. Trade unions are the bargaining agents for the workers. The main function of the trade unions is to protect the economic and non-economic interests of workers through constructive programmes and collective bargaining is one of the devices to attain that objective through negotiations with the employers, Trade unions may negotiate with the employer for better employment opportunities and job security through collective bargaining.

(3) From Government Point of View:

Government is also concerned with the process of collective bargaining. Government passes and implements several labour legislations and desires it to be implemented in their true sense. If any person violates the rules and laws, it enforces them by force.

Collective bargaining prevents the Government from using the force because an amicable agreement can be reached between employer and employees for implementing the legislative provisions. Labour problems shall be minimised through collective bargaining and industrial peace shall be promoted in the country without any force.

Collective bargaining is a peaceful settlement of any dispute between worker and employers and therefore it promotes industrial peace and higher productivity resulting an increase in the Gross National Product or the national income of the country.

Main Hindrances for Collective Bargaining:

The main objective of developing collective bargaining technique is to improve the workers-management relations and thus maintain peace in industries. The technique has developed in India only after India got independence and got momentum since then.

The success of collective bargaining lies in the attitude of both management and workers which is actually not consistent with the spirit of collective bargaining in India. There are certain problems which hinder the growth of collective bargaining in India.

The following factors or activities act as hindrances to effective collective bargaining:

(1) Competitive Process:

Collective bargaining is generally becoming a competitive process, i.e., labour and management compete each other at negotiation table. A situation arises where the attainment of one party's goal appears to be in conflict with the basic objectives of the other party.

(2) Not Well-Equipped:

Both the parties—management and workers—come to the negotiation table without doing their homework. Both the parties start negotiations without being fully equipped with the information, which can easily be collected from company's records. To start with, there is often a kind of ritual, that of charges and counter charges, generally initiated by the trade union representatives. In the absence of requisite information, nothing concrete is achieved.

(3) Time to Protest:

The immediate objective of the workers' representatives is always some kind of monetary or other gains, accrue when the economy is buoyant and the employer has capacity to pay. But in a period of recession, when demand of the product and the profits are falling, it is very difficult for the employer to meet the demands of the workers, he might even resort to retrenchment or even closure collective bargaining is no answer to such a situation.

(4) Where Prices are Fixed by the Government:

In industries, where the prices of products are fixed by the Government, it becomes very difficult for the employer to meet the demands of workers which would inevitably lead to a rise in cost of the products produced. Whereas the supply price to the consumers cannot be increased. It will either reduce the profits of the firm or increase the loss. In other words, it will lead to closure of the works, which again is not in the interest of the workers.

(5) Outside Leadership:

Most of the Indian trade unions are led by outsiders who are not the employees of the concerned organisations. Leader's interests are not necessarily to be identical with that of the workers. Even when his bonafides are beyond doubt, between him and the workers he leads, there cannot be the degree of understanding and communication as would enable him to speak on behalf of the workers with full confidence. Briefly, in the present situation, without strong political backing, a workers' organisation cannot often bargain successfully with a strong employer.

(6) Multiplicity of Trade Unions:

One great weakness of collective bargaining is the multiplicity of trade unions. In a multiple trade union situation, even a well recognised, union with long standing, stable and generally positive relationship with the management, adopts a militant attitude as its deliberate strategy.

In Indian situation, inter-union rivalries are also present. Even if the unions combine, as at times they do for the purpose of bargaining with the employer they make conflicting demands, which actually confuse employer and the employees.

(7) Appointment of Low-Status Executive:

One of the weaknesses of collective bargaining in India is that the management deposes a low-status executive for bargaining with the employees. Such executive has no authority to commit anything on behalf of the management. It clearly indicates that the management is not at all serious and the union leaders adopt other ways of settling disputes.

(8) Statutory Provisions:

The constraints are also imposed by the regulatory and participative provisions as contained in the Payment of Wages Act, the Minimum Wages Act, and Payment of Bonus Act etc. Such provisions are statutory and are not negotiable.

(9) Fresh Demands at the Time of Fresh Agreement:

At the time when the old agreement is near expiry or well before that, workers representatives come up with fresh demands. Such demands are pressed even when the industry is running into loss or even during the period of depression. If management accepts the demand of higher wages and other benefits, it would prefer to close down the works.

(10) Agreements in Other Industrial Units:

A prosperous industrial unit in the same region may agree with the trade unions to a substantial increase in wages and other benefits whereas a losing industry cannot do that. There is always pressure on the losing industries to grant wages and benefits similar to those granted in other (relatively prosperous) units in the same region.

Scope of Collective Bargaining:

Collective bargaining broadly covers subjects and issues entering into the conditions and terms of employment. It is also concerned with the development of procedures for settlement of disputes arising between the workers and management.

A few important issues around which collective bargaining enters in this developing country are as follows:

“Recognition of the union has been an important issue in the absence of any compulsory recognition by law. In the under-developed countries in Asia, however, on account of the tradition concept of management functions and the immaturity of the industrialist class there is much resistance from the employers to recognise the status of the unions.”

Bargaining upon wage problems to fight inflation or rising cost of living and to resist wage cuts during depression has resulted in several amicable agreements. But, no statistics are available for such amicable settlements. Therefore, Daya, points out, “It has been customary to view collective bargaining in a pattern of conflict; the competitively small number of strikes and lock-outs attract more attention than the many cases of peaceful settlement of differences.”

Another issue on which bargaining takes place is seniority, but in India, it is of less importance than in western countries. But, in India, lay-off, retrenchment, dismissal, rationalisation and participation in the union activities have been important issues for collective bargaining.

Regarding bargaining on hours of work, it has recognized that “in one form or another subject of working time will continue to play an important part in collective bargaining; although the crucial battles may be well fought in the legislative halls.”

Overtime work, holidays, leave for absence and retirement continue to be issues for bargaining in India, although they are not regarded as crucial.

The union security has also been an issue for collective bargaining, but it could not acquire much importance in the country, although stray instances are found. The Tata Workers union bargained with M/s Tata Iron and Steel Co. Ltd., Jamshedpur, on certain issues, one of which was union security and in the resulting agreement some of the union security clauses were also included.

The production norms, technical practices, details of working rules, standards of performance, allowance of fatigue, hiring and firing, protection of life and limb, compensation for overtime, hours of work, wage rates and methods of wage payments, recognition of unions, retrenchment, union security, holidays and competence of

workmen form the subjects of negotiations and agreements through collective bargaining. Customary practices are evolving procedures to extend the area of collective bargaining. Collective bargaining has been giving official sanction to trade experiences and agreements.

Collective bargaining, thus, covers the negotiation, administration, interpretation, application and enforcement of written agreement between employers and unions representing their employees setting forth joint understanding, as to policies and procedures governing wages, rates of pay, hours of work and other conditions of employment.

Collective Bargaining in the Post- Independence Period:

Before Independence, the collective bargaining as it was known and practised was virtually unknown in India. It was accepted, as a matter of principle, for usage in union management relations by the state.

Though it was emphasised in the First Five Year Plan that the State would encourage mutual settlement, collective bargaining and voluntary arbitration; to the utmost extent and thereby reduce number of intervention of the state in union management relations.

However, because of the imperatives of political and economic factors, the State was not prepared to encourage voluntary arbitrations and negotiations and the resulting show of strength by the parties. The State, therefore, armed itself with the legal powers which enabled it to refer disputes to an arbitrator or an adjudicator if the two parties fail to reach a mutually acceptable agreement.

This move of compulsory arbitration and adjudication was opposed by several labour leaders because they believed that this would destroy the picture of industrial relations in India. Dr. V.V. Giri expressed his views on this point at the Indian Labour Conference in 1952, "Compulsory arbitration" he declared, "has cut at the very root of trade union organisation...If the workers find that their interests are best promoted only by combining, no greater urge is needed to forge a band of strength and unity among them. But compulsory arbitration sees to it that such a band is not forged... It stands there is a policeman looking out for signs of discontent, and at the slightest provocation, takes the parties to the court for a dose of costly and not wholly satisfactory justice."

Despite this controversy, collective bargaining was introduced in India for the first time in 1952, and it gradually gained importance in the following years. The information, however, on the growth of collective bargaining process is very meager, and the progress made in this respect has not been very conspicuous, though not negligible. The data released by the Labour Bureau show that the practice of determining the rates of wages

and conditions of employment has spread to most of the major segments of the national economy.

A sample, study covering the period from 1956 to 1960 conducted by the Employer's Federation of India has revealed that collective bargaining agreements have been arrived in respect of disputes ranging from 32 to 49 percent. Most of the collective bargaining agreements have been entered into at plant level. In this connection, the National Commission on Labour has thrown ample light on the progress of collective agreement.

In its own words, "Most of the collective bargaining (agreements) has been at the plant level, though in important textile centres like Bombay and Ahmedabad industry level agreements have been (fairly) common... Such agreements are also to be found in the plantation industry in the South, and in Assam, and in the coal industry. Apart from these, in new industries—chemicals, petroleum, oil refining and distribution, aluminium and electrical equipment, automobile repairing—the arrangement for the settlement of disputes through voluntary agreements have become common in recent years. In the ports and docks, collective agreements have been the role at individual centres. On certain matters affecting all the ports, all India agreements have been reached. In the banking industry, after the series of awards, employers and unions have, in recent years, come closer to reach collective agreements. In the Life Insurance Corporation (LIC) with the exception of the Employer's decision to introduce automation which has disturbed industrial harmony in some centres, there has been a fair measure of discussion across the table by the parties for the settlement of disputes."

The collective bargaining reached has been of three types:

- (1) Agreement arrived at after voluntary direct negotiations between the parties concerned. Its implementation is purely voluntary;
- (2) Agreements between the two parties, though voluntary in nature, are compulsory when registered as settlement before a conciliator; and
- (3) Agreement which have legal status negotiated after successful discussion between the parties when the matter of dispute is under reference to industrial tribunal/courts.

Many agreements are made voluntarily but compulsory agreements are not negligible. However, collective bargaining and voluntary agreements are not as prominent as they are in other industrially advanced countries. The practice of collective bargaining in India has shown much improvement after the passing of some legislation like The Industrial Disputes Act 1947 as amended from time to time. The Bombay Industrial Relations Act 1946 which provided for the rights of workers for collective bargaining. Since then, a number of collective bargaining agreements have been entered into.

Issues Involved in Collective Agreements:

A study conducted by the Employer's Federation of India revealed that out of 109 agreements, 'wages' was the most prominent issue in 96 cases (88 percent) followed by dearness allowance (59 cases) retirement benefits (53 cases), bonus (50 cases) other issues involved were annual leave, paid holidays, casual leave, job classification, overtime, incentives, shift allowance, acting allowance, tiffin allowance, canteen and medical benefits.

A study of various collective agreements entered into in India, certain trends in collective bargaining are noticeable.

These are:

- (i) Most of the agreements are at plant level. However, some industry-level agreements are also there;
- (ii) The scope of agreements has been widening now and now includes matters relating to bonus, productivity, modernisation, standing orders, voluntary arbitration, incentive schemes, and job evaluation;
- (iii) Long term agreements ranging between 2 to 5 years, are on increase;
- (iv) Joint consultation in various forms has been provided for in a number of agreements; and feasible and effective.

Reasons for the Growth of Collective Bargaining:

The growth of collective bargaining in India may be attributed to the following factors:

(1) Statutory Provisions:

Which have laid down certain principles of negotiations, procedure for collective agreements and the character of representation of the negotiating parties?

(2) Voluntary Measures:

Such as tripartite conferences, joint consultative boards, and industrial committees at the industry level have provided an ingenious mechanism for the promotion of collective bargaining practices.

(3) Several Governments Measures:

Like schemes for workers' education, labour participation in management, the evolution of the code of Inter-union Harmony, the code of Efficiency and Welfare, the Code of Discipline, the formation of Joint Management Councils, Workers Committees and Shop Councils, and the formulations of grievances redressal procedure at the plant level— have encouraged the collective bargaining.

(4) Amendments to the Industrial Disputes Act:

The Amendments to the Industrial Disputes Act in 1964 provided for the termination of an award or a settlement only when a proper notice is given by the majority of workers. Agreements or settlements which are arrived at by a process of negotiation on conciliation cannot be terminated by a section of the workers.

(5) Industrial Truce Resolution:

The Industrial Truce Resolution of 1962 has also influenced the growth of collective bargaining. It provides that the management and the workers should strive for constructive cooperation in all possible ways and throws responsibility on them to resolve their differences through mutual discussion, conciliation and voluntary arbitration peacefully.

Government Policy to Encourage Collective Bargaining:

Ever since independence, it has been the declared policy of the Central Government to encourage trade unions development and the settlement of differences in industry by mutual agreement.

Article 19 of the constitution guarantees for all citizens the right to form associations or unions, only by reserving to the state powers in the interest of public order to impose reasonable restrictions on the exercise of this right.

The Industrial policy Resolution of 1956 declared that, “in a socialist democracy labour is a partner in the common task of development”, thus following out the resolution of the Lok Sabha of 1954 which set India on the path towards a “socialistic pattern of society.”

The Second Five Year Plan in 1956 was more specific and declared:

“For the development of an undertaking or an industry, industrial peace is indispensable; obviously, this can best be achieved by the parties themselves. Labour legislation and the enforcement machinery set up for its implementation can only provide a suitable framework in which employees and workers can function.”

Has Government Discouraged Collective Bargaining?

It is obvious, that the declared policy of the government laid emphasis on the voluntary settlement of differences in industry. But industrial legislation since independence and government intervention to establish various standards of working conditions and machinery for compulsory arbitration of disputes have limited the scope of collective bargaining.

The areas that are covered by labour legislation are mainly physical working conditions and terms of employment, and to the extent that these are prescribed by law the scope of collective bargaining is limited.

The Industrial Employment (Standing Order) Act, 1948 makes compulsory the drawing up conditions of employment relating to methods of paying wages, hours of work, over time, shifts, holidays, termination of employment and disciplinary action, but not through joint negotiation. There is no statutory requirement that employer should discuss the draft standing orders with the union.

The Minimum Wages Act, also passed in 1948, has given statutory power to appropriate government to fix minimum wages in certain scheduled employments. The object of this legislation was to secure a minimum in those occupations or industries where the worker were not sufficiently organised to be able to negotiate reasonable wages for themselves.

If the government was committed to support the principle of collective bargaining, why no attempt was made to encourage it by legislation? The Trade Union Amendment Act, passed in 1947, did not in fact provide for the compulsory recognition by the employers of representative trade unions, but this act was never notified and so never came into force.

It is arguable that some legislative action to compel recognition of the more stable unions might have helped to create a better climate for encouragement of voluntary settlement in industry.

The attitude of the management and unions was commonly “Let the issue go to the tribunal”, with the result that little real effort was made towards mutual settlement and conciliation officers found little response to their efforts at mediation. References to the adjudication piled up, the industrial tribunals were overwhelmed with cases, and lengthy delays and general frustration resulted.

From the above facts, it looks that the Government has discouraged the Development of Collective Bargaining in India. But the truth is that, the Government intention has never been to discourage it. In fact, the labour in India is not very well organised and it is not expected that it would be able to get its due share through collective bargaining.

Hence, the government has tried to protect in the interests of labour by passing the various acts such as the Factory Act of 1948. Employees State Insurance Act, 1948 and Minimum Wages Act. Hence, the cases involving industrial disputes should be to compulsory arbitration.

Khandubhai Desai, the then Labour Minister, stated in July 1956 that voluntary agreement to refer questions to arbitration was the best solution. But he added complete laissez-faire is out of date. Society cannot allow workers or management to follow the law of jungle. Therefore, as a last resort, the government has taken powers to refer disputes to adjudication.

It has, further, been argued that in a planned economy, the relations between the labour and management have also to be on planned basis.

They cannot be allowed to upset the production target just because one of the parties would not like to settle the disputes in fair manner.

Therefore, the Government of India under Industrial Disputes Act 1947 has created the following seven different authorities for the prevention and settlement of disputes:

1. Workers Committees.
2. Conciliation Officer.
3. Board of Conciliation.
4. Court of Enquiry.
5. Labour Courts.
6. Industrial Tribunals.
7. National Tribunals.

The important characteristic of the above machinery for the prevention and settlement of disputes is that, there is full scope for the settlement of dispute through collective bargaining and if it is not settled by Works Committees, Conciliation Officer, Board of Conciliation, only then, it is referred to Court of Enquiry and Labour Courts. The decision of the Labour Courts, Industrial Tribunal and National Tribunal is binding on both the parties.

Advantages of Collective Bargaining:

Perhaps the biggest advantage of this system is that, by reaching a formal agreement, both sides come to know exactly what to expect from each other and are aware of the rights they have. This can decrease the number of conflicts that happen later on. It also can make operations more efficient.

Employees who enter collective bargaining know they have some degree of protection from employer retaliation or being let go from the job. If the employer were dealing with just a handful of individuals, he might be able to afford to lose them. When he is dealing with the entire workforce, however, operations are at risk and he no longer can easily turn a deaf ear to what his employees are saying.

Even though employers might need to back down a little, this strategy gives them the benefit of being able to deal with just a small number of people at a time. This is very practical in larger companies where the employer might have dozens, hundreds or even thousands of workers on his payroll. Working with just a few representatives also can make the issues at hand seem more personal.

Agreements reached through these negotiations usually cover a period of at least a few years. People therefore have some consistency in their work environment and policies. This typically benefits the company's finance department because it knows that fewer items related to the budget might change.

On a broad scale, using this method well can result in more ethical way of doing business. It promotes ideas such as fairness and equality, for example. These concepts can spill over into other areas of a person's life, inspiring better general behavior towards others.

Disadvantages of Collective Bargaining:

A major drawback to using this type of negotiation system is that, even though everyone gets a say in what happens, ultimately, the majority rules, with only a few people determining what happens too many. This means that a large number of people, particularly in the general workforce, can be overshadowed and feel like their opinion doesn't really matter. In the worst case scenario, this can cause severe division and hostility in the group.

Secondly, it always requires at least two parties. Even though the system is supposed to pull both parties together, during the process of trying to reach an agreement, people can adopt us-versus-them mentality. When the negotiations are over, this way of looking at each other can be hard to set aside, and unity in the company can suffer.

Collective bargaining can also be costly, both in terms of time and money. Representatives have to discuss everything twice—once at the small representative meetings, and again when they relay information to the larger group. Paying outside arbitrators or other professionals quickly can run up a fairly big bill, and when someone else is brought in, things often get slower and more complex because even more people are involved.

Some people point out that these techniques have a tendency to restrict the power of employers. Employees often see this as a good thing, but from the company's perspective, it can make even basic processes difficult. It can make it a challenge to deal with individual workers, for example.

The goal of the system is always to reach a collaborative agreement, but sometimes tensions boil over. As a result, one or both parties might feel they have no choice but to muscle the other side into giving up. Workers might do this by going on strike, which hurts operations and cuts into profits. Businesses might do this by staging lockouts, which prevents members' of the workforce from doing their jobs and getting paid, negatively effecting income and overall quality of living.

Lastly, union dues are sometimes an issue. They reduce the amount of take-home pay a person has, because they usually are deducted right from his paycheck. When things are good in a company and people don't feel like they're getting anything from paying the dues, they usually become unhappier about the rates.

The idea of collective bargaining emerged as a result of industrial conflict and growth of trade union movement and was first given currency in the United States by Samuel Crompers. In India the first collective bargaining agreement was conducted in 1920 at the instance of Mahatma Gandhi to regulate labour management relation between a group of employers and their workers in the textile industry in Ahmadabad

Is minimum wage law justified?

Minimum wage law creates issues like unemployment. Yet most countries of the world have minimum wage law.

The minimum wage law is justified on the following grounds:

(i) First, the problem of unemployment that might erupt is slight exaggeration. Practically labour supply is heterogeneous consisting of unskilled, skilled, highly specialized and educated labour. All other categories of labour – other than unskilled and unorganized labour – are paid wages much higher than the minimum wage fixed by the law.

Therefore, the negative unemployment effective of the minimum wage law is confined to the category of unskilled labour. Therefore, the minimum wage law of protecting the interest of the weaker section of labour is not as high as projected above.

(ii) Second, the negative employment effect that minimum wage law may create is moderated by the positive employment effect of higher wage earnings. Higher wage incomes lead to higher consumption. Increase in demand for consumer goods, increases demand for labour and also open up new opportunities for employment. There is, therefore justification of minimum wage law.

(iii) Third, Inflation erodes the real income and real wage. The existence of minimum wage law provides an opportunity and need for upward revision of the wage rate.

(iv) Fourth, one major purpose of the minimum wage law is to promote social equity through a more equitable distribution of income.

7. Write a detailed note on “The Principles of Domestic Enquiry”.

Answer:

The aim of the rules of natural justice is to secure justice or to put it negatively, to prevent the miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it.”

The principles of natural justice are the rules laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights. These rules prevent such authority from doing injustice.

Following are the four principles:

1. Every person must have a reasonable notice of the case he has to meet if his civil rights are affected.
2. Every person must have the opportunity to be heard to defend himself.
3. The case must be heard by an impartial tribunal.
4. The authority must act fairly and reasonably and not arbitrarily.

Coming to the topic of this paper , Domestic Enquiry, is clearly based on the principles of Natural Justice and fair play . Today, “domestic enquiry”, occupies a very important position in Industrial Law. Domestic Enquiry essentially means an enquiry into the charges of indiscipline and misconduct framed against a workman or an employee and the term “ domestic” clearly suggest that it is a purely internal matter between an employer and his employees.

Even though the term ‘misconduct’ is not defined in any legislation governing labour laws in India , the Supreme Court in the case of : State of Punjab v. Ram Singh Ex. Constable held that misconduct can involve moral turpitude, improper or wrongful behavior , willful in character, doing a forbidden act or a transgression of well established rules of action or code of conduct. However, the Supreme Court was quick to point out that a mere element of judgment or carelessness or mere negligence in the performance or carrying out of duties does not come within the ambit of the term “misconduct”.

These enquiries mainly provide an opportunity to the worker to clearly explain his stance and prevent him from being punished arbitrarily, when he is innocent. Furthermore, a reasonable opportunity must be given to the delinquent workers to meet the charges framed against them and during the course of such an enquiry the employee must be given the liberty to choose the person to represent his/her cases.

If the rules of domestic enquiry do not lay a clear embargo on the right of the delinquent to be represented by a legal practitioner, then , it would be the discretion of the enquiry officer to allow or disallow the person to be represented by a legal practitioner after considering the nature of the adjudication and the enquiry.

With the increasing importance of the basic tenets of human rights and equality, law has it mandatory for the employer to work in a just and fair manner with his workers , knowing well that the employees are weaker party in the industrial relations. Thus, it is of utmost importance for the employers to carry out the enquiries in accordance with the principles of natural justice.

Simply put, the rule of 'hire and fire' no longer holds in this field. Article 311 of the Constitution of India provides that no person who is a member of the civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed or reduced in rank by an authority subordinate to that by which he is appointed.

Furthermore, Article 311(2) provides that with the reference to persons abovementioned , there shall be no person can be dismissed or removed or reduced in rank , unless :

- a) An inquiry is held.
- b) In the inquiry , he is informed of the charges framed.
- c) The person is given the opportunity to defend himself

In the private sector, the holding of a domestic enquiry is laid down by standing orders framed under the Industrial Employment (Standing Orders)Act, 1946. The procedure for holding enquiries has also been laid down by awards of settlements under the Industrial Disputes Act,1947.

NEED/IMPORTANCE FOR DOMESTIC ENQUIRY.

“Where a workman is accused of misconduct, a domestic enquiry has to be held against him in accordance with the provisions contained in the Standing orders governing the industrial establishment or in the absence of such Standing order in accordance with the principles of natural justice. After such a domestic enquiry is held it would be open to the employer to impose a penalty including one of termination of service howsoever styled.”

Today, with the growing industrialization, a variety of disputes have arisen for which the knowledge of Industrial Law is a must. Thus, in order to avoid discord between the employers and the workmen, it is essential that both the employers and the workers know of the rights, duties, responsibilities and obligations laid down in the Industrial Law.

Getting into litigation is never a comfortable choice for the employers or the employees as it results in waste of time and energy and it goes without saying huge outflow of money.

To add, even in the case of abandonment of service, an employer has to give notice to the workman and hold an enquiry since it is for the employer to prove such abandonment. In this age of economic growth, the society requires industrial peace so that production is not hampered and by holding such enquiries the level of “arbitrariness and consequential grievance and unrest is avoided.”

Domestic Enquiry, to reiterate, is based on the principles of natural justice and promises to work on just and fair grounds. In the case of Union of India and Ors. v. Mohmd. Ramzan Khan, the Supreme Court held that :

Whenever there is an enquiry officer, he duly furnishes a report to the disciplinary authority at the conclusion of the enquiry thereby holding the delinquent guilty of all or any of the charges and proposing any particular punishment or not. Now, once this is made, the delinquent is entitled a copy of the same and he is also allowed to make a representation against it. If the report is not duly furnished as abovementioned then it shall be against the principles of natural justice and shall be liable to be challenged

Under the system of Domestic Enquiry, there is no disparity (inequality) and even the Supreme court in the judgment of Director, BCG vaccine v. S.Pandian and Ors. made it very clear that the payment of legal charges to the legal practitioner assisting the employees in the departmental inquiry shall be at the same rate as was available to the presenting officer who was a legal practitioner.

Even when the facts are indisputable or when the facts are admitted by the workman/employee, an enquiry is required. An enquiry is a condition precedent for inflicting penalty of termination of service. Even if the employer makes a plea that allegations and charges made against an employee have been admitted, even then an enquiry is necessary. Thus, the legal maxim “audi alteram partem” i.e. right to hear the party. In no manner whatsoever, does the employer get the upper hand in any situation and Domestic Enquiry is for the purpose of serving justice.

Essential Ingredients of Domestic Enquiry.

The evidence which is served during the enquiry serves the dual purpose of establishing the charges and determining the penalty. If no evidence is adduced during the enquiry the right to reasonable opportunity of being heard in respect of the charges will be plain illusory. It is only on the basis of the evidence adduced during the enquiry that the person facing the enquiry may effectively exercise his right of being heard in respect of the charges against him by showing the charges have not been established and that penalty of dismissal, removal or reduction in rank, is not justified.

The Process of Holding Domestic Enquiries (In Brief)

The first and primary step is to carry out a preliminary investigation before the employer holds a disciplinary enquiry in order to find out whether a prima facie case of misconduct is evident. Thus, the enquiry should be the result of a preliminary investigation should not be adopted merely as a matter of course.

After a preliminary investigation is carried out and prima facie case of misconduct is established, the following stages of disciplinary enquiry should be followed :

1. Issue and service of a charge sheet calling upon the employee to submit an explanation.
2. Consideration of the explanation.
3. Giving notice of an enquiry into the charge in case of unsatisfactory explanation.
4. Suspension with or without pay, pending enquiry(if needed)
5. Enquiry into the charge:
 - Deciding as to who should conduct.
 - Deciding as how to proceed.
 - Deciding about the order of the examining witnesses.
6. Recording of findings by the enquiry officer.
7. Punishment decision.

8. Communication of punishment

Conclusion

Natural Justice has been defined as Universal Justice and fundamental justice . The concept of Domestic Enquiry is based on these very sound principles of Natural Justice. This entire system has been primarily made to protect the interests and rights of the workers in the age of rising industrial disputes .

The question , I put forth : Is this Idealistic system of delivering justice to the workers working efficiently or is it just a mere sham ?

I would give my perspective on Domestic Enquiry (based on the articles and case laws read) that this system which promises to safeguard the rights of the workers has taken away the rights more than protecting it .

There are so many instances or to put it differently, it is the new trend , to appoint an Enquiry Officer , who is well acquainted with the employers so that the decision passed him can be in favor of the employers. This is a very sad situation because the poor workman , who bestows faith in this justice system doesn't realize he is subject to trickery.

Due to his lack of intellect and understanding of the workings of the system , the workman is adjudged guilty

I would love to believe that if Domestic Enquiry functions as it ought to then it shall only be a boon for the workman and the society at large.

An employee accused of misconduct gets his day in “court” via a domestic inquiry, whereby the employer has to prove the charges and the worker gets to defend himself.

A DOMESTIC inquiry (DI) is an internal hearing held by an employer to ascertain whether an employee is guilty of misconduct before an employee is dismissed or before any other major penalty is imposed.

It aims to establish whether the alleged misconduct is proven or not, and should the misconduct be proven, it will recommend a punishment that is appropriate. The employer will have to prove the charges before punishment is imposed, while the employee gets an opportunity to defend himself.

To ensure every step is taken accordingly, both parties must be able to anticipate the process of the inquiry. If the employee has been given an opportunity prior to the latest alleged misconduct, the employee can be dismissed.

However, the DI must bear in mind to follow the proper procedures and that employees are treated fairly.

There are six steps in conducting the DI process:

1. Issuance of showcause letter

The letter is issued to the accused employee to call for an explanation for the alleged misconduct and to answer the question on why disciplinary action should not be taken, to be responded to within the set time frame. The letter should be drafted in a language that can be easily understood and must be confidential. It is to be personally delivered to the employee.

2. Response to the showcause letter

The employee should respond within the stipulated time. If the explanation is acceptable, no punishment will be imposed. However, if it's not acceptable or unclear, a Notice of Domestic Inquiry may be issued.

3. Issuance of Notice of DI

In cases where there is no response from the employee, or the response is found to be unacceptable or unclear, HR may proceed to issue the Notice of Domestic Inquiry.

4. Suspension

If the response is unsatisfactory, the accused can be suspended up to a maximum of two weeks with half wages. However, the employer must pay back the remaining wages to the employee if he is later found to be not guilty.

5. Appointment of the Panel of Domestic Inquiry

The panel of inquiry must not be involved directly in the investigation. It should consist of people of the same rank or higher than the accused. To conduct a DI adequately, the chairman of the panel should have some knowledge of DI process, procedures and regulations relating to employment law.

Always bear in mind that the panel must strictly comply with the principle of natural justice and the panel should be seen to act "fairly and justly".

The panel should comprise an odd number of persons who are employees of the company, usually three or five. Practically, three panel members are appropriate for SMEs. In addition, there should be a secretary and a presenting officer in the domestic inquiry.

6. Domestic Inquiry

At this stage, the employer should start with the allegation of the misconduct and provide valid proof.

The panel should keep a verbatim record of the proceedings, and the chairman must outline the rules covering the conduct of the proceedings and ensure that the DI be held in the presence of the accused.

All witnesses must be taken into account and questioned in the presence of the accused, and documented evidence must be presented and statements during the DI must be recorded and signed. At the end of the DI, the panel must be able to conclude and submit the DI report to the management.

Once the DI date has been set and the employee has been formally notified, the employer should anticipate that the following scenarios may happen on the day of the DI;

1. The employee is absent

In this case, the employer needs to ensure that notice of DI has been sent out. Then another date should be set for the inquiry. Also, the employee should be informed that the DI will proceed on the postponed date even if he is absent again.

2. The employee submits a sick certificate

As per the first scenario, the Inquiry should be postponed and a letter should be written stating he should be present on the postponed date unless he is seriously ill.

3. The Employee requests a postponement

If the accused employee is able to provide a reasonable reason for the request, the postponement shall be granted.

The next stage would be on the day of the actual inquiry. The DI comprises several stages. Firstly, the charge is read and explained to the accused and he is asked to make his plea, either guilty or not guilty. It's important to ensure that the employee understands the charges before he makes a plea.

The inquiry panel or officer should make sure that the plea is unequivocal, without any conditions, and that he understands the consequences of his plea.

If the accused employee pleads not guilty, the presenting officer then calls the company's witness.

If in any case the accused is not represented by union officials, the accused is allowed to give his evidence and may be guided by the inquiry panel or officer.

He is then cross-examined by the presenting officer, may be given a chance to clarify certain issues and may be then examined by the inquiry panel or officer.

The accused should then be allowed to call his witnesses.

Once all this is done, the panel will adjourn to decide whether the employee is guilty or not. If the employee is found to be guilty, the panel will recommend to the management an appropriate penalty.

There are many possible penalties, be it a written warning, a no-pay suspension not exceeding two weeks, demotion, withholding of a contractual increment or bonus, or dismissal.

The DI must be conducted ethically and the panel must strictly comply with the principle of natural justice and should be seen to act fairly and justly.

8. Define unfair labor practices. Discuss the unfair labor practices by employees.

Answer:

Definition:

An unfair labor practice is a violation of specific provisions of the laws administered by the National Labor Relations Board (NLRB), and state laws, which vary by state, that may be committed by either the employer or the union. Unfair labor practices by management were largely outlawed by the National Labor Relations Act. Unfair labor practices by labor unions were largely outlawed by the Taft-Hartley Act.

For example, it is illegal for management to threaten or retaliate against employees for seeking union representation or to refuse to provide a union information that the law requires the agency to provide. Similarly, unions may not try to influence management to discipline employees who did not join the union or refuse to represent employees because they are not union members. Neither an agency nor a union may refuse to bargain with the other in good faith.

What Are Unfair Labor Practices?

The NLRA gives employees the right to act together to try to improve the terms and conditions of their employers, by forming a union, joining a union, or otherwise. To preserve these rights, the NLRA sets out the rules for union elections, collective bargaining, and more.

The NLRA also prohibits employers and unions from taking certain actions that would interfere with these employee rights or with the delicate balance the NLRA creates between unions and employers. These actions are called "unfair labor practices".

Unfair Labor Practices by Employers

The NLRA prohibits employers from:

- Interfering with an employee's right to organize, join, or assist a union; engage in collective bargaining; or engage in protected, concerted activities. For example, employers must treat union-related conversations among employees like any other matter unrelated to work: They may not make special rules that single out communications relating to the union or to workplace grievances for disciplinary treatment. (See Shop Talk for information on employer restriction of conversations relating to the union; for information on how these rules apply to

online communications among employees, see Do Labor Laws Protect Employee Posts on Social Media?)

- Dominating or providing illegal assistance of support to a labor union. Employers may not establish their own union (a company union or sham union), or dominate or interfere with any labor organization. To determine whether an employer unfairly controls a particular workplace group, the National Labor Relations Board (NLRB) looks at all of the facts, including who started the group, whether the employer played a role in organizing the group and deciding how it would function, whether management attends meetings or otherwise sets the group's agenda, the group's purpose, and how the group makes decisions.
- Discriminating against employees to encourage or discourage membership in a labor organization, or replacing workers who strike to protect an unfair labor practice.
- Retaliating against an employee for filing a charge with, or giving testimony to, the NLRB.
- Refusing to engage in good-faith collective bargaining.
- Making a hot cargo agreement with a union. A hot cargo agreement is an arrangement between an employer and a union in which the employer promises to stop doing business with another employer, typically one with whom the union has a dispute.

Unfair Labor Practices by Unions

The NLRA prohibits unions from:

- Restraining or coercing employees in the free exercise of their right not to support a union (for example, by threatening employees who don't want a union or expelling members for crossing an illegal picket line).
- Restraining or coercing an employer in its choice of a bargaining representative (by insisting on meeting only with a particular manager or refusing to bargain with the representative the employer chooses).
- Causing or trying to cause an employer to discriminate against an employee for the purpose of encouraging or discouraging union membership (for example, convincing an employer to penalize employees who engage in antiunion activities)
- Refusing to engage in good-faith collective bargaining (for example, refusing to come to the bargaining table or listen to any of the employer's proposals).
- Engaging in strikes, boycotts, or other coercive action for an illegal purpose.
- Charging excessive or discriminatory membership fees.
- Getting or trying to get an employer to agree to pay for work that is not performed. This is called "featherbedding."
- For a union that is not certified to represent a group of workers, picketing or threatening to picket an employer to force it to recognize or bargain with the union or force the workers to accept the union as their representative, if (1) another

union already represents the workers, (2) a valid representation election was held in the past year, or (3) the union does not file a petition for an election with the NLRB within 30 days after the picketing starts.

- Making a hot cargo agreement (explained above).
- Striking, picketing, or otherwise engaging in a collective work stoppage at any health care institution without giving required notice to the institution and the Federal Mediation and Conciliation Service.

9. Explain the provision relating to Lay off and Retrenchment under Industrial Dispute Act 1947

Answer:

Chapter V-B was added in the Industrial Disputes Act, 1947 through amendment under Article 32 of the Constitution. This chapter deals with the special provisions relating to lay-off, retrenchment and closure in certain establishments. Chapter V-B includes Section 25-K to Section 25-S of the Industrial Disputes Act, 1947. Definitions of lay-off, retrenchment and closure under Industrial Dispute Act, 1947 are as under:

Definition of Lay off (Section 2(kkk))-

“Lay-off” (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Definition of Retrenchment (Section 2(oo))-

“Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or [(bb) termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]
- (c) Termination of the service of a workman on the ground of continued ill-health;]

Definition of Closure (Section 2(cc))-

“Closure” means the permanent closing down of a place of employment or part thereof;

Application of Chapter V-B of Industrial Disputes Act, 1947-

Under Section 25-K of Industrial Disputes Act, 1947 the application of Chapter V-B dealing with special provisions relating to lay-off, retrenchment and closure is mentioned. The provision mentions the area where the Chapter V-B of the Industrial Disputes Act, 1947 applies.

Section 25-K- (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 2[one hundred] workmen were employed on an average per working day for the preceding twelve months. (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Special Provision relating to Lay-Off

Section 25-M Prohibition of lay-off

(1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except [with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion],

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

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

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

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

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

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

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

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

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

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

Reasonable restrictions-

In order to prevent hardship to the employees and to maintain higher tempo of production and productivity, section 25M of the Industrial Disputes Act, 1947 puts some reasonable restrictions on the employer's right to lay-off, retrenchment and closure. Section 25-M makes it clear that no workmen whose name is borne on the muster rolls of his employer shall be laid off without previous permission of such authority as may be specified by the appropriate government unless such lay off is due to shortage of power or natural calamity and in case of a mine it is due to fire, flood, etc.

Constitutional Validity of Section 25-M

In *Papnasam Labour Union V. Madhura Coats Ltd.* And another the constitutionality of Section 25-M of Industrial Disputes Act, 1947 was challenged on the ground that the section as amended by the Amendment Act of 1976 imposed unreasonable restrictions in so far as it required prior permission to be obtained to effect lay-off and as such it was ultra vires and void. It was held that the object of Section 25-M is to prevent avoidable hardship to the employees resulting from lay-off and maintain higher production and productivity by preserving industrial peace and harmony. It was further pointed out that the legislature has taken care in exempting the need for prior permission to lay-off in Section 25-M if such lay-off is necessitated on account of power of failure or natural calamities because such reasons being grave, sudden and explicit, no further scrutiny is called for. Therefore, in the greater public interest for maintaining industrial peace and harmony and to prevent unemployment without just cause, the restriction imposed under sub-section (2) of Section 25-M cannot be held arbitrary, unreasonable or far in excess of the need for which such restriction has been sought to be imposed. Criminal cases need

not be pursued, not only within the ambit of Section 482 of Criminal Procedure Code but in special facts of the case will also secure the ends of justice.

Special Provision Relating To Retrenchment

Section 25-N Condition precedent to retrenchment of workmen-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

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

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

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days

from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6) be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. Such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

The infirmity in retrenchment by reference to section 25N cannot be ventured to be found out without laying factual foundation attracting applicability of the provision.

It is incumbent on the management to prove that the copies of the application as required by section 25N read with rule 76A of the Industrial Disputes Rules, 1957, were served on the concerned workman.

Constitutional Validity of Section 25-N

In Workmen of Meenakshi Mills Ltd., etc. V. Meenakshi Mills Ltd.

And another, the Supreme Court held that Section 25-N of the Act as constitutionally valid on the ground that the restrictions imposed on the right of employer to retrench workmen is in interest of the general public. It does not infringe Article 19(1) (g) of the Constitution and duty to pass a speaking order and affording opportunity to the parties concerned with judicial power while functioning under sub-section (2) of Section 25-N and hence no appeal lies to Supreme Court against an order passes under sub-section (2) of Section 25-N.

In Uttaranchal Forest Development Corporation and Another v. Jabar Singh and Others, the services of the respondent workman were retrenched by notices in compliance with Section 6-N of the U.P. Industrial Disputes Act, 1947. Labour Court gave an award holding the retrenchment as valid. The award was challenged in the High Court and the Court directed reinstatement with back-wages. The question for consideration was whether the corporation was an industrial establishment within Section 25-L of the Industrial Disputes Act, 1947 and if so whether the retrenchment was not valid for non-compliance of Section 25-N of the Industrial Disputes Act, 1947.

The Supreme Court observed that the process of cutting tress by axe and changing the shape by saw and conversion of tress into logs for purpose of sale and disposal fell within the scope of manufacturing process under Section 2-K of the Factories Act, 1948.

The establishment of appellant was therefore, held, to be an industrial establishment under Section 25-L of the Industrial Disputes Act, 1947 and Section 25-N was applicable.

The appellant did not comply with the two requirements of Section 25-N of the Industrial Disputes Act, 1947 namely giving three month notice or wages in lieu of notice and taking permission from the appropriate government. The retrenchment notices were therefore illegal and workmen were held entitled to be reinstatement with full back wages and continuity of service.

SPECIAL PROVISION RELATIONG TO CLOSURE

Section 25-O Procedure for closing down an undertaking-

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

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

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

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

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

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

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

(8) Where an undertaking is permitted to be closed down under subsection (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

In S. G. Chemicals and Dyes Trading Employees Union v. S. G. Chemicals and Dyes Trading Limited and Others, the respondent company was engaged in business of pharmaceuticals etc. and was operating in Bombay through three Divisions situated at different places. The pharmaceuticals, the Dyes, and the Marketing and Sale Divisions situated at Worly, Trombay and Churchgate respectively. The registered officer of the Company was situated at Churchgate. The Company gave notice to the Government under Section 25-FFA (1) of its intention to close down its Marketing and Sales Division employing 90 workmen at Churchgate. Copies of the said notice were sent to the Commissioner of Labour, Maharashtra and the Union. Pursuant to this notice the Division of Churchgate was closed down and the Company agreed to pay compensation under Section 25-FFF of the Industrial Disputes Act, 1947. The Union protested against the termination of the services of the workmen and complained that the closure was contrary to the provisions of Section 25-O of the Industrial Disputes Act, 1947 and the Company had committed unfair labour practice under the Maharashtra Recognition of Trade Unions and Prevention of the Unfair Labour Practice Act, 1971. The union contended that for the purpose of Section 25-O all the workmen working in all three divisions of the Company should be taken into consideration as there was functional integrity amongst all the three Divisions. It was held that the Section 25-O applies to the

closure of undertaking of an industrial establishment and not to the closure of an industrial establishment. It also does not require that an undertaking of an industrial establishment should also be an 'industrial establishment'.

'Undertaking' means part of an 'industrial establishment'. Undertaking and industrial establishment taken together constitute one establishment. Section 25-O would apply to the closure of an undertaking provided the condition laid down in Section 25-K is fulfilled. Further undertaking of an industrial establishment need not to be a factory. Consequently it was held that the closure of the Churchgate division was illegal as it was in contravention of the provisions of Section 25-O and the workmen whose services were terminated on account of such illegal closure are entitled to receive their full salary.

Applicability of Section 25-O

This section deals with the permission for closure of undertaking. In *Hindalco Industries Ltd v Union of India and Others*, it was held that even though the closure of an undertaking was not a planned and voluntary closure by the company Section 25-O of the Industrial Disputes Act, 1947 would be applicable. It was also pointed out that even if an undertaking is closed for reasons beyond its control Section 25-o would be applicable and the conditions imposed in the order of the government granting permission for the closure were valid and binding on the appellant company.

Absorption in Service

In ***Managing Director, Karnataka Forest Development Corporation Ltd. v. Workmen of Karnataka Pulpwood Ltd.*** And others, the private respondents were the workmen of a joint sector company. The State Government granted necessary permission to close down the company. The matter regarding closure of the company was not in dispute. Only the impugned order of the High Court directing the absorption of respondent's workmen into service of the appellant corporation is challenged in this appeal.

Allowing the appeal it was held that in the event of undertaking being closed down, the only right which assures in favour of the workmen is to obtain compensation as provided. Both merger of two undertakings and the closure of one undertaking do not stand together. As such if the workmen think that any other right has accrued to them, they

have to approach appropriate forum and civil writ petition is not maintainable.

Constitutionality of old Section 25-O

In **Excel Wear v. Union of India**, it was held that Section 25-O of the Industrial Disputes Act, 1947 as a whole and Section 25-R in so far as it relates to the awarding of punishment for infraction of the provisions of Section 25-O are constitutionally bad and invalid for violation of Article 19(1) (g) of the Constitution. It was further held that it is true that Chapter V-B deals with certain comparatively bigger undertaking and of few types only. But with all this difference it has not made the law reasonable. It may be a reasonable classification for saving the law from violation of Article 14, but certainly it does not make the restriction reasonable within the meaning of Article 19 (6). Similarly, the interest of ancillary industry cannot be protected by compelling an employer to carry on the business if he cannot pay even the minimum wages to the labourer.

Within the meaning of Article 19(1) (g) includes right to close down the business and the fact that the citizen cannot exercise this right as much as the permission of the State Government is required under Section 25-O before closing down the business, infringes the right given under Article 19(1) (g). The Supreme Court judgment in **Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd** would equally apply to the provisions of Section 25-O as amended by the Act 46 of 1986. The right to close a business is an integral part of the fundamental right to carry on business and is guaranteed by Article 19(1) (g) of the Constitution.

Constitutionality of amended Section 25-O

In **Orissa Textile and Steel Ltd. v. State of Orissa and Others**, the constitutional validity of Section 25 as amended in 1982 was considered. This Section was struck down being unconstitutional in **Excel Wear v Union of India**.

In **Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd**, the constitutional validity of Section 25-N was upheld by the Supreme Court. Therefore, there had been difference of opinion among the High Courts on the validity of Section 25-O. it was held by the Supreme Court in the present case that the amended Section 25-O was not ultra vires the Constitution and it was saved by Article 19(6) of the Constitution on the following grounds-

(i.) Section 25-o had been enacted to give effect to the directive principles of the Constitution and was in the interest of general public.

(ii.) Under the amended Section the order granting or refusing permission for closure has to be in writing and reasons are to be recorded.

(iii.) Even after permission to close being given, the employer had still to give notice and compensation as specified in Section 25-N.

(iv.) The other defect that no time limit has been fixed while refusing permission to close was now cured by sub-sections (3), (4) and (5) of amended Section 25-O.

(v.) The restrictions imposed under the amended section were reasonable and in the interest of general public.

(vi.) As far refusal in case of reasons being genuine is concerned the interest of general public or other factors might still justify refusal of permission, requiring that business be continued for some time.

(vii.) The phrase “in the interest of general public” was not vague but was of a definite concept.

(viii.) There was no excessive delegation of power to the executive as the guidelines had been set out in Section 25-O.

(ix.) There is no substantive vice as the reason for refusal now shall be given in writing after inquiry and giving opportunity of hearing. Thus, power of government was quasi-judicial.

(x.) Section 25(o) was not discriminatory between, say, a firm of lawyers and a factory or mine.

(xi.) The argument that the reasons gives inExcel Wear case, for striking down Section 25-O had been considered inMeenakshi Mills, case and as such it was not open to the present bench to reconsider those reasons was not acceptable to the Supreme Court. It observed that it was the duty of the Constitution Court to form its own opinion about a given case instead of relying upon the gloss placed on that case by some other decision.

Section 25-P Special provision as to restarting of undertaking closed down before commencement of Industrial Disputes (Amendment) Act, 1976-

If the appropriate Government is of opinion in respect of any undertaking or an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976 (32 of 1976)—

- (a) That such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;
- (b) That there are possibilities of restarting the undertaking;
- (c) That it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and
- (d) That the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking, it may, after giving an opportunity to such employer and workmen, direct, by order published in the Official Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

Penalty

Section 25-Q Penalty for lay-off and retrenchment without previous permission- Any employer, who contravenes the provisions of section 25-M or section 25-N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Section 25-R Penalty for closure-

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

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

It was held in **Excel Wear v. Union of India**, that Section 25-R in so far as it relates to the awarding of punishment for violation of provisions of Section 25-O are constitutionally bad and invalid for violation of Article 19(1) (g) of the Constitution.

Section 25-S Certain provisions of Chapter VA to apply to industrial establishment to which this Chapter applies-

The provisions of sections 25B, 25D, 25FF, 25G, 25H and 25J in Chapter VA shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of this Chapter apply

10. Define and distinguish between strike and lockout

Answer:

Strike

Strike is one of the oldest and the most effective weapons of labour in its struggle with capital for securing economic justice. The basic strength of a strike lies in the labours privilege to quit work and thus brings a forced readjustment of conditions of employment[5]. It owes its origin to old English words Striken to go. In common parlance it means hit, impress, occur to, to quit work on a trade dispute. The latter meaning is traceable to 1768. Later on it varied to strike of work. The composite idea of quitting work or withdrawal of work as a coercive act could be gathered in the use of word as a verb as well as adjective. The definition and use of the word strike has been undergoing constant transformation around the basic concept of stoppage of work or putting of work by employees in their economic struggle with capital[6].

Strike has been defined in Section 2 (q) of the Industrial Disputes Act as under— Strike means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment

The analysis of the definition would show that there are the following essential requirements for the existence of a strike:

- (1) There must be cessation of work.
- (2) The cessation of work must be by a body of persons employed in any industry;
- (3) The strikers must have been acting in combination;
- (4) The strikers must be working in any establishment which can be called industry within the meaning of Section 2(j); or
- (5) There must be a concerted refusal; or
- (6) Refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment;

(7) They must stop work for some demands relating to employment, non-employment or the terms of employment or the conditions of labour of the workmen.

Ingredients of Strike

Cessation of Work:-

This is most significant characteristic of the concept of strike. It has been variedly expressed as abandonment, stoppage, omission of performance of duties of their posts, hampering or reducing normal works, hindrance to the working or suspension of work, discontinuing the employment or breaking their contract of service or refusing or failing to return to or resume employment or refusing or failing to accept engagement for any work which they are usually employed for[7]. Thus what required for strike is that there must be stoppage of work or there must be refusal to continue to work or to accept employment by any number of persons employed for the work but the refusal must be concerted or under a common understanding. The cessation of work may take any form. It must, however, be temporary and not for ever and it must be voluntary. No duration can be fixed for this. If the cessation of work is as a result of renunciation of work or relinquishment of the strikers status or relationship, it is not strike. Permanent cessation of work would result in termination of the contract of work which is alien to the underlying sanction of strike retaining contractual relationship during the strike periods. Cessation of work is not a cessation of contract of employment.

Concerted action

Another important ingredient of the strike is a concerted action. The workers must act under a common understanding. The cessation of work by a body of persons employed in any industry in combination is a strike. Thus in a strike it must be proved that there was cessation of work or stoppage of work under a common understanding or it was a concerted action of the workers or there was cessation of work by workers acting in combination. Stoppage of work by workers individually does not amount to strike. The concerted refusal or refusal under a common understanding to continue to work or to accept employment or to resume work by any number of persons is a strike. One thing must be kept in mind that the refusal of work means refusal to perform duties which the

workers are required to perform. If the workers are at liberty to do a particular work or not to do a work their refusal to work does not amount to strike. For example, over-time work, if it is the duty or workers to do overtime work necessarily because it is the practice of that establishment to take overtime work from the workers in that case refusal to work overtime would amount to strike otherwise not. Thus the test to determine whether refusal to do overtime work constitutes a strike or not would depend upon whether overtime was habitually worked in that industry.[8]

The strike is illegal

1. if it is in breach of Contract of Employment.
2. if it is in Public Utility Services.
3. if Notice under Section 22(1) is not given.
4. if commenced during Award or settlement period.
5. if commenced During or within 7 days of completion of Conciliation Proceedings.
6. if commenced During or within Two months of completion of Adjudication Proceedings

Lockouts

The use of the term lock-out to describe employer's instruments of economic coercion dates back to 1860[9] and is younger[10] than its counterparts in the hands of workers, strike by one hundred years. Formerly the instrument of lock-out was resorted to by an employer or group of employers to ban union membership: the employers refused

employment to workers who did not sign a pledge not to belong to trade union. later the lock-out was declared generally by a body of employers against a strike at a particular work by closing all factories until strikers returned to work[11]. India witnessed lock-out twenty-five years after the "lock-out" was known and used in the arena of labour management relations in industrially advanced countries. Karnik reports that the first.

known lock-out was declared in 1895 in Budge Budge Jute Mills[12]. Section 2(1) defines the term Lock-out. However, the present definition is only a mutilated one. The

term was originally and correctly defined in the Trade Dispute Act, 1929. From the definition given in the Trade Dispute Act, the present Act has taken the present definition but has omitted the words when such closing, suspension or refusal occurs in consequences of a dispute and is intended for the purpose of compelling those persons or of aid in another Employer in compelling persons employed by him to accept terms or condition of, or affecting employment.

With the omission of these words, the present definition fails to convey the very concept of Lock-out. In Sri Ramchandra Spinning Mills v/s State of Madras[13], the Madras High Court read the deleted portion in the definition to interpret the term lock-out. According to the Court, a flood may have swept away the factory, a fire may have gutted the premises; a convulsion of nature may have sucked the whole place under ground; still if the place of employment is closed or the work is Suspended or the Employer refuses to continue to employ his previous workers, there would be a lock out and the Employer would find himself exposed to the penalties laid down in the Act. Obviously, it shows that the present definition does not convey the concept of the term lock out

Lock-out, When Legal

The Act treats strikes and lock-out on the same basis; it treats one as the counter part of the other. (Mohammed Sumsuddin), the circumstances under which the legislature has banned strike, it has also at the Same time banned the lock-out. Thus what holds good-bad; legal-illegal, justified unjustified for strikes, holds the same for the lock-out. As such, the provisions of the Act which prohibit the strike also prohibits the lock-out.

The object and reasons for which the Lock-out are banned or prohibited are the same for which strikes are banned or prohibited. It is because the Employer and the Employees are not discriminated in their respective rights in the field of industrial relationship between the two. As such, lock-out if not in conflict with Section 22 and 23 may be said to be legal or not legal. Sections 24(1) (iii), 10(3) and 10A (4A) similarly controls the lock-out. A lock-out in consequence of illegal strike is not deemed to be illegal. But if lock-out is illegal, Section 26(2), 27 and 28 will come in operation to deal with the situation. The Act does not lay down any guidelines to settle the claims arising out of illegal lock-out. The courts, therefore, have adopted the technique of apportioning the blame between the Employer and employees. This once again brings to the fore the concept of justifiability of lock-out.

The Statutory Definition

Section 2(1) of the Industrial Disputes Act, 1947 defines Lock-out to mean: The temporary closing of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him[14]. A delineation of the nature of this weapon of industrial warfare requires description of: (i) the acts which constitute it; (ii) the party who uses it; (iii) the party against whom it is directed; and (iv) the motive which prompts resort to it.

Prohibition of Lockout

In the similar circumstances the lockout has been prohibited in the public utility service. Section 22 (2) of the Act provides that no employer carrying on any public utility service shall lock out any of his workmen:

1. Without giving them notice of lockout as hereinafter provided, within six weeks before locking out; or
2. Within 14 days of giving notice; or
3. Before the expiry of the day of lockout specified in any such notice as aforesaid; or
4. During the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings.

It makes clear that the employer has to comply with the same conditions before he declares lockout in his industrial establishment which the workmen are required to comply with before they go on strike. The conditions for both the parties are same.

Conclusion

Compulsory arbitration as an alternative of collective bargaining has come to stay. The adoption of compulsory arbitration does not, however, necessarily mean denial of the right to strike or stifling of trade union movement. If the benefits of legislation, settlements and awards are to reach the individual worker, not only the trade union movement has to be encouraged and its outlook broadened but the laws have also be suitably tailored. The existing legislation and Judicial pronouncements lack breadth of vision. Indeed, the statutory definitions of strike and lock-out have been rendered worse by a system of interpretation which is devoid of policy-oriented approach and which lays undue stress on semantics. The discussion of the concepts and definition of strike has sought to establish

that legalistic consideration has frequently weighed with the court in interpreting and expounding the said statutory definition: We believe that emphasis on literal interpretation resulted in ignoring the ordinarily understood connotation of the term strike and in encouraging undesirable activity. We now pass on to acts which constitute strike. Unlike the Industrial Relations Bill, 1978 the three phrases used in the definition of "strike" in IDA are not qualified by the expression total or partial. Further, they do not specifically take into account go-slow. The Courts have accordingly excluded go-slow from the purview of strike. However, the exclusion of go-slow from the ambit of "strike" throws them open to the third party suits for damages

No	Strike	Lock-out
1	<p>Definition :</p> <p>Section 2 (q) of the Industrial Dispute Act 1947 defines strike as “ a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal under a common understanding of any numbers of persons, who are or have been so employed to continue to work or accept the employment.</p>	<p>Definition:</p> <p>Section 2(l) of the Industrial Dispute Act 1947 defines Lock-out “lockout means the temporary closing of a place of employment, of the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.</p>
2	<p>The Strike is a weapon in the armoury of the working class to fight collectively and to pressure on the employer. It is a weapon which is made use of the labor class to safeguard their interests both economic and cultural.</p>	<p>Lockout is an Act of employer, by which his industrial establishment is temporarily closed to suppress the demands of his employees and to make them resume duties(employment) at terms and conditions dictated by him.</p>
3	<p>The strike is a temporary Closure of place of Employment.</p>	<p>Lockout is the cessation of work by the body of persons employed in an industry.</p>

11. Describe the provisions relating to lay off under Industrial Dispute Act 1947

Answer:

Special Provisions relating to lay-off, retrenchment and closure under Industrial Disputes Act.

Chapter V-B was added in the Industrial Disputes Act, 1947 through amendment under Article 32 of the Constitution. This chapter deals with the special provisions relating to lay-off, retrenchment and closure in certain establishments. Chapter V-B includes Section 25-K to Section 25-S of the Industrial Disputes Act, 1947. Definitions of lay-off, retrenchment and closure under Industrial Dispute Act, 1947 are as under

Definition of Lay off (Section 2(kkk))-

“Lay-off” (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the musterrolls of his industrial establishment and who has not been retrenched.

Definition of Retrenchment (Section 2(oo))-

“Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but doesn't include-

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or [(bb) termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) Termination of the service of a workman on the ground of continued ill-health;]
Definition of Closure (Section 2(cc))-

Under Section 25-K of Industrial Disputes Act, 1947 the application of Chapter V-B dealing with special provisions relating to lay-off, retrenchment and closure is mentioned. The provision mentions the area where the Chapter V-B of the Industrial Disputes Act, 1947 applies.

Section 25-K- (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 2[one hundred] workmen were employed on an average per working day for the preceding twelve months.(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Special Provision relating to Lay-Off

Section 25-M Prohibition of lay-off-

(1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except [with the prior permission of the appropriate Government or such authority as maybe specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion],

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

(3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under subsection(1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of

such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

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

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

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

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section(4) or refer the matter or, as the case may be, cause it to be referred, to tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

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

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is

necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

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

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

Reasonable restrictions-

In order to prevent hardship to the employees and to maintain higher tempo of production and productivity, section 25M of the Industrial Disputes Act, 1947 puts some reasonable restrictions on the employer's right to lay-off, retrenchment and closure. Section 25-M makes it clear that no workmen whose name is borne on the muster rolls of his employer shall be laid off without previous permission of such authority as may be specified by the appropriate government unless such lay off is due to shortage of power or natural calamity and in case of a mine it is due to fire, flood, etc