MBA (P79)
Semester- IV
Human Resource Management Group
HRM-401  Industrial Relations and Labour Legislation
UNIT 1

INDUSTRIAL RELATIONS: CONCEPT & APPROACHES

Introduction -- Unit Objectives -- Concept Of Industrial Relations -- Defining Industrial Relations -- Nature Of Industrial Relations -- Objectives Of Industrial Relations -- Parties To IR -- The Actors In A System -- Significance Of IR -- Causes Of Poor Industrial Relations -- Effects Of Poor Industrial Relations -- Various Approaches Proposed By The Industrial Relations Scholars As Per Their Research -- IR And The Environment -- Scope And Aspects Of Industrial Relations -- Personnel Management Vs. Human Resource Management -- Human Resource Management Vs. Industrial Relations

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UNIT 1

INDUSTRIAL RELATIONS: CONCEPT & APPROACHES

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1.0 Introduction
The concept of industrial relations means the relationship between the employees and management in the day to day working of an industry. The Indian IR scenario has been rapidly changing with the opening up of the liberalized economy and the subsequent inflow of the Multinational Corporations (MNCs). This has brought a shift in the attitude towards the relationship. This entry of MNCs has shifted the focus from a labour economy to a human economy. An extensive linkage between economy, politics and history has always characterized Indian IR. The changes that are taking place are primarily due to endogenous forces embedded within India's political economy. There has been a major effect on the macro economic aspect on the structure of the labour market (productivity, employment and wages), also on the structure of IR (number of unions, collective bargaining, labour legislation, industrial conflict and state intervention). These transformations have brought in changes on the growth pattern of the economy.

1.1 Unit Objectives

After reading this unit, you should be able to:

- The concept of Industrial Relations with respect to the Indian scenario.
- Defining Industrial Relations, Nature & Objectives of IR.
- Parties to IR, Actors in the system
- Significance of IR
- Effects and Causes of Poor Industrial Relations
- Various approaches proposed by the industrial relations scholars
- IR & the Environment
- Scope & Aspects of IR

1.2 Concept of Industrial Relations

The term industrial relations refer to industry and relations. "Industry" means "any productive activity in which an individual is engaged" and relations" means "the relations that exist in the industry between the employer and his workmen."

Thus, industrial relations are seen as relationships between employees and employers within the organizational settings. The field of industrial relations looks at the relationship between management and workers, particularly groups of workers represented by a union.

Industrial relations have a broad as well as a narrow outlook. Originally, industrial relations were broadly defined to include the relationships and interactions between employers and employees. Industrial relations cover all aspects of the employment relationship, including human resource management, employee relations, and union management (or labor) relations. The meaning has become more specific and restricted. Industrial relations pertains to the study and practice of
collective bargaining, trade unionism, and labor management relations, while human resource management is a separate, largely distinct field that deals with nonunion employment relationships and the personnel practices and policies of employers.

1.3 Defining Industrial Relations

According to (ILO) International labor organization, industrial relations deal with either relationship between the state and employers’ and workers organizations or the relations between the occupational organizations themselves.

As per Dale Yoder Industrial Relations refers to the relationship between management and employees, or employees and their organization that arise out of employment.

Teed and Metcalfe observed Industrial Relations are the composite approach of the attitudes and approaches of the employers and employees towards each other with regard to planning, Supervision, direction and unification of the activities of a set up with less friction and more cooperation with mutual effort for others well-being.

According to Prof. John T. Dunlop (1958) "An industrial relations system at anyone time in its development is regarded as comprised of certain actors, certain context and ideology which binds the IR system together and a body of rules created to govern the actors at the work place and work community.

According to C.B. Kumar "Industrial relations are broadly concerned with bargaining between employees and trade unions on wages and other terms of employment. The day to-day relations within a plant also constitute one of the important elements and impinge on the broader aspects of industrial relations.

According to V.B. Singh "Industrial relations are an integral aspect of social relations arising out of employer employee interaction in modern industries, which are regulates by the state in varying degrees in conjunction with organized social forces and influenced by prevailing institutions.

According to H.A. Clegg "The field of industrial relations includes the study of workers and their trade unions, management, employers' associations and the state institutions concerned with the regulation of employment.
Flanders (1970) defined that IR is oriented to the entertainment of conflict through the mechanisms of institutionalization and regulation.

Thus based on the various definitions, the term industrial relations may be conceptualized as the relations and interactions in industry, particularly between labour and management, as a result of their composite attitudes and approaches to the management of the affairs of the industry for the betterment of not only the management and workers but also of the industry and the national economy as a whole.

Check Your Progress

1. State the concept of Industrial Relations.
2. Define the term Industrial Relations.
3. Considering different definitions attributed to industrial relations, which definition in your opinion is more appropriate in the current context of global organizations?

1.4 Nature of Industrial Relations

- IR is concerned with relationship of management and workers.
- To protect the interests of employees
- Concerned with systems, rules and procedures used by unions & employees
- Role of regulatory mechanism in resolving any industrial disputes.
- IR is multidisciplinary in nature. The study of Industrial Relations has also drawn from the fields of psychology, sociology, communication, technology etc. and is now in the process of establishing its own field of study.

1.5 Objectives of Industrial Relations

The primary objective of industrial relations is to bring about good and healthy relations between the two partners in industry labour and management. It is around this objective that other objectives revolve.

According to Kirkland, "the state of industrial relations in a country is intimately connected with the form of its political government, and the objectives of an industrial organization may change form economic to political ends." He divides these objectives into four:
a. Improving the economic condition of workers in the existing state of industrial management and political government;

b. Control by the state over industries to regulate production and industrial relation;

c. Socialization or nationalization of industries by making the state itself an employer; and

d. Vesting the proprietorship of industries in the workers.

The other objectives are:

- To maintain industrial democracy based on participation of labour in the management and gains of industry.
- To raise productivity by reducing tendency of high labour turnover and absenteeism.
- To ensure workers’ participation in management of the company by giving them a fair say in decision-making and framing policies.
- To establish a proper channel of communication.
- To safeguard the interests of the labour as well as management by securing the highest level of mutual understanding and goodwill between all sections in an industry.
- To avoid all forms of industrial conflicts so as to ensure industrial peace by providing better living and working standards for the workers.
- To bring about government control over such industrial units which are running at a loss for protecting the livelihood of the employees.

Check Your Progress

1. State the nature of Industrial Relations.
2. State the objectives of Industrial Relations.

1.6 Parties to IR
1.7 The Actors in a System

The actors are:

(a) Hierarchy of managers and their representatives in supervision

(b) A hierarchy of workers (non-managerial) and any spokesmen

(c) Specialised governmental agencies (and specialised private agencies created by the first two actors) concerned with workers, enterprises, and their relationships.

Check Your Progress

1. State the parties and actors in the system.
2. Critically examines the role of three main players of IR in the current Indian Context. How do you think their roles would evolve in the coming years?

1.8 Significance of IR

The healthy industrial relations are key to the progress. Their significance may be discussed as under –
1. **Uninterrupted production** - The most important benefit of industrial relations is that this ensures continuity of production. This means, continuous employment for all from manager to workers. The resources are fully utilized, resulting in the maximum possible production. There is uninterrupted flow of income for all. Smooth running of an industry is of vital importance for several other industries; to other industries if the products are intermediaries or inputs; to exporters if these are export goods; to consumers and workers, if these are goods of mass consumption.

2. **Reduction in Industrial Disputes** - Good industrial relation reduce the industrial disputes. Disputes are reflections of the failure of basic human urges or motivations to secure adequate satisfaction or expression which are fully cured by good industrial relations. Strikes, lockouts, go-slow tactics, "gherao" and grievances are some of the reflections of industrial unrest which do not spring up in an atmosphere of industrial peace. It helps promoting co-operation and increasing production.

3. **High morale** – Healthy and good industrial relations improve the morale of the employees. Employees work with great zeal with the feeling in mind that the interest of employer and employees is one and the same, i.e. to increase production. Every worker feels that he is a co-owner of the gains of industry. The employer in his turn must realize that the gains of industry are not for him alone but they should be shared equally and generously with his workers. In other words, complete unity of thought and action is the main achievement of industrial peace. It increases the place of workers in the society and their ego is satisfied. It naturally affects production because mighty co-operative efforts alone can produce great results.

4. **Mental Revolution** - The main object of industrial relation is a complete mental revolution of workers and employees. The industrial peace lies ultimately in a transformed outlook on the part of both. It is the business of leadership in the ranks of workers, employees and Government to work out a new relationship in consonance with a spirit of true democracy. Both should think themselves as partners of the industry and the role of workers in such a partnership should be recognized. On the other hand, workers must recognize employer's authority.

5. **New Programmes** - New programmes for workers development are introduced in an atmosphere of peace such as training facilities, labor welfare facilities etc. It increases the efficiency of workers resulting in higher and better production at lower costs.
6. Reduced Wastage - Good industrial relations are maintained on the basis of cooperation and recognition of each other. It will help increase production.

1.9 Causes of Poor Industrial Relations

- **Economic causes:** It has been seen that often poor wages and poor working conditions are the main causes for unhealthy relations between management and labour. Unauthorised deductions from wages, lack of fringe benefits, absence of promotion opportunities, faulty incentive schemes are other economic causes. Other causes for Industrial conflicts are inadequate infrastructure, worn-out plant and machinery, poor layout, unsatisfactory maintenance etc.

- **Organisational causes:** Faulty communications system, unfair practices, non-recognition of trade unions and labour laws are also some other causes of poor relations in industry.

1.10 Effects of Poor Industrial Relations

Poor Industrial Relation produces adverse effects on the economic life of the country. We may enumerate the ill-effects of poor Industrial Relations as under:

1. **Multiplier effects:** Modern industry and modern economy both are interdependent. Hence although the direct loss caused due to industrial conflict in any one plant may not be very great, the total loss caused due to its multipliers effect on the total economy is always very great.

2. **Low Morale and motivartion:** Poor Industrial Relations adversely affect the normal tempo of work so that work far below the optimum level. Costs build up. Absenteeism and labour turnover increase. Plants discipline breaks down and both the quality and quality of production suffer.
3. **Resistance of change**: Dynamic industrial situation calls for change more or less continuously. Methods have to be improved. Economics have to be introduced. New products have to be designed, produced and put in the market. Each of these tasks involves a whole chain of changes and this is resisted bitterly if these are industrial conflict.

4. **Frustration and social cost**: Every man comes to the work place not only to earn a living. He wants to satisfy his social and egoistic needs also. When he finds difficulty in satisfying these needs he feels frustrated. Poor Industrial Relations take a heavy toll in terms of human frustration. They reduce cordiality and aggravate social tension.

**Check Your Progress**

1. Explain the significance of Industrial Relations.
2. Enumerate the causes of poor Industrial Relations.
3. Enumerate the ill-effects of poor Industrial Relations.

**1.11 Various Approaches Proposed By the Industrial Relations Scholars as Per Their Research**

Various scholars viewed Industrial relations and drew heavily from different fields of study like psychology, sociology, economic, legal, political and managerial. Later on scholars started viewing Industrial Relations as a system and as a process. But none of these gives a perfect view of Industrial Relations they nevertheless enrich the appreciation and development of the subject.

Scholars have recently started viewing Industrial Relations from a holistic and multi dimensional viewpoint. For instance, the economist would view the relationship as that of wages and outputs in terms of supply and demand. To the politician it might be appear as class war or vote bank. Contributions of various scholars, on Industrial relations and its associated and sub fields, their concepts and thoughts, can be arranged in groups or approaches for a better understanding as discussed below:

- **Unitarist Perspective**

In unitarism, the organization is perceived as an integrated and harmonious whole with the ideal of "one happy family", where management and other members of the staff all share a common purpose, emphasizing mutual cooperation. Furthermore, unitarism has a paternalistic approach where it demands loyalty of all employees, being predominantly
managerial in its emphasis and application.

- Consequently, trade unions are deemed as unnecessary since the loyalty between employees and organizations are considered mutually exclusive, where there can't be two sides of industry.

- **Pluralist Perspective**

Flanders, Clegg and Fox are some of the important exponents of the pluralist approach to the study of Industrial Relations. This approach views the organization as consisting of different conflicting interest groups or stakeholders like employees, shareholders, consumer's community, managers, government etc. It emphasizes on the need for management to regulate and balance the interests and interaction of all the partners to Industrial relations.

They view industrial relations as some sort of job regulation also, as viewed in the systems approach.

- In pluralism, the organization is perceived as being made up of powerful and divergent sub-groups, each with its own legitimate loyalties and with their own set of objectives and leaders. In particular, the two predominant sub-groups in the pluralist perspective are the management and trade unions.
- Consequently, the role of management would lean less towards enforcing and controlling and more toward persuasion and co-ordination. Trade unions are deemed as legitimate representatives of employees; conflict is dealt by collective bargaining and is viewed not necessarily as a bad thing and, if managed, could in fact be channelled towards evolution and positive change.

- **System Approach Approach to IR - Dunlop’s Approach**

Dunlop defines an industrial relations system in the following way:

An industrial relations system at any one time in its development is regarded as comprised of certain actors, certain contexts, an ideology, which binds the industrial relations system together, and a body of rules created to govern the actors at the workplace and work community. The theory tries to explain why particular rules are established in a particular industrial relation system.

The systems theory is divided into four inter-related components namely: Actors; certain context; an ideology and a body of rules.

The systems approach views the Industrial relations as a system in itself with the following elements –
**Participants** - The actors taking part in the Industrial Relations process.

There are 3 actors:

- Workers and their organizations/representative
- Managers and their organization/representatives
- The government and its specialized agencies for enactment and implementation of laws, rules and policies.

**The Environment** constituting the technological, economic and social (power distribution) sub-systems in which the organization operates. The environment influences the relations between employer and employee.

**Ideology** - All the participants have their own sets of beliefs and values, which shape the interaction between them, and consequently the output of such a relationship. In the words of Dunlop an ideology is a "set of ideas and beliefs commonly held by the actors that helps to build or integrate the system together as an entity".

**The Structure** - The structure consists of rules and procedures established for the interaction of the actors in Industrial relations, collective bargaining procedures, conflict resolutions and grievance settlement practices.

The system approach, according to many authors has the following important features—

- Universality of character i.e. its applicability to all forms of human relationships.
- Its adaptability and suitability to all types of organizations.
- Dynamism—study of continuously changing interactions.

- The Industrial Sociology Approach
G. Margerison, an industrial sociologist, holds the view that the core of industrial relations is the nature and development of the conflict itself. A human being has been acknowledged to be a social animal and a corporate organization in the eyes of law is a legal citizen. Organizations are composed of human beings and deal with other organization and institutions consisting of a different set of human beings. Hence the interaction between institutions and organization, towards furtherance of each other's goals and objectives, involves interaction between human beings at different levels, as individuals and as groups, big and small. Such interacting individuals and groups have different personalities, emotions, skills, likes and dislikes, attitudes and behavior, wants and needs, interests and desires which may, at some stage and situations, be in conflict. Study of Industrial relations can therefore be seen as analysis of individual and group behavior in the context of social dynamics, within organizations. The sociological aspects of human relationships like group dynamics, migration, family norms and status, stress and strain, delinquency therefore affect industrial relations.

- **The Action Theory Approach**

  The action theory approach takes the collective regulation of industrial labour as its focal point. The actors operate within a framework, which can at best be described as a coalition relationship.

- **The Marxist Approach**

  All Marxist literature is based on the class conflict between haves and has notes, between the controller and the controlled and between the exploiter and the exploited. The Marxian approach to industrial relations, also, therefore derives its strength from the class conflict analysis of industrial relations. According to some Marxists, Industrial Relations are basically market relations. It views industrial relations as a struggle between worker and owners, employer and employees, between capital and labour, with a view to exert greater influence on each other.

  Lenin (1978) was of the view that social democratic consciousness amongst workers will have to be brought from outside i.e. the conviction to combine in unions, fight the employers and strive to compel the government to pass necessary legislation.

  Marx felt that although workers unite for common goals, the goals do not remain common and conflict of interests creeps in, but still some common interests still remain which keep them together. In this context Industrial relations is viewed as a class struggle but with certain limitations.

- **The Human Relations Approach**
In the words of Keith Davies, human relations are “the integration of people into a work situation that motivates them to work together productively, cooperatively and with economic, psychological and social satisfactions.” According to him, the goals of human relations are:

(a) to get people to produce
(b) to cooperate through mutuality of interest
(c) to gain satisfaction from their relationships.

➢ **The Gandhian Approach**

The father of our nation, Mohandas Karamchand Gandhi, himself a great labour leader, carried his own, different approach towards employer-employee relations.

Gandhiji accepted the workers right to strike, but only in extreme situation when employers fail to respond to all kinds of moral appeals. Even strike, if it takes place should be peaceful and non violent. He enunciated the principle of trusteeship, implying that the owner of wealth is actually the custodian and keeps the wealth as a trustee of society, to which it actually belongs, and the individual workers are expected to be co-trustees too. Gandhiji advocated the following rules to be observed for resolution of disputes:

- Workers should seek reasonable demands through collective actions.
- Trade unions should decide to go on strike taking ballot authority from all workers, and remain peaceful using non violent methods.
- Workers should avoid strikes to the extent possible.
- Strikes are to be the last resort
- Workers should take recourse to voluntary arbitration where direct settlement fails.

The Gandhian approach is based on the premise of fair play and basic goodness, of reasonable moral and ethical standards. Few scholars have attempted to relate ethics and morality to the functioning of the Industrial Relations system.

➢ **Psychological Approach**

The psychologist study Industrial relations as an outcome of the relationship between human beings in the form of worker, manager or owner. They hold the relationship to be arising out of fulfillment or non-fulfillment of certain promises or expectation between the parties concerned (which they connote as psychological contract) as a result of exchanges and transactions taking place between them. They also view the problem of industrial relations as deeply routed in the perception, attitudes, and interest of the participants.
Rousseau (1995) (Psychological contract in organizations) writes about 'the individuals' belief in paid for promises, or a reciprocal obligation between the individual and the employer. Thus she includes not only the explicit expectations but also the implicit and perceived expectations, which may also have a subjective connotation.

Industrial relations also have a fair amount of subjectivity "when an individual perceives that contribution he or she makes obligates the organization to reciprocate in a certain manner and vice-versa, a psychological contract emerges." To this extent, employment relations are a construct created by the interpretation of what expectations, promises and actual exchanges mean to individuals, groups and the organization. Since employee relations are based on expectations, obligations and exchanges between the individuals, between groups, and between the employer and employee, it also involves socio-emotional consideration of trust and identification, which are easily breakable but extremely difficult to restore.

**HRM -HRD Approach**

The human relations approach to the study of industrial relations lays stress on the policies and techniques to improve employee morale, efficiency and job satisfaction. It encourages small work-groups to exercise considerable control over its immediate environment. The human relations school was founded by Elton Mayo and later, propagated by Roethlisberger and others.

When human resources are not properly managed the problem of human relations surface. It can be managed by appreciating the dynamics of human behavior, both at individual and group level. This approach tends to satisfy individual and collective needs of workers - economic, physiological, safety, security, social and psychological, as a step to harmonies the interactions and exchanges at the workplace.

However, the level of satisfaction, motivation and commitment will depend upon the health of the organization, the systems, the style of leadership and cooperation - coordination between employer and employees. In this approach every organization will need a specific diagnosis of industrial relations that may be constituted of one or more elements discussed above in a ratio, specially suited to the organization. In this spectrum, the unions are envisaged to function as partners in the pursuit of progress of the organization, and come closer to the managerial function of HRD-HRM. In the HRM -HRD approach managements reach out to the employees with or without union, through development oriented initiatives while strategically keeping the organizational interests paramount.

There is evidence to suggest that in the Indian context also, initiatives of this nature, under the banner of HRD movement is attempting to a give a development thrust though reforms in performance, care, training and development systems, communication and grievance redressal (Joseph 1995)
One of the earliest proponents of this approach, who unfortunately does not find mention in studies of Industrial relations, is Barnard. Barnard (1938) (the functions of the executive) argues that individual is the fundamental strategic factor in organizations. Natural cooperation as inherent in human nature was largely responsible for the success or failure of business ventures. Therefore, organizations must make positive efforts to create a conducive environment to induce workers to cooperate.

Check Your Progress

1. Explain the various approaches proposed by the Industrial Relations Scholars.

1.12 IR and the Environment

Management of IR in an organization is constrained by several environmental forces like the changing economic, legal, political, and social scenario, organizational factors like owner dependency, size, technology, the workforce characteristics and the IR factors like bargaining structure, trade unionism, and others. A strategic understanding of these IR factors would activate the IR structures and systems and in the process not only challenge the existing skill levels but also the prevailing shared values of the organization. This would also help the manager to develop a multiple interest perspective for firm level decision process on an assumption that there is an inherent conflict of interest between employers and employees. The macro economic framework has drastically changed since the introduction of the New Economic Policy in 1991; initiated by the central government and have led to major reforms in some sectors of the economy and has promoted efficiency and competitiveness. These policies have had a perceptible impact on the structure, processes and output of the IR system in India and thus there arises a need for having a much better understanding on the IR framework. Industrial relations environment is influenced by several factors.

A few are discussed below:

I. Institutional Factors:- Under institutional factors are included such items as state policy, labour laws, voluntary codes, collective agreements, labour unions and employers organizations, social institutions the community, caste, joint family, creed, system of beliefs, etc. attitudes to work, systems of power status, relative nearness to the centers of power, motivation and influence and industrial relations.

II. Economic Factors: - Under economic factors are included economic organizations (socialist, capitalist, communist, individual ownership, company ownership, government ownership) and the powers of labour and employers; the nature and composition of the labour force and the sources of supply and demand in the labour market.
III. **Technological factors:** - Under technological factors come the techniques of production, modernization and rationalization, capital structure, etc.

Sometimes, external factors, such as international relations, global conflicts, dominant socio-political ideologies, and the operations of international bodies (such as the ILO) influence industrial relations in a country.

IV. **Legal and Political environment**

Industrial relations in an organization is effected by the legal and constitutional framework which determine the rights and privileges, powers and immunities, roles and domains, territories and boundaries of the different players to Industrial relations.

In fact, rarely individuals or groups will give up their rights, and dominance or authority to someone else.

All over the world and also in India, the system and structures for Industrial relations arose out of the political necessity of governments to develop a good social order and increase development and productivity.

Legislations were enacted and machinery created for the same. All organizations have to adhere to the law and establish structures accordingly.

The other factors of internal environment affecting the IR include:

- **Attitudes and Mindsets**

The outcome of the Industrial relations process depends upon the accommodating spirit and the synergetic effect of the actions and behavior of the parties concerned towards Industrial relations. How the negotiations and exchanges take place depends upon the objectives, interests and attitude of the parties to Industrial Relations.

- The attitude of management to employees and union.
- Attitude of employees to management.
- Attitude of employees to the union.
The attitudes towards negotiations and exchanges of the various parties to Industrial Relations depend upon the atmosphere of trust/distrust prevailing between the partners concerned.

- **Leadership Style**

  Behaviors and functional styles of the leaders in the organization bear a great influence on the climate. Every leader, in his/her own unique way influences the functioning of the formal structures by informal and formal interventions.

- **Organisational Structure**

  The organizational structure formalizes relationship within the organization. It has geographical, hierarchical and operational dimensions. Those dimensions, depending upon the size and nature, complicate the relationship in terms of communication, conduct, control and coordination.

  The set of rules and procedures prescribed in the organization for harmonious working and warmth in climate helps canalize efforts and reduce discords/conflicts. It provides roles for all the players in the organization and their norms of behaviors.
Check Your Progress

1. Explain the factors which influence Industrial Relations Environment.

2. State True/False:

1. The Marxian approach to industrial relations, derives its strength from the class conflict analysis of industrial relations

2. The Gandhian Approach study Industrial relations as an outcome of the relationship between human beings in the form of worker, manager or owner.

3. Flanders, Clegg and Fox are some of the important exponents of the pluralist approach to the study of Industrial Relations.

1.13 Scope and Aspects of Industrial Relations

The concept of industrial relations has a very wide meaning and connotation. In the narrow sense, it means that the employer-employee relationship is confined to the relationship that emerges out of the day-to-day association of management and labour.

In its wider sense, industrial relations include the relationship between an employee and an employer in the course of the running of an industry and may project itself into spheres which may transgress into the areas of quality control. However, the term industrial relations are generally understood in the narrow sense.

An industry is a social world in miniature. The association of various persons, workmen supervisory staff management and employer creates industrial relationships. This association affects the economic, social and political life of the whole community. In other words, industrial life creates series of social relationships which regulate the relations and working together of not only workmen and management but also of the community and the industry.

Industrials relations are, therefore, inherent in an industrial life. These include:

i. Labour relations, i.e., relations between union and management (also known as labour - management relations);
ii. Employer-employee relations, i.e., relations between management and employees

iii. Group relations, i.e., relations between various groups of workmen; and

iv. Community or public relations, i.e., relations between industry and society.

The last two are generally not considered for study under industrial relations, but form part of the larger discipline sociology. The two terms, labour-management relations and employer-employee relations are synonymously used.

The main aspects of Industrial relations are:

i. Promotion and development of healthy labour-management relations;

ii. Maintenance of industrial peace and avoidance of industrial strife; and

iii. Development of industrial democracy.

Industrial relations are inherent in an industrial life.

Check Your Progress

1. Explain the scope of Industrial relations.

1.14 Personnel Management vs. Human Resource Management

The word industrial relations, employee relations have been used differently in the different period in the industry by the management. Personnel Management or Personnel Administration is seen as a line responsibility and staffs function. The basic of a good management is getting effective results through building and maintaining a productive human organization. The contribution of human being is silent. Human Resource Management goes beyond this concept. Human Resource Management is defined as “a process by which the management brings workers into contact with the organization in such a way that the objectives of both the groups are achieved. HR implies a concern for the people but the effective manager never loses sight of the organizations overall objectives. The employees share the benefit of increased production.

1.15 Human Resource Management vs. Industrial Relations

Unlike the field of Human Resource Management, Industrial Relations focuses within a country on the sectors of both product and labor markets rather than on individual enterprises. Industrial Relations not only incorporate the structure, organization and development within enterprises but
also systematically use the channel of product markets, which tend to be highly significant, and the government regulation and public policies. Industrial relations describe three major theoretical perspectives or frameworks for analysis of workplace relations. The three views are generally known as unitarism, pluralist and radical. Every framework gives a particular perception of workplace relations and will therefore interpret such events as workplace conflict, the role of unions and job regulation differently. The radical perspective is referred to as the conflict model, although this is somewhat ambiguous, as pluralism also tends to see conflict as inherent in workplace. Radical theories are strongly identified with Marxist theories.

Check Your Progress

2. State how Human Resource Management is different from Industrial Relations.

1.16 Summary

IR refers to the interrelations between the three main actors-employees and their organizations, management and government. Industrial relations are shaped by socio-economic, psychological and political factors. These relations are complex and multifaceted, and to understand them from different perspectives is desirable.

1.17 Key Terms

**Pluralism:** A condition or system in which two or more states, groups, principles, sources of authority, etc., coexist.

**Employers associations:** An employers' organization or employers' association is a collective organization of manufacturers, retailers, or other employers of wage labor

**Conflict:** An active disagreement between people with opposing opinions or principles.

1.18 Review Questions
1. Taking into consideration different perspectives and approaches advocated for Industrial relations, can you advocate or build a theoretical model for IR? Give reasons to support your answer.

2. How is the concept of IR different from the concept of HRM?

3. Discuss the significance Industrial relations in Indian context.

### 1.19 Further Reading and References

- P.N Singh& Neeraj Kumar, Employee Relations Management, Pearson India
UNIT 2

INDUSTRIAL RELATIONS: EVOLUTION & GROWTH

2.0 Introduction
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2.3 History & Evolution of Industrial Relations in India
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2.0 Introduction

The concept of industrial relations started way back in eighteenth century and term has been used differently in the workplace situations at different times over the years. The emergence of the concept of industrial relations, personnel management, human resource management and human resource development, contributed to the growing need of labour. The term industrial relations refer to relationship between management and labour or among employees and their organizations that characterize or grow out of employment. This chapter provides background on the evolution and Growth of Industrial Relations in India.

2.1 Unit Objectives
After reading this unit, you should be able to:

- History and Genesis of Industrial Relations
- History and Evolution of Industrial Relations in India
- The Role of the State
- Tripartism in India’s industrial Relations System
- The Impact of ILO on Indian Labour Relations
- Emerging Trends in IR Management

2.2 History and Genesis of Industrial Relations

Industrial Relations are the most primitive form of Personnel Management, which goes back to the eighteenth century. It has relevance right from the 1769, when James Watt fought for the patent of the steam engine. Industrial Relations borrows its basic principles from various disciplines e.g. Economics such as wages, bonus, monetary benefits; Law as labor laws; sociology which includes trade unions and their social framework. In the last two centuries, there have been three interrelated revolutions which marked the evolution of industrial relations into its present form. The three revolutions are:

- Industrial Revolution
- Democratic Revolution
- Capitalist Revolution

Pre industrial revolution era – This period refers to the prior to industrial revolution in the world. This was the time while there was no formal way of establish relationship between employers and employees. This era is marked basically with the following features:

- During this time period, economic activity was restricted to agriculture, craftsmanship, trademanship and domestic service. The workforce was largely illiterate and not professionally qualified.
- There were no defined work hours rather working hours were long.
- Consideration of human fatigue and its impact on efficiency was missing. There was no structured relationship rather it was based on master and the craftsman basis. There was more focus on personal rather than professional.
- The work place, work environment and conditions were improper did not receive any attention.

Industrial revolution

Industrial revolution brought about a radical transformation in the economic and social life. It began in the UK and then soon spread to France, Germany, and the USA. This period was extensively marked by the studies made by Taylor and his principles of scientific management. The salient features of the industrial revolution are:

- It was driven by a series of connected events, which brought about innovation and technology in the factory premises, replacing manual labor and redefining the Man-Machine relationship.
- The concept of factory came to existence and a lot of experiments were conducted to increase productivity. The focus was mainly on efficiency.
• Brought about the concept of free labor market i.e. commoditizing labor. Before, the supply side was governed by some groups and unions and the markets were generally held by master craftsmen.
• Formalization of contract based relationship.
• Different countries experienced industrial revolution at different times. It started at UK, and then spread to USA, France, Germany, Japan, and China. These countries had a regulated market protected by the government. Industrial revolution greatly impacted some countries and towards its end, 80% of the production was dominated by 20% of the countries, which contributed to 20% of the world’s population.

**Democratic revolution**

Democratic revolution refers to giving consideration for involvement of people in things which matter to them. Democratic revolution is the next important event in industrial relations which impacted industrial revolution. It started in 1750 in UK and then spread to USA and then France. This revolution brought about a change in the political governance of the countries and focused on labour. These Countries moved from colonialism to different arrangements.
The salient features of the democratic revolution are:
• **There was an increase in social concerns for human rights**- During the industrial Revolution as human rights were suppressed and workers were not allowed to voice their opinions. The Democratic revolution changed the way workers were treated.
• **It impacted trade unionism positively**. The countries where unionization was banned and considered a sin, changed and took to the new norms e.g. In Germany, Trade Union was not accepted before the democratic revolution and the same goes for USA, where trade unions were banned in certain sectors.

**Capitalist Revolution**

Capitalist revolution is the next phase in the course of industrial relations. This revolution changed industrial relations significantly. There were certain changes in the society after the capitalist revolution. Some of the features of capitalist revolution are given as below:
• It initiated the provision for private ownership of means of production in industries and their use for personal benefits.
• Building freedom of contract for employment conditions
• Employment relation is natural outgrowth of Capitalist
• Capitalist revolution in industrial relation unequal authorities between the parties.

This Capitalism caused a divide in society between rich and poor and between employer and the employee. In fact, the capitalism added a negative flavor to the social structure and thus arose certain conflicts. The effects of Capitalism can be categorized as follows. Capitalism has both positive and negative impacts; some of the key features are given below:
• Capitalism has increased the basic indicators of well-being such as life expectancy, real per-capita income, working hours, and working Conditions
• Growth and emergence of working class consciousness
• Worker led protests and strikes
Worker created trade unions which tried to become economic oriented bodies
Public attention to labor problems and social question.

Check Your Progress
1. Explain the three interrelated revolutions which marked the evolution of industrial relations into its present form.

Period 1930-1955 of Industrial Relations

During this phase of industrial relations the industries had already faced depression. This period caused a shift from crafts union towards industries unions. Infact, crafts union were opposed to the idea of organizing workers on industries basis. This period marked the new generation of academicians. It marked new reforms and introduction of 25 government regulations which redefined industrial relations as till this time government was not playing an active role. 1932 witnessed highest unemployment and this period continued till 1944 which reflected in, extreme trends of unemployment. Some of the features of this era were that the economists studied new market fractions and operation of labor markets. The academicians focused on the concept of wage recognition for employees. The government role came in picture in the form of government regulations by way of involvement and participation in labour market. All these above aspects helped shaping up the industrial relations.

The new features emerged from this were:

- Inter wage structure was adopted for labour force
- Wage differentiation among the different workers of different sectors. This was a boon for workers to get the wages according to their nature of work.
- The field of benefits was introduced such as bonus, leaves, medical facility in some cases. Internal pattern and rules for the movement of workers formulated.
- During this phase, formulation of various systems came in place in the form of job discipline and capturing attendance and employee performance etc.
- Procedure for dispute resolution adopted the way of formulating and adopting various labour legislations
- Legal status of government regulations

Period 1950-1970 of Industrial Relations

After the Second World War, there has been significant reforms happened across the globe. The country has taken initiatives in these reforms.

- New ways of dealing with human resources given a concern.
- New Generation of labor economists seems to have evolved where quantification of economics was done which wasn’t seen before; the use of numbers became important, so did the use of tools such as HR Matrix, HR Scorecard, econometrics etc.
• Expansion of Business Schools (Harvard B Schools, Other Schools in US) and a new pool of management thoughts emerged.
• Industrial Relations are seen as a Systems Approach

2.3 History & Evolution of Industrial Relations In India

Evolution of Industrial Relations

Industrial relations has its roots in the industrial revolution which created the modern employment relationship by spawning free labour markets and large-scale industrial organizations with thousands of wage workers. As society wrestled with these massive economic and social changes, labour problems arose. Low wages, long working hours, monotonous and dangerous work, and abusive supervisory practices led to high employee turnover, violent strikes, and the threat of social instability.

Evolution of Indian Industrial Relations

The origin of the industrial relations can be traced to the origin of the industry itself. Industrial relations in an organised form started emerging in India only by the latter half of the 19th century.

Prior to the Independence, the industrial relations philosophy was mainly laissez faire and selective interventions (National Commission on Labour, 1969). The Trade Dispute Act (1929) was enacted and it provided for government intervention in industrial disputes. The policy objectives of the elected government after Independence were to protect the labour of exploitation and to ensure industrial peace and harmony. The initial phase was a paternalistic protective phase.

The Protective Phase (1947-1956)

This phase of industrial relations was characterized by providing rights to the citizens by the adoption of the constitution and the industrial truce resolution to restrain from work stoppages.

The protective phase witnessed the enactment of the Industrial disputes Act (1947), the Constitutional provisions, the Industrial Truce resolution, the First five year plan etc.

The original background of industrial relations in India can be classified under four periods:

The Consolidation Phase (1956-1965)

While the first phase saw a number of legislative interventions by the state, the second phase saw a host of initiatives based on moral exhortations. This phase witnessed the following:
There should be no lockout or strike without notice.
No unilateral action should be taken in connection with any industrial matter.
There should be no recourse to go slow tactics.
No deliberate damage should be caused to plant or property.
Awards and agreements should be speedily implemented.
Any action that disturbs the cordial industrial relations should be avoided.

In order to consider these aspects and the relevant matters, a tripartite sub-committee was appointed; recommending a code of discipline was accepted with certain modifications. The Code of Discipline in Industry, thus evolved, was accepted in March 1958 after due discussion, and came into force on 01 June 1958.

The second phase had two Five Year Plans. The policy initiatives taken up in this period reflected a new labour policy that aimed towards the prevention and settlement of disputes.

**The Conflict Ridden Interventionist phase (1967-80; 4th & 5th five-year plans):**

The third phase was precipitated by the fragmentation of political parties, different parties in power in the centre and in the states and the onset of the emergency. This period also saw the report of the first National Commission on Labour in 1960. With increasing strife; the government’s role became increasingly interventionist. The important features of this phase are as under:

- Economic stagnation.
- Economy grows at @ 2%/year; two oil price shocks
- Considerable slowdown in employment growth & declining real wages.
- Crisis in IR system: massive strikes & industrial conflict, multiple unionism & decline in strength. Conflict, multiple unionism & decline in strength.
- Government losing control over the IR system.

**The productivity- Efficiency- Quality- orientation phase (1981-91; 6th & 7th five-year plans):**

- Initial domestic economic liberalization; economy grows at 5.7%/year.
- Regional variation in economic development increases.
- Variation in wage growth: skilled versus unskilled, labour productivity increases, period of ‘jobless’ growth.
- Rise of ‘independent’ enterprise unionism.

**The Post-Reform Decade, 1992-2009**

- Stabilization & Structural Adjustment Reforms: Economy grows @ 6.2%-6.5%
- In the five years (2004-09) growing at 7%-8%/year.
- Regional variation increases massively.
- Max growth in services: IT, IT-enabled services, ‘hotels, trade & restaurants’; but also in autos & ancillaries; more recently in overall manufacturing.
Check Your Progress
1. State the new features of Industrial Relations which emerged during the period of 1930-1955.
2. Which reforms happened across the globe after the Second World War during the period of 1950-1970 of Industrial Relations?
3. Explain the various phases of Indian Industrial Relations.

2.4 The Role of the State

State regulation characterized management of both product market and the industrial relations system (IRS) in the post-Independent India. The logic of industrial peace determined the institutional framework of the IRS in the era of regulation. Over the years, the failures of "state regulation model" concerning both the product market in the industrial sector and the IRS were pointed out and there have been calls for liberalizing both. The process of economic liberalization began since the mid-1980s and accelerated since 1991. Meanwhile, some important developments were taking place in the industrial relations system as well. The State, the employers and the trade unions responded to these forces in different ways. These taken together affected the employment relations in significant ways.

State intervention in the Industrial Relations was a part of the interventionist approach to the management of industrial economy. Several considerations like unequal distribution of power in the labour market, neutrality of the state, incompatibility of free collective bargaining institution with economic planning etc. provided moral justification for retaining state intervention in the IRS. State intervention in the IRS is logical also when the state holds large stakes in the industrial sector of the economy.

However state intervention does not mean suppression of trade unions and collective bargaining institution. In fact, state intervention and collective bargaining were considered as complementary to each other. Gradually, various tripartite and bipartite institutions were introduced to supplement the state intervention in the IRS.

The tripartite process was considered as an important instrument of involving participation of pressure groups in the state managed system. Non formal ways were evolved to do what the formal system did not legislate, for one reason or other.

Check Your Progress
1. State the role of the State.

2.5 The Labour Policies

Labour policy in India has been evolving in response to specific needs of the situation to suit requirements of planned economic development and social justice and has two fold objectives, namely maintaining industrial peace and promoting the welfare of labour.

2.5.1 Major Highlights of Labour Policy
• Creative measures to attract public and private investment.
• Creating new jobs.
• New Social security schemes for workers in the unorganized sector.
• Social security cards for workers.
• Unified and beneficial management of funds of Welfare Boards.
• Reprioritization of allocation of funds to benefit vulnerable workers.
• Model employee-employer relationships.
• Long term settlements based on productivity.
• Vital industries and establishments declared as ‘public utilities’.

2.6 Tripartism in India’s Industrial Relations System

Tripartism is a system of labour relations in which the state, employers, and workers are autonomous yet interdependent partners, pursuing common interests and participating in decisions affecting them in a binding spirit of mutuality and reciprocity. This can take place at either or both macro and micro levels.

Tripartite consultation is an important feature of India’s industrial relations system. It has a long history in India as it was set up as early as 1942. The Indian Labour Conference (ILC) and the Standing Labour Committee (SLC) are two main forums for Tripartite Consultation.

The objectives of Tripartite Consultation could be mentioned as under:

i. To promote uniformity in labour legislation.
ii. To lay down a procedure for settlement of industrial disputes.
iii. To consider matters of importance to both the managements and labour.

There are a number of tripartite bodies which operate at the Central and State levels.

A large number of tripartite bodies have been set up by the government to provide a forum of discussion and consultation on various labour-related issues. Among these bodies, a few notable ones are:

1. The Indian Labour Conference (ILC);
2. The Standing Labour Committee (SLC);
3. The Committee on Conventions;
4. The Industrial Committee; and
5. Other bodies of tripartite nature deals with various aspects of labour problems.

2.6.1 Tripartite Bodies

**Indian Labour Conference and Standing Labour Committee**

Both ILC and SLC are two important constituents of tripartite bodies. They play a vital role in shaping, the I.R. system of the country. A brief account of these bodies is discussed here:

The objects of the Indian Labour Conference (ILC) are:

a. To promote uniformity in labour legislation;
b. To lay down a procedure for the settlement of industrial disputes; and
c. To discuss all matters of all-India importance as between employers and employees.

Indian Labour Conference (ILC) and Standing Labour Committee (SLC) have been constituted to suggest ways and means to prevent disputes. The representatives of the workers and employers are nominated to these bodies by the Central Government in consultation with the All-India organizations of workers and employers.

The Labour Ministry settles the agenda for ILC/SLC meetings after taking into consideration the suggestions sent to it by member organizations. These two bodies work with minimum procedural rules to facilitate free and fuller discussions among the members. The ILC meets once a year, whereas the SLC meets as and when necessary.

ILC and SLC are both important constituents of tripartite bodies and play a vital role in shaping the IR system of the country. The function of ILC is to advise the Government of India matter referred to it for advice, taking into account suggestions made by the provincial government, the states and representative of the organizations of workers and employers’. The function of SLC is to consider and examine such questions as may be referred to it by the central government and to render advice, taking into account the suggestions made by various governments, workers and employers.

The functions of ILC are:

- To promote uniformity in labour legislation. To lay down a procedure for the settlement of industrial disputes. To discuss matters of All-India importance as between employers and employee.

- According to the National Commission on Labour these bodies have contributed to attainment of the objectives set before them. They have facilitated the enactment of central legislation on various subjects to be made applicable to all the states and union territories in order to promote uniformity in labour legislation.


Other subjects processed by tripartite bodies are workers education, workers participation in management, training, wage policy, Code of Discipline, criteria and procedures for the recognition of unions. Though the recommendation of tripartite bodies is of advisory nature, they carry considerable weight with the government, workers and employers.

Check Your Progress

1. State the major highlights of Labour Policy.
2. State the objectives of Tripartite Consultation.
3. State the tripartite bodies which have been set up by the government on various labour-related issues.
4. State the objects of the Indian Labour Conference (ILC).
5. State the functions of ILC.

2.7 The Impact of ILO on Indian Labour Relations

The International Labor Organization (ILO) was set up, with an objective to develop the conditions of labors not only in India but around the world, in the year 1919. India was the instituting member of ILO, which now expanded its primary membership to 145 countries. Indian Labor Organization through its resolutions and recommendations supports countries to lure their own set of labor legislations for the well conduct of the labor class, and the preservation of their rights. The primary objective of action in the ILO is the creation of the International Labor Standards in the form of Resolutions and Recommendations. Resolutions are international treaties and instruments, which generate legally binding responsibilities on the nations that ratify those nations. Recommendations are non-binding but better set out guidelines orienting countrywide policies, procedure and help in developing actions.

2.7.1 The Ratification Procedure of the ILO Standards

Ratification of a Resolution enforces legally binding responsibilities on the nation concerned and, consequently, India has been very careful in ratifying Resolutions. It has always been in the exercise in India that we ratify a Resolution when we are entirely satisfied that these laws and practices are in conformity with the appropriate ILO Resolution. It is now measured that a better course of action is to proceed with progressive implementation of the standards, leave the formal ratification for consideration at a later stage when it becomes practicable. India have so far ratified 39 Conventions of the ILO, which is much better than the position obtaining in many other countries. Even where for special reasons, India may not be in a position to ratify a Convention, India has generally voted in favor of the Conventions reserving its position as far as its future ratification is concerned.

2.7.2 Core Conventions of the ILO & the Ratification of Conventions by India

The eight Core Conventions of the ILO (also called fundamental/human rights conventions) are: Forced Labor Convention (No. 29), Abolition of Forced Labor Convention (No.105), Equal Remuneration Convention (No.100), and Discrimination (Employment Occupation) Convention (No.111) (The above four have been ratified by India). Freedom of Association and Protection of Right to Organized Convention (No.87),Right to Organize and Collective Bargaining Convention (No.98),Minimum Age Convention (No.138),Worst forms of Child Labor Convention (No.182) (These four are yet to be ratified by India). Consequent to the World Summit for Social Development in 1995, the above-mentioned Conventions (Sl.No.1 to 7) were categorized as the Fundamental Human Rights Conventions or Core Conventions by the ILO. Later on, Convention No.182 (Sl. No.8) was added to the list.

Check Your Progress
1. State the ratification procedure of the ILO Standards.
2. State the eight Core Conventions of the ILO.
2.8 Emerging Trends in Industrial Relations Management

The globalization and the new economic forces have brought in significant changes in the labour market and IRS. The 'actors' of the IRS have responded to them in varying ways. The agencies of labour and capital looked to the state for concrete action favouring their respective interests and have exerted pressure on it to introduce wide ranging labour reforms. The state responded in ways that would protect its dominant political interests and adopted strategies that sought to placate capital without hurting the fundamental interests of labour like employment security. However, the government did not lose sight of its economic goal of attracting investments and intervened or refused to intervene in labour relations suiting the interests of capital. It also redirected its attention to the hitherto neglected masses of unorganized sector workers. Thus, the state's role is 'complex' and cannot be fitted neatly as favouring either capital or labour. However, the conducive environment encouraged the employers to devise both 'hard' (lockouts, closures, anti-union measures, etc.) and 'soft' (idleness pay, VRS) ways to achieve flexibility and weaken union power. Most trade unions on some occasions banded together and fought united battles in the policy arena and resisted changes at the national level. At the micro level, they responded to the market logic and extended cooperation to employers when consulted on issues of labour flexibility, wage restructuring, work load and so on and fought tenacious battles when not consulted and sought to be sidelined. They started paying more attention to the hitherto neglected workers in the informal sector and to create a "more inclusive" union movement.

With H.R.M replacing personal management has made lot of changes in personal relationships and personal handling the Industrial Relations changes are visible as follows:

1. The rules regulations etc are now days so tailored to suit the workers they are seen with a humanitarian approach. The old pattern, I don't what you will do is changed, a co-operative attitude is taken now, this has resulted in a jump in Industrial Relations.

2. The laid out procedures are contracted as per need of the hour. The focus is to get the things done not to stick to reties and get stuck up.

3. The superintendence pattern is shifted and a guidance pattern is adopted by managers hence workers feel homely and as a team.

4. The managers facilitate the works under the transformed leadership.

5. Team work is facilitated Go and do it' is changed into let us go and do it.

6. Industrial workers are industrial assets has become the motto of Tata iron and steel company’s motto is Tata family a feeling of oneness this has resulted in owning of the industry. This motto has paved way for its phenomenal growth and diversification more or less it is coming towards Japanese style.

7. Higher thrust is given for the development of workers, skill improvement; management development career growth planning etc has improved the industrial relations.

Industrial Relations Changes has brought lot of changes in :
a) Management, entrepreneurs, employees because of necessity and compelling circumstances.
b) In the trade unions
c) In the workers themselves
d) Attitude of the government, politicians
e) Judiciary also

This can be discussed as follows:

**A. Changes related to Management, entrepreneurs, employees**

1. Management has changed Human Relations Management policies.
2. Employers have formed their effective associations to tackle not only their workers but also to compete
3. Linkage with international business organizations, participation in world trade suggesting requisite changes in commercial laws etc. has become the order of the day.
4. Linkage with international labour organization they can, up to date, the information’s to see their suggestions and improve workers conditions.
5. ASSOCHAM chamber of commerce etc has emerged as confederation of Indian Industries.

**B. Status of Trade unions:**

After independence of our country more and more industries were coming, trade unions were becoming stronger.
In private sectors trade unions were masters they could to strong arms tactics at the same time some industrialists could suffocate the unions with their gangs’ Things were extreme union leaders were in the pocket of industrialists.

4. When nationalization of industries started, more public sectors came in to being public sector bureaucrats cannot purchase or give pressure on union leaders like private management hence they have to take other steps to keep the relations better. Hence industrial relations had to be attended to keep industries running smoothly.
5. With Nationalization spree trade unions affiliated themselves to political parties more vigorously; rather unions became a pawn in the hands of politician. Real union leaders lost their faces. Masked politicians became the string pullers in industrial affairs.

**C. Change and Workers**

1. Workers have started making hay while the sun shines them joined unions which are powerful, not unions which are principled.
2. Might is right those who can get us more will be our leader, theirs is our union.
3. Gamut of industrial social security Acts came into being only keeping in mind the interest of industrial workers without any thought about the industry or the employers.

D. Attitude of government and politician

1. Politicians were jubilant while there was nationalization since they can hold the reins
2. The profit loss of Public Sector Units was linked with government money, which is unlimited, as such politician and government machineries were comfortable industrial relations got a boom.
3. Back bone less management was seen in most of the industries, workers wages enhanced, with out increasing their responsibility or accountably.
4. Almost after half a century after independence when the euphoria of independence waned – there was a sudden stop on nationalization, reversal started.
5. More privatization disinvestments started, this has created strain or industrial relations.
6. Amalgamation, merger, takeover, N.R.I’s companies, Foreign companies invasion, started with full speed, workers baffled, unions got submerged, global competition necessity was felt by one all as such industrial relations was at balance.

7. The new pattern of employment in Information Technology, Computer World- the word workers disappeared hence unions become out of questions. If persons are posted as supervisors and managers straight away – they are not coming under workmen Act. The new employment set up of the country has money and comfort as such the relations of employer’s employee is cordial.

8. Industries which were having workers saw the competitive world and both employer employee appreciated the necessity for good relations – to compete with others. This has become a golden relations’ period.

E. Change in Judiciary

1. Judicial Activism was pronounced, judges were free to decide for the country’s welfare
2. A slight shift was perceptible in some place where employer’s action was justified.
3. Through there were frequent brushings between judiciary and parliament, by and large development of the nation got a boom

Check Your Progress
1. Enumerate the emerging trends in industrial relations management.

2.9 Industrial Relations and Productivity

Industrial relations are that part of management which is concerned with the man power of the enterprise whether ordinary, skilled workers or manager. Good industrial relations provides congenial atmosphere where workers can think of their job, management thinks of their welfare and goal of the company and the workers also are concentrating to achieve the goal of company.

The achievement of greater productivity can be had by good industrial relations only. The overall productivity in various functional domains can be achieved as given below:
1. Productivity can be of manpower, finance, marketing and workers productivity man power productivity can be had by efficient development of work force, right man at the right place at the right time, for right type of job.

2. A deployment which equates full load to a perfect worker his optimum capacity is brought out. He can bring out his optimum only when he is fully satisfied his psychology is in good condition improvement of industrial psychology is done by good relations only.

3. Finance productivity is deployment of finance for just and best output. The receipt of finance at low interest and payout should fetch high interest payment to workers also. If payment to workers are just and incentive oriented, stimulating, competitive, workers interest is aroused – results in higher production and more return on the money invested as finance, Hence this besides creating mutual confidence develops a team spirit and better relations.

4. Marketing productivity, for the efforts taken expenditure incurred by marketing department if sales are high it may be called a productive marketing philosophy more marketing can be achieved if cost of production is less. Cost of production will be low if workers are a satisfied lot, if wastage is avoided, if best quality is produced, if disciplined production takes place within stipulated time at the stipulated cost and quality. This is easily achieved if morale of work force if high is they are motivated.

5. Workers productivity with increased sense of responsibility which comes of best team and co operative spirit, we will produce, shows togetherness, best relation between employer and employee. Besides satisfied employment results in less absenteeism and reduced turnover absence of both automatically increase production and productivity. Strained industrial relations lead to industrial an dispute which is ant production loss to both employers and employee.

The productivity can be increased along with better industrial relations and allied activities like:

1. Adoption of supply chain management to get best raw materials where maximum utilization becomes possible.
2. Giving better environment to workers and improved working conditions environment should remove boredom or monotony and create zeal and dynamism.
3. Updated machines with full scale mechanization will reduce cost of production
4. The work force should be correctly selected properly trained and fully loaded. This should be followed by training for updating.
5. Proper rewards either monetary or non-monetary should be arranged; incentive plans mutually agreeable should be framed and adhered to for moral boosting.

Check Your Progress

1. Write a note on industrial relations and productivity.
2. What are the roles of government and judiciary in Industrial Relations change contemplated?
3. Discuss the relationship between Industrial Relations and productivity.

2.10 Summary
There have been significant changes in the economic environment in the last fifty years of development which has brought significant changes in both the employers and the employees. The First World War was an opportunity in disguise for local factories in India. Prices of virtually all products went up and profits soared, however, wages of lower employees were still the same. There were various strikes and disputes between management and employees. The Workmen's Compensation Act (1923), the Trade Union Act (1926), and the Trade Disputes Act (1917) were established. While the wages of employees remained the same, they were given a certain share of profits made by their hiring industry. Strikes, however, were sometimes prohibited under the Emergency Rules. The years following World War II involved the most workers' upheaval, and saw the establishment of Industrial Employment Act (1946) and Industrial Disputes Act (1947).

The post-independence era saw a developing relation between industry and labour. A conference called the Industrial Truce Resolution took place in 1947, and foresaw the establishment of the Minimum Wages Act, Factories Act, and Employees State Insurance Act in 1948. This ensured peace between labour and industry. While industrial relations in India have evolved a long way, some features of the early system still exist today. The time has come, to build a consensus amongst the three actors of IR for developing a new paradigm of IR.

2.11 Key Terms

**Productivity:** The effectiveness of productive effort, especially in industry, as measured in terms of the rate of output per unit of input.

**Judiciary:** The judiciary (also known as the judicial system or court system) is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes.

**Lassize faire:** The policy of leaving things to take their own course, without interfering. It is a philosophy or practice characterized by a usually deliberate abstention from direction or interference especially with individual freedom of choice and action.

2.12 Review Questions

Q1. With globalization, the labour law provisions should be as liberalized in India as they are in advanced economies of the world-Comment.

Q2. The mid-1990 was characterized by a union-movement shift from those of “rights “to those of interest”. Elucidate.

Q3. Discuss the impact of ILO on the Industrial relations in India.

2.13 Further Reading and References
• K.K. Ahuja, personnel management, Kalyani Publishers, New Delhi.
• P.N Singh & Neeraj Kumar, Employee Relations Management, Pearson India
UNIT 3

INDUSTRIAL RELATIONS IN MAJOR INDUSTRIALIZED ECONOMIES: A COMPARATIVE STUDY

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3.0 Introduction

The formulation of labour management relations policy is one of the significant tasks at the national level, and its successful implementation does influence the labour relations climate at the industry and enterprise levels. The policy formulation takes place at the national level and is thus influenced by the socio economic and political climate of the country and also influences the neighboring countries.

3.1 Unit Objectives

After reading this unit, you should be able to:

- Enumerate the industrial relations in the major industrialized economies of the world and provide insights about the developments in the field Industrial relations.
- To compare the Industrial relations systems, structure and processes across countries.
- To examine the industrial relations with particular reference to: evolution, trade unions, collective bargaining and legislations.

3.2 Industrial Relations: A Historical Perspective

At its inception, the management of industrial relations emphasized the economic perspective, labour being a factor of production and the employment terms predominated by demand- and-
supply economics. The classical-economics pre-dominated the labour management relationship, advocated free and unregulated labour markets.

The laissez-faire approach led to an exploitative regime as far as capital's treatment of labour was concerned. Industrial relations, initially took on a regulatory role to correct this unequal bargaining power. Subsequently, industrial relations broadened its scope taking on a protectionist role addressing the problems that came to the fore during the laissez-faire phase. The laissez-faire essentially resulted in complete one-sidedness of a power relationship 'between the employers and the employees, almost always loaded against the employee because of market imperfections. With external factors and market imperfections coming into focus, State intervention had to be initiated to address the issues. Legislations to protect the rights of the employees and an institutional mechanism to handle conflicts were the products of this phase.

With this emerged the bargaining role of the industrial relations systems and the demarcation of the role of the State, the employers and the employee organizations/trade unions. State intervention brought the focus of industrial relations outside the industrial enterprise through bargaining at a particular industry level and sometimes even on the national level.

State intervention was welcomed by the employers. Unions got the advantage of influential base outside the workplace. This, however, led to the politicization of industrial relations in general and trade union in particular.

The State intervention and the labour-related regulations, however, failed to address labour-related problems such as low productivity, absenteeism, attrition, employment security, working conditions in terms of safety and occupational health. The above concerns led to the emergence of the human resource management perspective in the 1980s; that it is not factors external to the enterprise, but ineffective human-resources strategies, policies and practices that create labour problem. With the pressure on enterprises to adapt and change employers started concentrating on issues at the enterprise level.

3.2.1 The International Factors

A major thrust for all parties to IR is to establish a robust system of IR so as to ensure economic and social imperatives. To do so, a few contemporary issues have to be taken into account by the actors of an IR system

- The globalization of business and the resultant competition, changes in technologies, scales of operation and the widening of markets are forcing all enterprises to cut flab and become nimble.
• Information Technology has had and is having a huge impact on organization structures, work processes, working conditions, geographical spread, the nature of supervision, communications, performance measurement, compensation strategies and the management of people. The demographic profile of workers has also changed.

• The restructuring of industrial enterprises and business organizations is taking place, across a majority of countries as they adapt to the forces unleashed by globalization. In many cases, this has resulted in situations that have a big impact on industrial relations and socio-political fronts. Privatization and divestment of State-owned companies have resulted in redundancies that cause a strained relationship amongst the actors of IR.

• Another future is the changes occurring in the work forces, to varying degrees, in both industrialized market economies and developing economies. The new worker/employee, by and large, is better educated and is different in outlook when compared to his blue-collared predecessor; And this proportion is rising, which means a complete change in the approach to managing this lot.

• With the emphasis on cost efficiency and product quality, more and more of non-core activities may get outsourced to those who specialize in some non-core aspect of work. There may be different sub-groups of employees to be managed.

• The role of unions is changing. The unions seem to be in disarray, trying to define a role in the changing environment. Unionization is on a decline and they have not yet adapted themselves to the new realities of fundamental shifts in the work and business environment. In the interim, there is a growing realization that, perhaps, the employees too, need to lend a hand in competency development for sustained advantage and survival. However, there are many issues on which they may have formulated a position but not the wherewithal to forge ahead; for example, collectively challenging the issues facing the knowledge and service workers, outsourcing, etc. And, maybe, there is a growing a realization that their contribution may be more effective in managing workplace relations.

• Researchers, by and large, agree that factors driving these changes are increasingly competitive environments caused by the integration of world markets.

• The direction of the change: decentralization of bargaining, and a movement towards increased flexibility in wages and labour deployment at the workplace level.

Relatively less attention has been paid to how industrial relations systems have changed in the developing nations of Asia. Given that countries have seen considerable changes in their industrial relations systems, we need to understand the nature of these changes.

3.2.2 The Political Factors

Labour Relations, by most governments, were viewed as a means to prevent workplace conflicts or to contain such conflicts so that the production doesn't suffer and consequences. In the South and Southeast Asian countries, this was largely achieved through the creation of dispute-settlement and conflict resolution machineries established by the governments that is, outside the purview of the workplace alone.
In a few industrialized economies of the West, the employer-employee-relationships were largely controlled through enactments and legislations. The objective of the State in industrial relations in Asian countries was to keep a control on the freedom of the employer for such actions that may affect employment. At the same time, they also resorted to restrict trade-union action and control unions, to keep proliferation of unions in control. The Asian countries emphasized efficiency; and the protection of employment. The cultural factors in the Asian countries was represented by a strong hierarchical structure, paternalistic management systems, respect for authority were hindrances to a negotiation and communication, based on equality, between the employers and the employees. Japan however, maintained a different culture of workplace flexibility, strong enterprise identity and enterprise unions. Australia and New Zealand, on the other hand had centralized IR models, but things are changing now even there.

The industrial relations systems in a few countries are discussed in the next sections. The historical evolution of industrial relations system primarily originated from Britain and, hence, has been elaborated in detail. The framework for comparison mainly comprises trade unionism, the role of employer organizations and the legislative framework.

Check Your Progress

1. Explain the contemporary issues which have been taken by the actors of an IR system.

3.3 Industrial Relations in the UK

Britain was the first country to industrialize and also the first country to set up industrial relations institutions. The history of IR, in Britain has been eventful, and it is necessary discuss this evolution, especially in the twentieth century, in some detail.

3.3.1 The Evolution

Britain is regarded as the place where modern industrial relations came into existence and matured. Any serious study of industrial relations will remain incomplete (and may not even make sense), unless one has some appreciation of the developments during the rand industrialization and the years following it in Great Britain.

3.3.2 Prior To 1990

During the early part of the twentieth century, the IR was shaped around the challenges of the staple industry, with the twin concerns of containing industrial conflict because of wages and also with a view to regulating the industry because of intense competition.
This resulted in an industry level collective bargaining to take care of the problems. The next major change was ushered in the time after the World War, when the concern was an increased productivity in a war-ravaged economy as well as new capital intensive economy.

The lack of firm-level bargaining was felt, and it was pointed out that due to this, there was little scope for firm & to take measure for improvement in productivity and introduce changes or/and reorganize changes in 'work'. This concern was articulated by the Donovan Commission that submitted its report in 1968 mainly saying that the trade unions and the employers' organizations were so focused at industry-level bargaining that not enough resource and attention was being paid at the unit level, where most of the changes were to take place.

There was little control over the unionized employees and also an absence of institutions for regulating at the firm level. The legislative measures based on the recommendations could not be pushed through due to large-scale protests. It was only in 1974 when, gradually, reforms to in discussions at the firm level were introduced. The main provisions were:

i) A statutory right to trade-union recognition
ii) Workers were granted a set of individual rights designed to encourage and improve collective bargaining, including funding for shop-steward training, time off for shop stewards, and rights to information and consultation
iii) A new form of extension procedure was created, which permitted trade unions to use legislation to drive the employers to the bargaining table and grant them recognition

This resulted in facilitating decentralized bargaining and a proliferation of bargaining into industries and firms hitherto unexplored. However, instead of promoting peace, the reforms plunged Britain into an era of widespread industrial conflict, threatening to affect competitiveness of the UK and also affecting its economic power. The unions, at most places, brought the management to its knees.

The era of 'Thatcherism' (which largely implied actions based on Margaret Thatcher's political and economic philosophy of reduced State intervention, free markets, and entrepreneurialism) and the Employment Relations Act (1979) were reactions to the era of industrial chaos and strong-arm tactics of the trade unions. The above Act made revisions in the trade union recognition and modified removed a number of other rights. The thrust of the government was to restore a balance in the relationship through taming the unions. Recession in the early 1990s further weakened the trade unions, thus paving the way for a fundamental restructuring of the industrial relations. There has been a sharp decline in trade unionism since then. A new individualized kind of relationship has emerged where a large proportion of workers are not members of any trade union and are not covered under collective bargaining.
3.3.3 Recent Changes

There have been a few charges to protect the rights of the workers, including regulations on minimum wages, working hours, more protection against unfair termination, rights for working women, etc., but the emphasis remains towards weakening collectivism in the management of industrial relations. The regulation of the labour market has taken the firm of individual legal rights, enforceable through labour courts and State agencies, not collective rights designed to strengthen trade unions, which could then take on the role of regulating social relations through collective bargaining.

3.3.4 Trade Unions in the UK:

Three characteristics distinguish the British industrial relations system.

- First and foremost tradition of voluntarism.
- The second feature is the representation of workers through trade union officers at workplaces in the form of shop stewards.
- Third, the organization of trade union-membership is on occupational rather than industrial lines. So there is a formal system originating from in created through the agency of the State and the other is the informal system created by actual behaviour of trade unions and employers' associations, managers, shop stewards and workers.

The trade unions function with a focus on primarily three sets of objectives:

I. Maintaining and improving wages, hours and Conditions of work, and also what wages can buy, increasing the site of real and net income and the share accruable to the working class.

II. Providing and improving opportunities for the advancement of the workers for full employment.

III Extending the influence of the working class over the industry and arranging for their participation in management.

The trade unions of Britain, not only defend or improve the wages and conditions of labour, but also raise the status of the workers in the industry and society. They extend the area of social control of the nation’s economic life. Trade unions in England have provided benefits for themselves and have also worked for the development of social services in the State.
They recognize the needs of individuals and are, to a large-extent, taking responsibility for the whole community.

Check Your Progress

1. State the main provisions at the firm level prior to 1990 in UK.
2. State the three characteristics which distinguish the British industrial relations system in UK.
3. State the three sets of objectives according to the trade unions in UK.

3.4 Industrial Relations in the European Union

For the purpose of industrial relations, the European Union cannot be considered as an integrated whole as of today and the traditional framework for studying IR may not be applicable. Nevertheless as the efforts to integrate are on, at this point of time we may take a look at the important institutions, laws and trade unions in member countries. The European Commission has been attempting a pooling of research on the IR structures, processes, laws and practices in member countries with a view to bring in gradual uniformity on larger policy matters pertaining to industrial relations, but it is early days yet.

The Trends in the European Union

In this section, we identify a few trends across the Member States:

3.4.1 Trade Unions:

- Unions in most of the member countries are organized on a sectoral or occupational basis,

- Blue-collar unions are losing influence and the white-collar unions gaining significance.

- In most countries, there is more than one peak organization or confederation, with divisions on occupational, religious or political lines.

Large differences in trade-union density—the ratio of actual to potential membership—continue to exist between the member States, ranging from 80 per cent in Denmark to 8 percent in France.

The density rate is high in the Nordic countries, while Spain, France and most of the new Central and Eastern European member States have comparatively low rates,
The overall weighted-average-density rate in the EU is now between 25 per cent and 30 per cent of wage earners, and the trend in union density is clearly downward across Europe.

Most of the EU member states experienced a fall in density over the period from 1995 to 2004, with unions in Central and Eastern Europe facing dramatic membership losses.

3.4.2 Collective bargaining:

Collective bargaining, almost across all the member States, has moved towards decentralization, although wide variations exist in practice.

- For example, in Spain, works councils operate with a clear mandate and sign 74 per cent of plant agreements

- In Austria, commentators observe "organized decentralization", a phenomenon linked to delegation: or "opening" clauses, enabling some flexibility on certain economic and working conditions.

3.4.3 Workplace Representation:

- Workplace representation has been legally established and formally installed in most of the EU countries and is a distinctive feature of the EU industrial relations system.
- There is, however, a great range of forms of representation, reflecting the specific characteristics of industrial relations in particular countries.
- The most significant European legislation on workplace representation is the framework directive of the minimum standards for informing and consulting employees at the company level in all the member States (Directive 2002/14). However, the directive is drafted in very broad terms, leaving considerable scope for individual States to implement its terms. Thus, it creates a general framework for informing and consulting employees, without harmonizing representation.

Despite variations, there appears to be a conscious effort to build a pan-European frame-work on industrial relations. Regular exchanges of reports and research at the commission level have been taking place over the past few years and have resulted in a few directives for the constituents. Therefore, despite this diversity in country-specific practices in the collective bargaining and employee representation, there is a progressive unity and coherence at the European level. The European Trade Union Confederation (ETUC) brings together virtually all major confederations and centres in the current member States (with a number of gaps in coverage filled in recent years). Also affiliated to ETUC are major European-industry
federations, grouping almost all major EU trade unions in their respective sectors, along with many from the new member States.

**Check Your Progress**

1. Explain the trends in the European Union.

**3.5 Industrial Relations in the USA**

**3.5.1 Trade Unions in the USA**

Industrial relations in the USA parallels the development of trade unions, organized labour and labour legislations, as it does elsewhere. The first major landmark in the history of modern US industrial relations was the founding of the American Federation of Labour (AFL) by Samuel Conyers in the year 1886.

"The AFL, at its time during the late nineteenth and the early twentieth century, was the largest federation of unions in the USA. It was organized on the basis of "craft unions" and was conservative in approach in as much as it did not challenge 'capitalism but was more concerned with the bread and butter issues of workers, such as improvements in the working conditions. Being basically an association of crafts-based unions, AFL failed to prevent dissension in ranks when it could not organize itself into industrial unions, when important sectors like auto, steel, etc. started growing."

The Congress of Industrial Organizations (CIO) was another federation formed in 1935 and took the Industrial union approach, mostly comprising dissenters from the AFL. Both unions saw growth during the years when the economy was slack and competed with each other, sometimes violently. The CIO, in 1955, merged with the AFL to form AFL-CIO.

Today, approximately 60 unions in the USA and Canada are affiliated with the AFL-CIO (American Federation of Labour-Congress of Industrial Organizations) and it represents close to 10 million employees. The AFL-CIO has little direct control over the affairs of its members. Rather, it works as an umbrella organization for trade unions at the policy level.

**3.5.2 Labour Legislations in the USA**

The first major piece of legislation pertaining to labour relations was the Norris La Guardia Act, 1932. Prior to this Act, employers were not required to enter the collective bargaining process,
had free hand in hiring and firing, and enforcing unfair employment contracts. One such unfair condition was forcing an undertaking from employees of not joining a union as a pre condition to employment. The employment contracts were known as 'yellow dog'.

The Norris La Guardia ACL (1932) made these contracts illegal, thus allowing employees to form and join unions. This was followed by the National Labour Relations Act (1935), also known as the Wagner Act, which provided for the employees:

1. Protection of their rights to organize
2. The right to engage in collective bargaining and
3. The right to strike in furtherance of their demands
4. Striking of certain unfair labour practices by employers as illegal
5. Secret ballot elections for representative unions
6. The creation of National Relations Board for enforcing certain provisions of the Act

The two Acts gave fillip to the unions, and their activities increased both under the AFL and the CIO. The balance of power shifted towards the unions and this period (till 1947) witnessed an increase in strikes and pressure tactics by the unions.

The Taft Hartley Act of 1947, also known as the Labour -Management Relations Act, put curbs on the activities of the unions in order to restore a balance in the relationship between the management and the workers. The significant provisions included:

- The addition of a list comprising 'unfair labour practices" on the part of the employees union.
- The prohibition of certain kinds of strikes and industrial action on the part of the union, e.g._, wildcat strikes
- The prohibition of 'closed shop" and severe restriction on "union shop.
- The injunction on strikes affecting national health or safety.

The Landrum Griffin Act of 1959 aimed at protecting the union members from possible wrong-doing and also empowering the members to terminate the right of the union to represent through decertification elections.
While the Wagner Act and the Taft 'Hartley Act concern the workers and the unions in the private sector, the provisions on the same have been extended to the government employees through the Executive Orders and also the Civil Services Reform Act.

Check Your Progress

1. State the provisions of National Labour Relations Act or the Wagner Act which was provided for the employees to form and join unions.

3.6 Industrial Relations in Australia

Just as in India, both the federal and the state governments can legislate on labour matters. Though the federal law, in order of precedence, is at a higher level, even the state laws and systems have a significant-influence on most matters relating to industrial relations.

The federal system is largely based on conciliation and arbitration. An important institution that plays a role in IR in Australia is the Industrial Tribunal as compulsory third-party arbitration in matters involving disputes and conditions of employment.

3.6.1 The Evolution

The oldest piece of legislation in Australia is the Conciliation and Arbitration Act, 1904, This Act has seen many amendments over the years. The principal aim of arbitration was to prevent any form of industrial action, the matters of dispute could be referred to a court for settlement or award through arbitration, which would be binding. The Act also encouraged the employers to recognize a representative union. By and large, the State has intervened consistently and vigorously in matters pertaining to IR in Australia. The Conciliation and Arbitration Act, 1904, was replaced by the Industrial Relations Act, 1985. The IR Act, 1988, required the federal trade unions to register themselves with a registrar to be able to take assistance of the arbitration process and other legal rights flowing from the Act.

3.6.2 The Recent Changes

There has been a change in the IR framework in Australia with a distinct movement towards decentralization and encouragement for the employers and the employees to settle at the enterprise level without third party intervention, The most significant instrument of the
workplace relationship-reform process was the Workplace Relations Act 1996 (WR Act) with the objective to the settlement of conflicts and disputes at the workplace itself.

The government itself intervenes only in settling issues like minimum wages and working conditions, but other matters pertaining to wages and working conditions are left to the parties to settle between themselves. Another feature is the freedom to negotiate collectively or to arrive at the Australian Workplace Agreement (AWA) that permits agreement between the employer and a single employee through a bargaining agent of choice. The freedom of association choice (not to associate) has also been provided in the Act.

### 3.6.3 Trade Unions in Australia

There is only one major trade union federation in Australia. The Australian Council of Trade Unions (ACTU). Formed in 1927, it was an attempt to consolidate the unions into one big body. The objective of ACTU has not been fully met since, instead of becoming one whole, it remains a loose collection of trade-union organizations.

It represents a majority of trade unions, but not all. The ACTU was primarily a union of blue-collar employees, and subsequently, the white-collar and government employees have mainly been covered under that emerged later- The ACTU has a close relationship with the Labour Party.

The trend now is towards amalgamation into larger unions. The number of unions with smaller numbers (1,000 and below) has decreased, whereas, those with larger numbers (50,000 or more) have increased their percentage of total union membership.

### 3.7 Industrial Relations in China

#### 3.7.1 The Historical Perspective

China's industrial relations system is deeply entrenched with its economic and political organization. The All-China Federation of Trade Unions was set up as early as 1925; its incorporation into the Chinese communist party defined the labor movement's role within a State-dominated, import-substitution industrialization policy in a centrally planned closed economy. The main characteristics of the system included State ownership of industrial enterprises, the implicit guarantee of employment for workers, centralized wage structure, a rigid labour market with little inter-enterprise or inter-regional mobility and the absence of price- or efficiency-driven controls over the industry. Thus, employment was permanent, and the enterprise was responsible for the provision of housing, and for all welfare, medical, and retirement benefits, as well as for social and entertainment needs. A sense of identity or the
industrial worker was based on cradle-to-grave welfare benefits. The term "iron rice bowl" is used to describe this inclusive IR system.

3.7.2 Prior To 1990

The combination of administrative labour allocation and the "iron rice bowl' produced a rigid and inflexible system within the enterprise, and outside as well. The absence of numerical flexibility was further reinforced by, the absence of labour mobility, given the household registration system (which only permitted workers to be permanently employed in their area of residence). The objectives of industrial relations policy were to support the economic and social structure that communism built, through mobilization of the mass of workers behind economic policies. However, it needs to be noted that trade unions rights and roles were banned during the Cultural Revolution (restored under the modernization period of Deng. By and large, however, the need for flexibility in the IR system was absent, given the absence of competitive pressures in the system.

3.7.3 The Recent Changes

The Chinese industrial relations system has been in considerable ferment since the opening up of the Chinese economy post-1978, and, in particular, post-1983. Decentralization in the State sector implied changes in industrial relations and human-resource practices, with new practices that are increasingly focused on getting a higher degree of numerical and functional flexibility. The contract system emerged to replace the lifetime employment system. The joint ventures brought with them flexible IR and HR practices from abroad. Further, as a part of these reforms, the Chinese government enacted-a new labour law in 1994 that essentially sought to create a new industrial relations system within the socialist market economy, but the implementation of this law has not been uniform.

3.7.4 Trade Unions in China

The trade union constitution preamble states the role of the union rather clearly: —The Trade. Unions of China are the mass organization of the working class led by the party and are the transmission belts between the party and the masses". Therefore, although the unions played a variety of economic and political roles, their role as a communication channel between the party and workers was the most central. The trade union focused on day-to-day shop-floor problems, educating the workers, ensuring the success of the enterprise, and ensuring that the management of the enterprise did not exploit workers. They dealt with matters such as grievances and decisions regarding social activities, Workers congresses (composed of representative: of workers) met about four times a year and had the responsibility for decisions on enterprise funds
for welfare activities, changes in organizational structure and payment systems, and the election of the enterprise director and the key management personnel.

Check Your Progress

1. Explain the historical perspective of Industrial Relations in China.

3.8 Industrial Relations in Japan

The Japanese industrial relations system is an institutionalized one and has historically included workplace-focused enterprise unions, lifetime employment systems, broad-based training, and seniority-based wages. One of the key outcomes of the Japanese IR system, when examined in conjunction with related Japanese institutions such as the keiretsu system and the system of production organization (sub contracting and quality-focused, team-based work) is the simultaneous achievement of stability in labour-market terms and considerable functional flexibility in workplace-level in relations through the development of internal labour markets.

3.8.1 The Historical Perspective

Prior to the 1990

The institutionalization of the Japanese industrial relations system can be assumed to have originated as early as the late 1800s in the silk industry where employers, forced to compete for scarce labour, instituted lifetime employment to create stable employment conditions. However, it was the large-scale conflict between labour and capital in the early post-war years, partly in response to many workers being made redundant as the war industries shut down coupled with the revolution in production management, that encouraged the institutionalization of lifetime-employment practice in the Japanese industry. The institutional structures that provided stable internal labour markets also provided Japanese employers a high degree of functional flexibility in the use of human resources, as lifetime employment, firm specific training, and enterprise-based unionism became widespread.

Thus, the Japanese industrial environment was characterized by highly functionally flexible IR systems within firms, in a context of a fair degree of rigidity in the labour market. The development of internal labour markets and lifetime-employment systems created a highly segmented labour force, with little inter-segment mobility.

3.8.2 The Recent Changes
The recession of the 1990s led to the questioning of the lifetime-employment concept, with severe declines in job security on an unprecedented scale. Changes were seen in the hiring practices with a dramatic increase in outsourcing strategies, the introduction of limited-term-employment contracts for some occupations, increased wage flexibility, and some degree of union restructuring. These changes suggested a gradual adaptation of the economic circumstances. There was evidence of a sudden and dramatic increase in outsourcing within Japan, termed 'work commissioning'. This resulted in an increase in wage flexibility, resulting in reducing the power of the trade

3.8.3 Trade Unions in Japan

Trade Unions in Japan are mostly organized at the enterprise level. These enterprise unions, in turn, are affiliated to a federation of unions relevant to the same industry. The third level is the organization of such federations into a national confederation. Apart from this, there are two other independent federations covering respectively metallurgy, and chemical and energy sectors. Enterprise unions are mostly autonomous, One of the two major federations in Japan, based on size, is Japanese Trade Union Confederation (Rengo). It was a result of 'efforts at restructuring the federations that were in existence then Rengo was formed in 1937 after efforts of several years starting 1982. It covers round about 65 per cent of unionized workers. The second confederation, the National Confederation of Trade Union (Zenroren), represents only around 9 per cent of all unionized workers, although reorganizations within the federations are going on, the overall membership of unions has been steadily declining.

3.8.4 Collective Bargaining

As seen in the above paragraph, in Japan, the unions are organized at enterprise, industry and national levels at present, there is no legislation in place that governs the process of collective bargaining in Japan. However, traditionally, it has been taking place at the enterprise level and has become a practice. Normally, most of the issues concerning working conditions, wages; and personnel policies are discussed and negotiated at the enterprise level. However, the industry at its level, decides on a wage level to be negotiated, based on the best pay levels in the industry. The industry-level unions also take a more strategic role in deciding the overall industry-level targets on wages Industrial action plan, etc. so as to strengthen the collective bargaining strength. In an indirect way, this helped in maintaining a kind of industry level parity across different enterprises. In recent years, however, with increasing competition and sluggish growth, the unions have not been very successful in maintaining parity as the wage increase is dependent on the performance of the individual enterprise.
1. Explain the historical perspective of Industrial Relations in China.

3.9 Industrial Relations in South Korea

3.9.1 The Historical Perspective

The Korean industrial relations system evolved primarily after the 1953 legislation regarding trade unions after the war. The rights granted to trade unions, however, were revoked during the 1960s period and thereafter. During the 1945-1960 period, workplace industrial relations in the major conglomerates known as the Chaebol” was closely modelled on the Japanese system, and were either paternalistic or authoritarian. The primary characteristics of the system paternalistic where the interests of the State and the employer were assumed to also take care of the interests of the-workers. This was aimed towards the prevention of industrial conflict that might threaten the prosperity of the Chaebol and thus economic development.

The State also mandated labour-management councils in every enterprise, introduced tripartite commissions at provincial (district) levels to resolve disputes.

3.9.2 Prior To 1990

1981 witnessed a change in economic-development strategy towards higher value added exports which resulted in more changes in Industrial Relations legislation. Legal changes mandated the formation of enterprise unions, although it was made mandatory for these enterprise unions to be a part of a union confederation created under the mandate of the government. This ensured a kind of indirect control over the enterprise unions. Chaebols, thus, continued with the paternalistic management and the stated objective of conflict avoidance was achieved. Although there were some efforts introduced some labour-protection laws and regulate vocational and skills training, the primary focus was political control of IR activity, i.e., stability. During this period therefore, conflict prevention and conflict avoidance became the stated objective, and all actions purported to achieve that as part of the overall goal of maintaining stability in industrial relations for economic development.

3.9.3 The Recent Changes

With democratization in 1987, industrial relations legislations practices have changed substantially. With the liberalization of labour law, the trade-union movement mushroomed, with sharp increase in union density and strikes during the 1987-1989. The scope of bargaining expanded substantially, and trade unions, confronted with a management unused to collective bargaining, have been able to use their economic power to win substantial. nominal wage
increases Bargaining power, thus, appeared to be with the unions in the years immediately following democratization. Given the erosion of their competitive position, Korean chaebol reacted to the militant union demands by following a mixture of suppressive policies and progressive FIR practices, although these practices were introduced by only some of the Chaebols. These changes happened in the early 1990s, despite the employment calling for the need to cut labour, given the increases in costs. The State initially tried to inject some wage moderation through the articulation of wage norms with little success as different Chaebols adopted different strategies of dealing with the union. The erosion in competitive position in the mid-1990s saw the increase in Korean investment abroad in low-cost areas, particularly in Asia and Latin America. As Korean experts' profits started to decline during the 1994-1995 period, employers began to step up their demands for industrial relations restructuring, to make workplace more flexible, and to get rid of the implicit lifetime-employment contract (or norm) that existed in the large Chaebol. The diversity of employer strategies increased as they sought to restructure IR and HR. The government in 1996 introduced a few labour reforms to tackle union militancy. It allowed union participation in politics and multiple unions, no new federation to be recognized till the year 2000. This increased the authority of the employers to lay off employees. These changes resulted in widespread labour agitation and strikes. In general, the nine years following democratization characterized as a period of experimentation and diversification in industrial relations practice and regulation.

However, the Korean industrial relations continue to be in a period of transition, witnessing a lot of experimentation with institutions, and a high degree of diversity in practices. The transition to democracy in Korea coincided with, and to some extent hastened the need for, increased flexibility in industrial relations, as Korean competitiveness in several sectors eroded.

Check Your Progress

1. Explain the historical perspective of Industrial Relations in South Korea.

3.10 Summary

In most of the countries, the initial primary goal of the Industrial relations system was to maintain labour peace and, more generally, industrial stability. The stated rationale for the need for stability varied from nation to nation. The IR systems began to be institutionalized only in the post-war period, coinciding with independence of some of the countries.

3.11 Key Terms
**Shop stewards:** Shop stewards are members who occupy an official position in the union hierarchy and who are also employees of an organization.

**Iron rice bowl:** The term "iron rice bowl" is used to describe that within this system, industrial relations consisted of a dualistic structure of co-determination.

### 3.12 Review Questions

Q1. The United States has one of the lowest union-density rates in the western world. What impact would this have on IR? Discuss various aspects of the IR system in the U.S.A.

Q2. Compare the IR scenario in Asian countries and those in the European Union.

### 3.13 Further Reading and References

- P.N Singh & Neeraj Kumar, Employee Relations Management, Pearson India
UNIT 4
TRADE UNIONISM AND TRADE UNIONS

4.0 Introduction

The trade union is an association, either of employees or employers or of independent workers. It is a relatively permanent combination of workers and is not temporary or casual. It is an association of workers engaged in securing economic benefits for its members Trade union formed in accordance with the law of their country shall have the privileges given by the law of trade union. With privileges or rights of the trade union, it should perform certain duties with respect to workers. The Primary purpose of a trade union is collective bargaining. In India trade
unions can be formed only the persons engaged in trade or business can form trade unions. Trade unions or labour unions are governed by the different law in different countries; they should follow the procedure and mode of registration for formation of the trade union according to the law of the country.

4.1 Unit Objectives

After reading this unit, you should be able to:

- Meaning of Trade Union and Definition of Trade Union
- Characteristic & Objectives of Trade Union
- Functions & Importance of Trade Unions
- Purpose of Trade Union
- Scope of Trade Union
- Functions of trade unions in major economies of the world
- Structure of Trade Union

4.2 Meaning and Definition of Trade Union

Definition

According to Cunnison, Trade Union is a monopolistic combination of wage earners who stand to the employers in a relation of dependence for the sale of their labour and even for the production, and that the general purpose of the association in view of that dependence is to strengthen their power to bargain with the employers.

According to S.D Punekar “a trade union is a monopolistic combination of wage earners who as individual producers are complementary to one another but who stand to employers in a relation of dependence for the sale of their labour and production and that the general purpose of association is in view of that dependence to strengthen their power to bargain with the employers or bargaining collectively.”

Sri V.V.Giri defined trade union as “voluntary organizations of workers formed to promote and protect their interest by collective action.”

According to C.K. Johri “trade unions are generally understood as voluntary organizations of workers formed for the purpose of defending and advancing the latter’s collective interest either mutually or in relation to outside parties’ such as employers, Government and other trade unions.

Statutory Definition of ‘Trade Union’ in Indian Context

The term ‘trade union’ has been defined under Section 2(h) in the Trade Unions Act, 1926.

Accordingly ‘trade union’ means any combination, whether temporary or permanent, formed primarily for purpose of regulating the relations between workmen and employers or between
workmen and workmen or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business and include any federation of two or more trade unions.

Provided that this Act does not affect:

(i) Any agreement between partners as to their own business.
(ii) Any agreement between an employer and those employed by him as to such employment or
(iii) Any agreement in consideration of the sale of goodwill of a business or of instruction in any profession, trade or handicraft
(iv) This definition is similar to that of the definition of trade union as defined under the Trade Unions Act, 1871 in England.

The paramount purpose of the combination is to regulate the relations between the employer and workmen and to impose the restrictive conditions on the conduct of trade or business of some other person. This definition is having a specific relevance to the immunities provided under sections 17, 18 and 19 of the Trade Unions Act, 1926.

4.3 Characteristics of a Trade Union

**Association of employees**- A trade union is essentially an association of employees belonging to a particular class of employment, profession, trade or industry. For example, there are unions for teachers, doctors, film, artistes, weavers, mine workers and so on.

**Voluntary Association** - An employee joins the trade union out of his free will. A person cannot be compelled to join a union.

**Permanent Body**- A trade union is usually a permanent body. Members may come and go but the trade union remains.

**Common Interest**- The member of a trade union have certain matters of common interest-job security, better pay and working conditions and so on, which bring them together.

**Collective Action** - Even when an individual employee has any grievance over certain management decisions, the matter is sorted out by the intervention of the trade union. Employees are able to initiate collective action to solve any problem concerning any particular employee or all the employees.

**Rapport with the Management** - The trade union seeks to improve relations between the employees and employers. The officials of the trade union hold talks with the members of the management concerning the problems of the employees in order to find an amicable solution. It is thus possible for the employees to have better rapport with the management.

4.4 Objectives of Trade Unions:

The major objectives of trade union are the following:

1. Better wages & working conditions and promotion of Industrial peace
2. Protection against Exploitation and Victimization.
3. Representation (Workers’ Interests)
4. Negotiation (Collective Bargaining)
5. Voice in decisions (Lay off, Retrenchment) affecting workers
6. Member Service (Education, Training, Welfare, Discounts, Loans)

4.5 Functions of Trade Union

Trade unions perform a number of functions in order to achieve the objectives. These functions can be broadly classified into two categories:
(i) Militant functions,
(ii) Fraternal functions

Militant Function: One set of activities performed by trade unions leads to the betterment of the position of their members in relation to their employment. The aim of such activities is to ensure adequate wages secure better conditions of work and employment get better treatment from employers, etc. When the unions fail to accomplish these aims by the method of Collective bargaining and negotiations, they adopt an approach and put up a fight with the management in the form of go-slow tactics, strike, boycott, gherao, etc. Hence, these functions of the trade unions are known as militant or fighting functions. Thus, the militant functions of trade unions can be summed up as:
- To achieve higher wages and better working conditions
- To raise the status of workers as a part of industry
- To protect labors against victimization and injustice

Fraternal Functions: Another set of activities performed by trade unions aims at rendering help to its members in times of need, and improving their efficiency. Trade unions try to foster a spirit of cooperation and promote friendly industrial relations and diffuse education and culture among their members. They take up welfare measures for improving the morale of workers and generate self-confidence among them. They also arrange for legal assistance to its members, if necessary. Besides, these, they undertake many welfare measures for their members, e.g., school for the education of children, library, reading-rooms, indoor and out-door games, and other recreational facilities. Some trade unions even undertake publication of some magazine or journal. These activities, which may be called fraternal functions, depend on the availability of funds, which the unions raise by subscription from members and donations from outsiders, and also on their competent and enlightened leadership. Thus, the fraternal functions of trade unions can be summed up as:
- To take up welfare measures for improving the morale of workers
- To generate self-confidence among workers
- To encourage sincerity and discipline among workers
- To provide opportunities for promotion and growth
- To protect women workers against discrimination

Specific Functions of Unions

- Wage & salary bargaining
- Fight for continuous improvement in employee benefits
- Improving working conditions at work place
- Improving welfare, healthcare & recreation facilities, and leisure at workplace
- Increasing rest periods, holidays, paid leave and time-offs
• Decreasing working hours, work load mainly manual, and hazardous working conditions
• Improving career and salary rise prospects & job security
• Protecting employees against arbitrary / unjust actions of Management

4.6 Importance of Trade Unions

  o For industrial peace
  o Decisions taken through the process of collective bargaining and negotiations between employer and unions are more influential
  o Effective communication between the workers and the management
  o Economic development
  o Recruitment & selection
  o Discipline among workforce
  o Settlement of Industrial Disputes in rational manner

4.7 Purpose of Trade Unions

• Employment Protection and Job Creation.
• Economic Protection.
• Social Status - Identity.
• Political Role - Democratic Institution
• Societal Obligation - Transformation.
• Competitiveness / Sustainable Development.
• Formed to protect and promote the interests of their members
• Primary function is to protect the interests of workers against discrimination and unfair labor practices

4.8 Why do People Join Union?

• Greater Bargaining Power
• Minimize Discrimination
• Sense of Security
• Sense of Participation
• Sense of Belongingness
• Platform for self expression
• Betterment of relationships

Check Your Progress

1. State the meaning and definitions of the term Trade Union.
2. Explain the characteristics of a Trade Union.
3. State the objectives of Trade Unions.
4. Enumerate the functions of Trade Union.
5. State the importance of Trade Unions.
6. State the purpose of Trade Unions.
7. State the reasons for the people who join the Union?

4.9 The Scope of the Term “Trade Union”

The scope of the term ‘Trade Union’ has been examined in the case of Registrar, Trade Unions Vs M. Mariswamy, it was contended that Mysore State Employees Provident Fund was not a trade union within the meaning of section 2(h) of the Trade Unions Act of the 1926. Rejecting the contention a single judge of the Karnataka High Court observed that “if the set section is analyzed, it will be cleared that any combination whether temporary or permanent will be a trade union, if it is formed primarily for one of the following purposes:

a) to regulate the relations between the workmen and employers; b) to regulate the relations between the workmen and workmen; c) to regulate the relations between employers and employers d) for imposing restrictive conditions on the conduct of any trade business. The expression ‘Trade Union’ also includes federation of two or more Trade Unions.

It is clear from the definition of the expression ‘Trade Union’ that it could be a combination either of workmen or of employees or of both, provided it is formed primarily for one of the purposes mentioned in clause (h) of Section 2 of the Act

Check Your Progress
1. Discuss the scope of the term “trade union”.

4.10 Functions of Trade Unions in Major Economies of the World

4.10.1 Functions of Trade Unions in the USSR

In the erstwhile USSR, the trade unions used to undertake (Trade Unions Act, 1959) the following functions:

Raising of labour productivity; improvement in the quality of production, participation in the planning and regulation of wages: improving wage rates; assisting in the fusion of technical progress; concluding collective agreements (with managements on questions of wages and other working conditions within the limits set by the planning authorities); participation in the settlement of industrial disputes, conclude agreements with the employers on the manner of utilization of funds allotted for measures of social and industrial security; setting up sanatoria and rest houses; striving for a better organization of medical assistance to the labourers and of the protection of the health of women and children, organizing funds of mutual assistance and many more.

Prior to disintegration, the functions of trade unions in the USSR were not only confined to production and collective bargaining only but they also enjoyed supreme power and their functions were all-pervasive, ranging from the organization of workers’holidays to looking after
canteens, libraries and dispensaries, and taking part in the determination of the nature and rates of compensation for industrial accidents.

4.10.2 Functions of Trade Unions in the Republic of China

In China, the functions of trade unions have been enumerated thus:

(i) To organize the workers to launch labour emulation drives, strengthen labour discipline and ensure the fulfillment of plans.
(ii) To improve the material and cultural standards of workers’ lives and to supervise the managements with a view to implement the various targets of the plan.
(iii) To organize political, educational and technical studies as well as cultural and sports activities.
(iv) To protect women and children from exploitation.
(V) To participate in various activities which are directed towards the improvement of living conditions?
(Vi) To enter into collective agreements with the management for mutually fulfilling the targets in respect of production, wages, labour norms, labour safety, welfare, social security, workers’ participation in management, material obligations etc.

4.10.3 Functions of Trade Unions in the USA

According to the first President of A.F.L. trade unions in the USA perform the following functions:
Protecting the wages of worker against capitalist exploitation; increasing wages; reducing hours of work; securing just and human working conditions, improving the safety and sanitary conditions of the workshop; increasing the workers share in the national income; introducing working rules and democratize labour management; freeing the labourer from tyrannies, petty or otherwise, which serve to make his existence a slavery; achieving equality of opportunity for all workers; supporting legislation which aids workers and opposing harmful legislation; protecting and strengthening democratic institutions; aiding and promoting the cause of peace and freedom in the world;

4.10.4 Functions of Trade Unions in the India

As per the Indian Trade Union Act, 1926, the primary function of a trade union is to protect and promote the interests of the workers and the conditions of their employment. They can also have other objectives, which are not inconsistent with this primary purpose or opposed to any law. In India, trade unions generally undertake the following functions:

(i) To achieve higher wages and better working and living conditions for the members.
(ii) To acquire control over running of the industry by workers.
(iii) To minimize the helplessness of the individual workers by making them stand-up united and increasing their resistance power through collective bargaining; protecting the members against victimization and injustice by employers.
(iv) To raise the status of the workers as partners in industry and citizens of society by demanding an increasing share for them in the management of industrial enterprises.
(v) To generate self-confidence among the workers.
(vi) To encourage sincerity and discipline among workers.
(vii) To take up welfare measures for improving the morale of the workers.

Check Your Progress

1. State the functions of Trade Unions in the USSR.
2. State the functions of Trade Unions in the Republic of China.
3. State the functions of Trade Unions in the USA.
4. State the functions of Trade Unions in the India.
5. Examine whether the trade unions in India have been able to fulfill these functions.

4.11 Historical Development of Trade Union Movement in India

The workers used to unite to form combinations to redress their grievances. Severe drought forced the agricultural workers to come out of villages in search of work. Industrialization had offered work to these workers. There was phenomenal exodus of agricultural workers from villages to industrial towns. This unparallel movement of agricultural workers led to surpassing of the workers supply to workers demand. Thus the theory of demand and supply played in determining to wage levels. Workers were exploited by the Industrialists. They were paid starvation wages.

The First World War added salt to the injury as that has lead to increase in cost of living considerably. United India was ruled by foreigners. For independence political agitations against the foreign rule was gaining momentum. Economic discontent was conspicuous among the masses. Political agitators were in search of issues. The discontented industrial workers were in search of support. Thus the political upsurge found its way in the discontent of industrial workers. Action committees were formed consisting of representatives of workers who lead the workers to strike at work. Many of the strikes were successful and the demands of the workers were fulfilled. These successes in term lead to jacking up the morale of the workers associations.

The Associations gained the confidence of the workers. Incidentally labour consciousness was on upraising through out the world. The trade union movement got impetus in India. During the same period International Labour Organization was established which further influenced the growth of trade union movement in India.

The history of Indian trade unions is also closely related to the history of the nationalist movement and various political parties that participated in the movement. The leaders of trade unions were often leaders or at least supporters of one political group or another. ‘The Swadeshee Movement’ the ‘Khilafat Movement’, the ‘Non-Cooperation Movement’, ‘The Home Rule Movement’, and ‘Civil Disobedient Movement’, were all conducted under the leadership of the Indian National Congress and motivated by a strong nationalist sentiment.
The Trade Union Movement in our country has passed through the similar conditions after the advent of factory system in India. It would be desirable to know how the factory system came in our country, with all its evils and problems.

The first Cotton Mill in India was established in 1851 in Bombay and the first Jute Mill in 1855 in Bengal. This was the beginning of the modern factory system in India. After 1851 and 1855, the number of factories began to increase both in Bombay and Bengal. The modern factory system brought in its wake employment of women and children, long and excessive hours of work, undermining of morality, lack of education, poor housing and an excessively high death rate.

Prof. S. N. Dhyani has observed that the year 1875 was landmark in the history of trade union movement. For the first time in India factory workers united together for securing better working conditions in the factories. The growing consciousness of a common cause for amelioration brought the working class closer despite several hindrances.

The Secretary of State for India was kept informed of all these evils of the modern factory system and the first Factory Commission was appointed in Bombay in the year 1875 and the first Factories Act was passed in 1881. The 1881 Act proved highly inadequate and its provisions regarding protection to child labour and absence of any regulation for women labour were highly disappointing.

Consequently, another Factory Commission was appointed in 1884. Mr. Lokhandey organised a Conference of Workers in Bombay and drew up a Memorandum signed by some 5,300 workers to be presented to the Factory Commission. This was the beginning of modern Trade Union Movement in India for the first time in 1890 the Mill Workers lead by N.M. Lokhanday formed an Association christened as “Bombay Mills Association”.

“The purpose was to provide a clearing house for the grievances of Mill workers and to help in drawing public attention to the cause of labour. This was the first Union in India which earned for its founder the title of being the ‘FIRST TRADE UNIONIST of the country. He also published DINABHANU, a working class newspaper, to place before the authorities and the employers, the legitimate grievances of workers. In subsequent years a number of unions were formed, such as The Amalgamated Society of Railway Servants of India and Burma (for European and Anglo-Indian Railway Employees) to cater to their economic needs, through mutual insurance schemes.

The Printers’ Union of 46 Calcutta, 1905; the Bombay Postal Union, as also at Calcutta and Madras, 1907; the Kamgar Hitwardhah Sabha, 1909; the Social Services League, 1910”. All India Trade Union Congress (AITUC) was established in 1920 as a result of a resolution passed by the organised workers of Bombay and the delegates which met in a conference on 31st October, 1920. The first session of the AITUC was held in October, 1920 at Bombay, under the chairmanship of Lala Lajpat Rai, who was at that time also the President of the Indian National Congress. According to the first Session of AITUC there were 107 unions affiliated or sympathetic to the organization. The Indian National Trade Union Congress (INTUC) came into existence on 4th May 1948, as a result of the resolution passed on 17 November 1947, by the Central Board of the Hindustan Mazdoor Sevak Sangh, which was a labour organization.
The pro labour leaders influenced by Gandhian Philosophy and Sarvodaya worked under the direction of National Congress. The AITUC was under the strong hold of the Communist, the Congress leaders thought of forming a Central Trade Union Organization. Later the history in 1920 took a different turn when the Madras High Court has granted an injunction restraining the union officials of Madras Textile Labour Union to induce certain workers to break their contracts of employment by refusing to return to work. Thus the leaders of trade union were exposed for prosecution and imprisonment under Indian Penal Code for criminal conspiracy besides for damages under torts even for bona-fide trade union activities. A resolution was moved in the central legislative assembly in AITUC seeking enactment of law for the protection of trade unions. Against the opposition of the employers finally the Indian Trade Unions Act, 1926 was passed which came into force from First June 1927.

During pre-independence days the trade union movement was not satisfactory due to various reasons. One of the main reasons was that of passing of Government of India Act, 1932. The post independence led to development of democratic spirit among the citizens including the working class. Thus in the post independence days trade union activities were developed tremendously. Every category of workers formed union’s of their own.

In April 1933, the Indian Trade Union Federation and a number of unaffiliated unions formed the National Trade Union Federation.

Post-Independence

In the year 1947, on August 15, India got independence. In order to restore normal conditions some trade union leaders gave importance for greater production. The Hindustan Mazdoor Sevak Sangh which was the off-spring of the Labour Sub-committee set-up by Gandhi Seva Sangh in 1937, to organise labour throughout on Gandhian Principles called upon its various member unions to affiliate themselves to the All India Trade Union Congress, and to promote through that body, the policy and programme of the Indian National Congress Party. But All India Trade Union Congress did not agree to change its policies. Then the labour leaders in Congress Party felt the necessity to form a new central organisation.

Thus the Indian National Trade Union Congress(INTUC) was formed in May, 1947. After the setting up of INTUC the communist dominated AITUC suffered considerably both prestige and membership. The INTUC has now been the largest federation of trade unions and, therefore, the most representative organization of workers in the country. At the time of its inception the INTUC had a following of more than 200 unions from all parts of the country with a total membership of more than 5,75,00062. When INTUC was set-up in May, 1947, the communists and socialists remained together in AITUC.

In practice the approaches of both to the basic labour issues of the day, such as compulsory adjudication, were much the same. However, from the organizational point of view, the socialists particularly felt a little uneasy as a minority in an organisation that was controlled by a party that
had a reputation for acting in a very disciplined and self-interested manner whenever it suited them.

In 1947 when the socialists adopted their own philosophy against AITUC Gandhi had tried to tie them more closely to Congress, but this was refused by Patel. After Gandhi's assassination in 1948, All India Congress Committee altered Congress constitution regarding the qualifications for membership. Due to the amendment membership to the workers belonging to the other political parties was not given following the amendment socialists severed their ties with Congress and became known as Socialist Party.

Socialists thought that the trade unions should be kept away from government, employers and politics. So, they established Hind Mazdoor Sabha (H.M.S) in 1948. Later, it was identified as a third force. The Indian Federation of Labour formed by Royist group in 1941, merged into this body. In 1949, some splinter groups from the H.M.S., and the AITUC, set-up a separate organisation, the United Trade Union Congress.

Besides the four central organisations some other federations have come into existence after the fifties. With the emergence of Jana Sangh the Bharatiya Mazdoor Sangh (B.M.S) in 1955, has come into existence. With the emergence of S.S.P., the Hind Mazdoor Panchayat (H.M.P) came into existence in 1962.

1970 witnessed another split at the national level in AITUC. The decision of left communist group which decided not to remain within the AITUC resulted in the formation of a separate organization namely Centre of Indian Trade Unions (CITU). A further split took place in 1972 in the United Trade Union Congress and another organization namely the United Trade Union Congress Lenin Sarani was formed The split in the Indian National Congress and formation of an organization in Congress resulted in a split in I.N.T.U.C. and in 1971, the splinter group from congress established National Labour Organisation. Every political party in the country has sought to have under its control and domination as many trade unions as it can. Important central federations, each working in close collaboration with and under the guidance, if not under the direct control of a separate political party. The link between AITUC, and the Communist Party of India, the I.N.T.U.C, and the Indian National Congress, the H.M.S., and Samyukta Socialist Party and the Praja Socialist Party, the C.I.T.U., and the Communist party of India (Marxist), the B.M.S. and the Bharatiya Janatha Party, and the U.T.U.C., and the small splinter parties of the left is well known64 There are as many as 10 central trade union organizations in the country (as against one or two in UK, Japan and USA).

The criteria for recognition as central trade union have been that the combined strength should be 5 lacs in numbers with a spread over to at least 4 states and 4 industries as on 31.12.89.

Ten such Trade Unions are (1) BMS (2) INTUC (3) HMS (4) UTUC – LS (5) AITUC (6) CITU (7) NLO (8) UTUC (9) TUCC (10) NFITU

Check Your Progress

1. Enumerate the historical development of trade union movement in India.
4.12 Structure of Trade Unions in India

In India, the structure of trade union consists of three levels: plant/shop or local, the state and the centre. It is generally from the central level that the ideology of the important central federations of labour in India percolates down to the state and local levels. Every national or central federation of labour in India has state branches, state committees or state councils, from where its organization works down to the local level.

There are two types of organizations to which the trade unions in India are affiliated:
(i) National Federations, and
(ii) The Federations of Unions

Here a brief discussion of this trade union form is given.

1. The National Federations have all the trade unions in a given industry as their affiliated members. Every trade union, irrespective of the industry to which it belongs, can join a general national federation. Such federations are the apex of trade union policies a national character. The central union organizations are national federations of labour based on different political ideologies.

Because of their political leanings, the affiliated trade unions in the field of labour relations follow either a militant policy or a policy of cooperation with the employers and the government, or a policy of continuous strife and litigation.

The trade union leadership to these national organizations is generally provided by the politicians. Such leaders are found leading a dozen or more unions in a particular state. These unions may be in the petroleum industry, the transport industry, electricity supply undertakings or craft unions, such as the rickshaw pullers’ union or taxi drivers’ union. Some of the trade union leaders and MPs and MLAs, corporations of city corporations and members of important committees dealing with the labour policy of the country.

The national/central federations are empowered to decide the question of jurisdiction of the various local and national unions.

A majority of these federations allow their affiliates to bargain independently with their respective employers. The federations only act as coordinating authorities for different unions under their control. They also select delegates to represent workmen in international conferences organized by the International Labour Organisation or the International Confederation of Free Trade Unions. The All-India federation of trade unions has a regular structure. For example:

The INTUC consists of a central organization, affiliated unions, industrial federation, regional branches and councils functioning under the direct control or supervision of the central organization, the assembly of delegates, the general council and the working committees.
The INTUC functions through its affiliated unions, delegates, assembly, general council (including office-bearers), the working committees of the general council and the Pradesh bodies.

The UTUC consists of the general body (.delegates'assembly) general council, and the working committee of general council.

The Hind Mazdoor Sabha (HMS) works through the general council, the working committee and affiliated organization.

2. Federations of Unions: These are combinations of various unions for the purpose of gaining strength and solidarity. They can resort to concerted action, when the need for such action arises, without losing their individuality. Such federations may be local, regional, state, national and international. There are a few organizations which are local in character, such as the Bharatiya Kamgar Sena, the Labour Progressive Federation, Chennai, the National Front of Indian Trade Unions and the Co-ordinating Committee of Free Trade Unions.

Many Unions are affiliated to one or the other type of the following central organizations of workers:
(1) The Indian National Trade Union Congress
(2) The All-India Trade Union Congress
(3) The Hind Mazdoor Sabha
(4) The United Trade Union Congress
(5) The Centre of India Trade Unions
(6) Bharatiya Mazdoor Sangh
(7) The National Front of India Trade Unions
(8) The United Trade Union Congress (LS)
(9) The National Federation of Independent Trade Unions
(10) The Trade Union Co-ordination Committee
(11) Indian Confederation of Labour
(12) Hind Mazdoor Kisan Panchayat
(13) National Labour Organization

Besides the affiliated unions and their federations, there are a large number of associations and federations which have not joined any one of the central workers’ organizations. Some of these are:

(1) The All India Bank Employees’ Association;
(2) The All India Bank Employees’ Federation;
(3) The All India Insurance Employees’ Association;
(4) The All India Defence Employees’ Federation;
(5) The All India Railway men’s Federation;
(6) The National Federation of Posts and Telegraphs Employees;
(7) The National Federation of Indian Railway men;
(8) All India Pvt. Employees Federation;
(9) All India Electricity Employees Federation;
Check Your Progress
1. Describe the two types of organizations to which the trade unions in India are affiliated.

4.13 Problems of Trade Union

a) Small size of the unions
   i) The small size of the unions is due to various factors, namely, i. The fact that any seven workers may form a union under the Trade Unions Act of 1926, and get it registered, a large number of small unions have grown.
   ii) The structure of the trade union organization in the country is in most cases the factory or the unit of employment. So whenever employees in a particular factory or mine are organized, a new union is formed.
   iii) Unionization in India started with the big employers and gradually spread to smaller employers. This process is still continuing and pulled down the average membership. Though the number of unions and union membership are increasing, average membership is declining.
   iv) Rivalry among the leaders and the central organizations has resulted in multiplicity of unions, thereby reducing the average membership.

b) Inadequate funds
   i) Because of the small size of the unions, they suffer from lack of adequate funds and they find it difficult to engage the services of experts to aid and to advise members in times of need. Further, they cannot face the challenge of employers for long because of their weak bargaining power. The trade unions suffer from financial weakness for the average yearly income of the unions has been rather low and inadequate. Under conditions of multiplicity of unions, a union interested in increasing its membership figures, usually keeps the subscription rate unduly low and does not collect even that subscription regularly. Insufficiency of funds is the main reason for the deplorable conditions of many a small union. The poor financial position adversely affects their entire working. They can neither undertake any welfare activities for their members nor can undertake successful conduct of strikes, or publication of periodicals. To improve the financial condition of the unions, the National Commission on labour recommended that the minimum subscription should be raised to a rupee per month. Another method that is usually advocated is the introduction of the “check-off system,” under which an employer undertakes, on the basis of a collective agreement, to deduct union dues from the workers’ pay and transfers the same to the union.

c) Multiplicity of the Unions & Intra-Union Rivalry
   Multiple rival unionisms are an important feature and one of the great weaknesses of the Indian trade union movement. Multiple unions are mainly the result of political outsiders wanting to establish unions of their own, with a view to increasing their political influence, albeit in urban areas. The existence of different conflicting or rival organizations, with divergent political views, is greatly responsible for inadequate and unhealthy growth of the movement. Multiplicity of unions lead to inter-union rivalries, which ultimately cuts at the very root of unionism, weakens the power of collective bargaining and reduces the effectiveness of workers in securing their legitimate rights.
d) **Intra-Union rivalry**

Another vexing problem is that of intra-union rivalry. Trade union rivalry is acute and pervades the entire industrial scene in India. In practically every important industry or industrial center, there exists a parallel and competing union.

e) **Leadership Issue**

Another disquieting feature of the trade unions is the ‘outside’ leadership, i.e., leadership of trade unions by persons who are professional politicians and lawyers and who have no history of work in the industry. This is ‘leadership by intellectuals’ rather than ‘by workers’. It applies at the local as well as at the national level. There are several reasons for this phenomenon namely, for avoiding victimization of worker-office-bearers of the trade unions, and at times for lack of financial resources to appoint whole time office-bearers.

f) **Politicalisation of the Unions**

One of the biggest problems the country’s trade union movement faces is the influence of the political parties, i.e. the most distressing feature is its political character. Harold Crouch has observed, even to the most casual observer of the Indian trade union scene, it must be clear that much of the behavior of Indian unions, whether it is militant or passive behavior, can be explained in political terms.

**Check Your Progress**

1. Describe the problems of trade unions.

**4.14 Summary**

Trade unions are associations of workers or organization formed together by labour, workers or employees to achieve their demands for better conditions at their work atmosphere. The union negotiates contracts and conditions with employers, keeping employee satisfaction high and protecting workers from unsafe or unfair working conditions. Trade union formed in accordance with the law of their country shall have the privileges given by the law of trade union. Every registered trade union according to the law of trade union shall have certain functions for achievement of certain objectives which are mentioned in details further. The primary object you of the trade union is to protect the interests of the workers and exploitation against him by Management or employer. In addition to this, it is the responsibility and duty of every trade union to support management for its functioning and contribute to organisation or company by way of encouraging workers in a positive way for the improvement of overall efficiency of organisation.

**4.15 Key Terms**

**Crafts union:** A labour organization membership of which is restricted to workers in a specified trade or craft.

**Federation:** A group of organizations, countries, regions, etc. that have joined together to form a larger organization.
4.16 Review Questions

1. What are the characteristics of trade unions?
2. What is a trade union and how are they generally formed? Trace the genesis of trade unions.
3. Discuss the structure of Trade Unions in India?

4.17 Further Reading and References

- P.N Singh & Neeraj Kumar, Employee Relations Management, Pearson India
UNIT 5

TRADE UNION LEGISLATION

5.0 Introduction

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5.7 Amendments in The Act

5.8 Summary

5.9 Key Terms

5.10 Review Questions
5.0 Introduction

Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action. They are the most suitable organizations for balancing and improving the relations between the employer and the employees. They are formed not only to cater to the workers’ demand, but also for inculcating in them the sense of discipline and responsibility. They aim to:-

- Secure fair wages for workers and improve their opportunities for promotion and training.
- Safeguard security of tenure and improve their conditions of service.
- Improve working and living conditions of workers.
- Provide them educational, cultural and recreational facilities.
- Facilitate technological advancement by broadening the understanding of the workers.
- Help them in improving levels of production, productivity, discipline and high standard of living.
- Promote individual and collective welfare and thus correlate the workers’ interests with that of their industry.

In India, the first organised trade union was formed in 1918 and since then they have spread in almost all the industrial centres of the country. The legislation regulating these trade unions is the Indian Trade Union Act, 1926. The Act deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilised properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class. The Act is applicable not only to the union of workers but also to the association of employers. It extends to whole of India. Also, certain Acts, namely, the Societies Registration Act, 1860; the Cooperative Societies Act, 1912; and the Companies Act, 1956 shall not apply to any registered trade union, and that the registration of any such trade union under any such Act shall be void.

The Act is administered by the Ministry of Labour through its Industrial Relations Division. The Division is concerned with improving the institutional framework for dispute settlement and amending labour laws relating to industrial relations. It works in close co-ordination with the Central industrial Relations Machinery (CIRM) in an effort to ensure that the country gets a stable, dignified and efficient workforce, free from exploitation and capable of generating higher levels of output. The CIRM, which is an attached office of the Ministry of Labour, is also known as the Chief Labour Commissioner (Central) Organization. The CIRM is headed by the Chief Labour Commissioner (Central). It has been entrusted with the task of maintaining industrial relations, enforcement of labour laws and verification of trade union membership in central sphere. It ensures harmonious industrial relations through:-
• Monitoring of industrial relations in Central Sphere;
• Intervention, mediation and conciliation in industrial disputes in order to bring about settlement of disputes;
• Intervention in situations of threatened strikes and lockouts with a view to avert the strikes and lockouts;

5.1 Unit Objectives

After reading this unit, you should be able to:

• The Trade Union Act, 1926
• Registration of Trade Unions
• Recognition of Trade Unions
• Multiplicity of trade unions
• Amendments in the Trade union Act

5.2 The Trade Unions Act, 1926

According to the Trade Unions Act, 1926, 'trade union' means "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions"

Check your Progress
1. State the aims for the formation of trade union.

5.2.1 Introduction to the Act

The origin of the passing of Trade Union Act in India was the historic Buckingham Mills Case of 1920 in which the Madras High Court granted an interim injunction against the Strike Committee of Madras Labour Union forbidding them to induce certain workers to break their contract of employment by refusing to return to work. Trade Union leaders found that they were liable to prosecution and imprisonment for bonafide union activities and it was felt that some legislation for the protection of trade unionism was necessary. In March, 1921, Mr.N.M.Joshi, the then General Secretary of the all India Trade Union Congress successfully moved a resolution in the Central Legislative Assembly that Government should introduce legislation for registration and protection of trade unions. But opposition from employers to adoption of such measure was so great that it was only in 1926 that Trade Union Act was passed.

5.2.2 Object of the Act

The object of passing the Act was to make necessary provisions in regard to the registration of Trade Unions and to define the law relating to registered Trade Unions. The Royal Commission on Labour in India observed that the object is to give trade unions the necessary protection from
civil suits and criminal laws relating to conspiracy in order to enable them to carry on their legitimate activities.
The Act extends to the whole of India including the state of Jammu and Kashmir. It came into force on the first day of June, 1927.

5.2.3 *Trade Dispute*
A trade dispute means any dispute:
(a) between employers and workmen
(b) between workmen and workmen
(c) between employers and employers

Any such dispute as mentioned to be a Trade Dispute must also be associated with –
(a) the employment
(b) non-employment
(c) the terms of employment
(d) the conditions of labour of any person

The definition of Trade Dispute in this Act is almost similar to the definition of Industrial Dispute given in the Industrial Disputes Act, 1947. In Trade Dispute, it is necessary that there must be a demand from one party and refusal to accept those demands by other party. There can be real and substantial between parties to such dispute.

5.2.4 *Trade Union*
The term trade union can be expressed both in an ordinary sense and in broad sense. In ordinary sense it is a combination of workmen and in a broader sense it includes combination of employers and federation of two or more such combinations. The trade union means:

Any combination whether temporary or permanent formed for the purpose of regarding relations between –
(a) workmen and employers
(b) workmen and workmen
(c) employers and employers

The above combinations put restrictions on the conduct of any trade or business but certain agreements given below have been excluded from the scope of the term trade union.

(a) Agreement between partners in a business
(b) Agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

**Check Your Progress**
1. Describe the Trade Unions Act, 1926.

5.3 *Registration of Trade Unions*
The Act provides for the registration of the trade unions with the ‘Registrars of Trade Unions’ set up in different States, like the Office of Registrar (Trade Union) set up by the Government of National Capital Territory of Delhi.

5.3.1 Appointment of Registrars (Section 3)
As regards registration of a trade union, the Act empowers the appropriate Government to appoint a person to be the Registrar of Trade Union for each state. The appropriate Government may appoint as many additional and deputy registrar’s trade unions as it think fit. They shall work under the superintendence and direction of the Registrar. The appropriate Government shall specify and define the local limits within which any additional and Deputy Registrar shall exercise and discharge his powers and functions.

5.3.2 Mode of registration of trade union

The registration of a trade union can be made under this Section 4 of the Indian Trade Unions Act, 1926 Act which says that any seven or more members of a trade union may by subscribing by their names to the rules of trade union and by otherwise complying with the provision of this Act with respect to registration, apply for registration of the trade union under this Act. The section also provides that in case members applying for registration disassociate themselves from the application, or cease to be members of the union, after the date of application, but before the registration of the union and their number does not exceed half of the total number of the persons applying, the application shall not be deemed to be invalid.

The Section 4 also provides

(a) That no trade union of workmen shall be registered unless at least ten percent, or one hundred of the workmen, which is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.
(b) no trade union of workmen shall be registered unless it has on the date making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

In India there is a procedure to be followed before unions can be registered. There is no room for the registration of a trade union if any of the objects is unlawful. It is only when is satisfied that the trade union as complied with the requirement of the Act in regard to registration that a registration will follow. It is to be mentioned here, once the trade union is registered, according to the procedure and the same is not withdrawn or cancelled the legal consequences will follow regarding the lies and liabilities.

5.3.3 Application for Registration (Section 5)

For registration of a trade union, seven or more members of the union can submit their application in the prescribed form to the Registrar of trade unions. The application shall be accompanied by a copy of the ‘rules of the trade union’ and a statement giving the following
particulars:- (i) Names, occupations and addresses of the members making the application; (ii) The name of the trade union and the address of its head office; (iii) The titles, names, ages, addresses and occupations of the office bearers of the trade union as per the format given in the Trade Unions Act 1926. The Registrar, on being satisfied that the Union has complied with all the requirements of this Act, shall register the trade union.

Every application for registration of a Trade Union shall be made to Registrar. It shall be accompanied by a copy of the rules containing matters as given in Section 6. It also contains a statement of the following particulars.

(a) the names, occupations and addresses of members making the application
(b) the name of the Trade Union and the address of its head office; and
(c) the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union

Where a Trade Union has been in existence for more than one year before its registration, a general statement of the assets and liabilities of the Trade Union in the prescribed form must be submitted along with the application.

5.3.4 Rules for Registration of Trade Union (Section 6)

The Section 6 of the Indian Trade Unions Act, 1926 provides that a trade union shall not be entitled to registration under this Act, unless the executive thereof constituted in accordance with the provisions of this Act and the rules thereof provide for the following matters:

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

The payment of a minimum subscription by members of the Trade Union which shall not be less than-

(i) One rupee per annum for rural workers;
(ii) three rupees per annum for workers in other unorganized sectors; and
(iii) twelve rupees per annum for workers in any other case;

(f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
(g) The manner in which the rules shall be amended, varied or restricted;
(h) The manner in which the members of the executive and the other office–bearers of the trade union shall be elected and removed. The duration of period being not more than three years,
for which the members of the executive and other office-bearers of the trade union shall be
elected;

(i) the safe custody of the funds of the Trade Union, and annual audit, in such manner as may be
prescribed, of the accounts thereof, and adequate facilities for the inspection of the account
books by the office-bearers and members of the trade union; and

(j) The manner in which the trade union may be dissolved.

In the case of IT Commissioner West Bengal Vs IS Mills Association, Indian Sugar Mills
Association was a registered trade union. Rules 4 and 64 were repugnant with each other. It
was submitted that Rule 64 should be treated as void as it was inconsistency with the state of
the objected union. It was held that the Court had no right to assume some of the stated
objective of the association as primary to declare others in apparent conflict with them as of
no effect. All rules framed by the association co-exist. Further the court had no right to re
write the rules of registered trade union by deleting any of them.

In the case of B.S.V. Hanumantha Rao Vs Deputy Registrar of Trade Union and Deputy
Commissioner of Labour, the rules of Allwyn Workers Union were amended to provide for
making the President of the Union as election authority, empowering him to nominate all
office bearers and denying authority to the general body to remove the president from office
before expiry of his term. These amendments were registered by the Registrar. It was held that
the amendments were contrary to the letter and spirit of the Trade Unions Act. The President
who is vitally interested in the conduct of elections cannot be the person who entrusted with
the authority to prepare the voters list, appoint returning officers and conduct elections. It is
case of person being given the authority to perpetuate himself in office. Such a procedure
amounts to constituting a person a judge in his own cost.

5.3.5 Registration

The Section 8 of the Indian Trade Unions Act, 1926 prescribes a duty on the Registrar to register
the trade union if all the requirements of the Act with regard to registration have been complied
with. The Registrar will, in such a case enter the particulars relating to the trade union in a
register maintained in the prescribed form. The Registrar has the powers to examine whether the
Union is to be registered or not and after fulfilling the conditions prescribed in the Act and the
Registrar will have to make the registration of the trade union.

Where that is a dispute as to who are elected office bearers of trade union, it is not within the
jurisdiction of the Trade Union, to determine which of the rival group of office bearers the real
one is. In the absence of any provision in the Act such dispute has to be resolved in a Civil Court.

The Registrar of the trade union will have to take suitable action according to the rules. There is
nothing illegal to form a rival union. In fact rivalry and competition may be highly beneficial in
many ways in case of a particular union seeking registration, all that it has to do is to ensure that
the provisions of the Indian Trade Unions Act, 1926 and rules and regulations there under, have
to be complied with once it is done the Registrar has no option but to register the union.
There is nothing under the law which makes incumbent as a union applying for registration to give notice to the existing unions. In case of delay for making registration a writ can be filed against the Registrar on registering a trade union. There is an implied decision by the registrar that the employer is carrying on trade or business or an industry and that the employers are therefore workmen under the Act.

Such a decision is one which is definitely against the interest of the employer if he contents that he was not carrying on a Trade, business or industry. Therefore, it cannot be said such an employer has no ‘locus-standy’ to question the order of the registration of the union on the ground of being contrary to the provisions of the Act.

There are some disputes between two rival factions claiming to the office bearers of the trade union and a procedure is prescribed under the Bokaro Steel Workers Union Vs State of Bihar. The following are the Principles laid down by the Court:

a. In a dispute between two rival factions claiming to be office bearers of a trade union, it is open to the Registrar for the purpose of maintaining and updating the registers require to be maintained under Section 8 of the Trade Unions Act, 1926.

b. His decision in this regard shall neither conferred any right on any person or group of person nor deviate any person or group of persons of any lawful rights.

c. Consequently the Registrar has no authority or power to issue any direction asking or advising the labour department or the Government or the employer to recognize and treat any person or group of persons as the duly elected office bearers of the union in dealing with that union.

d. The Registrar, trade unions, has no authority or power to direct the holding of election of office bearers of a union under his own supervision or that of his nominee.

e. In the absence of any provision in the Act, any dispute of this kind can only be resolved by means of suit filed before a Civil Court.

f. The adjudication in a suit atleasat in this state is normally a slow and time consuming process and does not constitute wholly satisfactory remedy for resolving the disputes.

g. The legislature will, therefore, be well advised to address itself to this lacuna in the trade unions Act and to take steps to find remedy for which has been long over due.

In the case of Inland Steam Navigation Workers Union held that where the objects of the Trade Union or not outside the objects prescribed by the Act and further all the requirements under the Act have been complied with the Registrar is bound to register the union.

5.3.6 Certificate of Registration (Section 9)

The Registrar, on registering a Trade Union, shall issue a certificate of registration which shall be conclusive evidence that the Trade Union has been duly registered under the Act.
It is obligatory on the part of the Registrar to register a Trade Union provided the provisions of the Act are complied with. He is not entitled to question whether the Union is lawful or unlawful.

5.3.7 Advantages of Registration

Although it is not legally necessary for a Union to be registered, registration does provide it with certain advantages. Some of the advantages gained by registration as given in Section 13 are as under:
1. A Trade Union becomes a body corporate by name under which it is registered and it a legal entity distinct from its members of which it is composed.
2. It gives perpetual succession and common seal.
3. It can acquire and hold both movable and immovable property.
4. It can enter into a contract.
5. It can sue and be sued in its registered name.

5.3.8 Cancellation of Registration (Section 10)

Power to withdraw or cancel registration of a Trade Union is given to the Registrar. The Registrar can exercise the power in the following case, namely:
1. On the application of the Trade Union for such a course
2. Where the certificate of registration has been obtained by fraud or mistake
3. Where the Trade Union ceased to exist
4. Where the Trade Union has willfully and after notice from the Registrar allowed any rule to continue in force which is inconsistent with the provision of this Act
5. Where the Trade Union has willfully and after notice from the registrar violated any provisions of this Act
6. Where the primary objects of the Union are no longer statutory objects Where the Union desires to have its certificate of registration withdrawn or cancelled, the Registrar on receiving much application, must, before granting the application satisfy himself that the withdrawal or cancellation was approved by a general meeting of the Trade Union or if it was not so approved, it had the approval of the majority of the members of the Trade Union.

The Registrar is not competent to cancel registration of a Trade Union without giving requisite notice and giving an opportunity to the Trade Union to show cause against the proposed action.

The Registrar must be given not less than two months, previous notice in writing giving the grounds on which it is proposed to withdraw or cancel the certificate of registration. No such notice is required where such application is made by the Trade Union itself.

5.3.9 Appeal (Section 11)

Section 11 of the Act gives a limited right of appeal from the decisions of the Registrar. Any person who is aggrieved by the refusal of the Registrar to register a Trade Union or the withdrawal or cancellation of certificate of registration is given the right of appeal. The appeal must be within 60 days of the date of which Registrar passed the order against which appeal is made.
5.3.10 Body Corporate (Section 13)

Every registered Trade Union is a body corporate by the name under which it is registered. A registered Trade Union is an artificial person in the eyes of law capable of enjoying rights like a natural person. It has a perpetual succession and a common seal. It has the right to acquire and hold both movable and immovable property. It can enter into a contract and can sue and be sued in its registered name.

The registered trade unions (workers & employers) are required to submit annual statutory returns to the Registrar regarding their membership, general funds, sources of income and items of expenditure and details of their assets and liabilities, which in turn submits a consolidated return of their state in the prescribed proforma to Labour Bureau, Ministry of Labour Bureau, Ministry of Labour and employment. The Labour Bureau on receiving the annual returns from different States/Union Territories, consolidates the all India statistics and disseminates them through its publication entitled the ‘Trade Unions in India’ and its other regular publications.

5.3.11 The Objects on which General Funds may be spent (Section 15)

(a) Salaries, allowances and expenses to office bearers
(b) Expenses for administration and audit of the accounts of funds of the union
(c) Towards Prosecution or defense of any legal proceeding to which the union or its member is a party
(d) The conduct of trade disputes on behalf of the union or its members
(e) Compensation for the members at the time of dispute.

5.3.12 Penalties and Procedure

Under Sections 31 to 33 the Registrar of Trade Unions is empowered to impose penalty on the trade union for default in submitting returns or for supply of false information or statements.

(i) Failure to submit returns (Section 31):

(a) failure to give notice which is required to be given by a registered trade union;
(b) failure to send any return, required to be sent by a registered trade union; or
(c) failure to send any documents, required to be sent by a registered trade union.

Every office-bearer or other member of the executive committee is bound to give such information, or send statements or documents as required under the provision of the Act, and if this is not done, they are punishable with fine which may extend to Rs. Twenty-five. In the case of a continuing default, an additional fine extending to Rs. Twenty-five may be imposed for each week after the first week during which the default continues. But in no case the total fine shall exceed rupees five hundred.

The following information or statements are required to be submitted by the registered trade union:

(i) Notice of change in the address of the head office of the trade union;
(ii) Notice of change of the name on amalgamation of the unions;
(iii) Notice of change in the officers of the trade union;
(iv) Copies of the corrected rules;
(v) Copy of every alteration made in the rules;
(vi) Notice of dissolution of the trade union; and
(vii) Annual returns for the period ending March 31.

Any person who willfully makes, or causes to make, any false entry in, or any omission from the general statement, or the copy of the rules or the copy of altered rules, which are required to be submitted to the Registrar in the case of a registered trade union, shall be punishable with fine which may extend to Rs. 500 (Section 31).

Any person who contravenes any of the orders of the Registrar for verification of the membership of a registered trade union (under Section 28A) shall be punishable with fine which may extend to five hundred rupees (Section 31).

(ii) Supplying False Information about Trade Unions (Section 32):
The Act also lays down that where any person with intent to deceive gives:
(a) to any member of a registered trade union, or
(b) to any person including or applying to become a member of such trade union, or (c) any alteration as are for the time being in force, shall be punishable with fine which may extent to Rs.200.

Similarly, any person who with intent to deceive gives a copy of any rules of an unregistered trade union to any person, on the pretence that such rules are the rules of a registered trade union, shall be punishable with fine which may extend to Rs.200.

(iii) Cognizance of Offence (Section 33): Any offence under this Act cannot be tried by a court inferior to that of Metropolitan Magistrate or a Judicial Magistrate First Class Further, no court shall take cognizance of any offence unless complaint thereof has been made by both or with the previous sanction of the Registrar of by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.

Individual employees, if not required to become members in good standing in the union, may refuse to follow contract provision. Other employees, although benefiting from union activities, may also refuse to support the union. These free riders can create dissatisfaction among union members, who may also likewise refuse to continue their support to union activities. For these reasons, unions often propose some system of union security, of which all employees are required to be or to become and to remain union members.

The Union Security covers:

(a) Sole or Exclusive Bargaining Agent: Under this type of security, the union is accepted as a bargaining agent for all employees (members and non-members) in the unit.
(b) Preferential Union Shop: Under this, additional recognition is granted to a union by agreement that management shall give the first chance to union members in recruitment.
Check Your Progress
1. Explain the information of registration of Trade Unions.

5.4 Recognition of Trade Union

The Gajendra gadkar Commission in 1969, and the Ravindra Varma Commission in June 2002, in their recommendations has given the clear findings, that statutory recognition of the bargaining agent is a crucial issue in the Industrial Relations Agenda of India, and the National Trade Union centers, now should sit together and evolve consensus on this in the country’s interests and in their own interests. The country has to march forward and achieve industrial growth and economic growth, in the present highly competitive environment in the global economy.

The Indian Trade Unions Act of 1926, gave legal cover to the activities of unions, and provided only for registration of unions, at the national level. The Act, did not however make provision for recognition of trade unions at the national level, except in very few States in India. The Central Trade Unions Act was amended in 1947, containing provisions for the recognition of unions and for penalizing unfair labour practices. This was an amendment of far reaching importance in the labour field. But this amendment was not notified and the recognition issue got postponed.

The Act classifies trade unions into three categories:
1. Representative union
2. Qualified union,
3. Primary union

The basis of this classification is the percentage of membership that a union has at the industry level (Chemical industry) or at the lowest level, the primary union. The representative union should be able to muster 15% of the total number of employees, employed in any one industry in a contiguous area. The qualified union should have 5% of the employees in an industry enrolled as members and finally the primary union should have 15% or more employees enrolled in a unit or a plant. Therefore it is apparent that there is a scaling down of numbers in terms of the status accorded. The idea is to provide some basis to assess the relative strength of a union seeking recognition.

Check Your Progress
1. Describe the categories for the recognition of trade union.

5.5 Code of Discipline – 1958

At the historic 15th Indian Labour Conference, held at Nainital, under the Chairmanship of late Guljarilal Nanda, the then Labour Minister of the Government of India, and a true Gandhian, the Code of Discipline was adopted on May 21, 1958. The code made a provision for recognition of unions, for the purpose of collective bargaining. As per the code, the unions with a membership
of fifteen percent (15%) of the workers in an establishment and twenty five percent (25%) of the workers in the industry were entitled to recognition. Evaluation and implementation machineries at the Central and State Levels, were formed, to monitor the implementation of the code. The employers and the unions, experimented the provisions but as the code, was only a moral-code, and has no statutory backing the results were not impressive. The Hon’ble Minister, who shaped the code, acted sincerely and honestly and the code, really created awareness about the need for recognition of unions, in the bargaining field. As the code faded, the collective bargaining exercise continued, within the parameters of the Industrial Disputes Act, 1947. Conversion of the moral code, to a statutory code, by the Central Government in the sixties, might have strengthened the collective bargaining exercises in India. Recognition of trade union serves as guidelines for those employers and workmen who are willing to regulate their relationship on equitable plane.

5.6 Multiplicity of Trade Unions

In India, many of the unions are general unions. In this environment, a combination of factors seems to operate – the first being the democratic principle of any seven members being able to form and register a union. In a democracy, even a minority is given an opportunity to organize and further its interests. The Trade Union Act of 1926 also gives sanction to this principle of seven members forming a union. Secondly, given the large number of trade union federations at the national and regional level, which are vying with each other for increased membership there is bound to be disunity among the workers. There is no single federation to which all the other federations belong. The trade union leaders, some of whom are outsiders while others have come up from within the trade union movement, have different approaches to the problems at hand and hence there may, and does come a parting of ways on many occasions.

In multi-union situations at the plant level, the problem of inter-union rivalry frequently poses a managerial problem. Disagreement among unions to technological change, rationalization, automation or terms and conditions of employment causes work stoppage. Sometimes one union agrees while the other does not, for a variety of reasons. These rifts are also due to the rivalry among leaders, or to differences in strategy to be adopted or to differences in ideology. A clash of personalities and egos also plays its part.

One of the effects of industrialization, which has meant the stepping up of the rate of capital formation, has been a strain on the lying standards of workers. This has been coupled with another side effect. i.e. hob insecurity – a problem that workers usually face in the initial stages of industrialization. The growth of unions in such cases has generally been to protect the interest of the working class. The process of industrialization itself makes for increase in the rate of unionization. In India this process has not followed the pattern that existed in the developed countries. The merchant-craftsman’s stage of capitalism was bypassed and we had instead an abrupt transition from the agricultural pattern of production to the factory pattern of production. In the process the emphasis on craftsmen and their skills got de-emphasized. This, when coupled with the low level of skill formation, not only meant a greater number of unskilled industrial workers, but, also as a consequence, led to the growth of several general industrial unions and hence the problems of inter-union rivalry.
Another factor was the political linkage with unionization. Unions through their collective action are organizations concerned with the interest of a particular class. Hence they are also concerned with the distribution of power. Since distribution of power and decision-making is linked with the political process, the inter-relationship between politics and unionism is part of this process which is perpetual. Both political parties and unions have a vested interest in each other as the effect of their actions and strength is of interest to each other. Unions have a vital stake in the political process and the decisions that will change or restructure the balance of power within their society.

The growth of the four major national federations can be traced directly to the growth of the major political parties which have different ideologies and approaches to the distribution of power and the role of labour in society. The ideological links between these federations and the political parties are, therefore, responsible for cleavages in the union movement.

Another phenomenon has been the role of the outside leaders in the union. This is partly due to the low level of education of the workers, their lack of opportunities to gain experience and therefore their dependence on small elite of educated and influential people. All these factors have led to the domination of the trade union positions by outside leaders. The technical demands in terms of understanding the voluminous and all-embracing legislation are formidable and a legalistic approach seems to be all-pervading. Therefore familiarity with the various pieces of legislation does play a part in getting things done. The social distance between the manager and the worker has also played its part. In a tradition-bound society which gives due deference to authority, the distance between the manager and the worker has been substantial. The gap has therefore been filled by politicians turned union executives.

5.6.1 Detrimental Effect of Multiple Unionism

The large number of national federations at the macro level means that the unit level concept has been considerably de-emphasized. It leads to the diffusion of union power at the top and therefore damages the political leverage of labour. It also leads to inefficient efforts to change or introduce new legislation in order to improve the lot of workers, which could have been possible if there was one cohesive body at the macro level.

Multiple unionisms also lead to multiple enrolments in unions and non-subscribing members, causing delay or failure to get recognition. This restrains a union’s bargaining power during a period of prolonged strife while the unions are squabbling among themselves for dominance, the workers are deprived of their wages and the plant suffers a loss of production.

Again, at the plant level, multiple unionism qualitatively weakens the movement resulting in the formation of small-sized unions without effective organization, a precarious financial position and an inability to achieve significant benefits or rights to the members through their own efforts.

Collective bargaining is not possible and there is greater dependence on government machinery in labour-management relations.

The primary role of a union is to protect the workers and to channelize their efforts into more rational directions so that the viability of the plant is also enhanced. The effect of having
multiple trade unions both at the macro-and-micro-levels serves only to weaken the workers' power base while at the same time negatively affecting the viability of the plant. A variety of remedies have been suggested, which will be discussed later.

However, it must be noted that in spite of the foregoing there are many organizations where multiple unions exist and the management does effectively negotiate, and conclude agreements. In many plants, workers are unionized – on a craft basis – their special skills or training bonding them together. Multi-unionism is more a problem where general unions exist, for whom all categories can be organized in one general union.

Check Your Progress
1. What is multiplicity of Trade Union?
2. What are the effects on multiplicity of Trade Union?

5.7 Amendments in the Act

However, the Trade Unions Act 1926 has been amended from time to time and the most important being the Trade Unions (Amendment) Act 2001. This Act has been enacted in order to bring more transparency and to provide greater support to trade unionism in India. Some of the salient features of the Trade Unions (Amendment) Act, 2001 are:

- No trade union of workmen shall be registered unless at least 10% or 100, whichever is less, subject to a minimum of 7 workmen engaged or employed in the establishment or industry with which it is connected are the members of such trade union on the date of making of application for registration.

- A registered trade union of workmen shall at all times continue to have not less than 10% or 100 of the workmen, whichever is less, subject to a minimum of 7 persons engaged or employed in the establishment or industry with which it is connected, as its members.

- A provision for filing an appeal before the Industrial Tribunal/ Labour Court in case of non-registration or for restoration of registration has been provided.

- All office bearers of a registered trade union, except not more than one-third of the total number of office bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected.

- Minimum rate of subscription by members of the trade union is fixed at one rupee per annum for rural workers, three rupees per annum for workers in other unorganised sectors and 12 rupees per annum in all other cases.

- The employees who have been retired or have been retrenched shall not be construed as outsiders for the purpose of holding an office in the trade union concerned.

- For the promotion of civic and political interest of its members, unions are authorized to set up separate political funds.
Hence, trade union legislation ensures their orderly growth, reduce their multiplicity and promote internal democracy in the industrial organisation and the economy. The trade unions have thus acquired an important place in the economic, political and social set up of the country.

The Act has been further amended from time to time. For latest amendments visit the link provided: http://labour.gov.in/latest-notificationamendments

Check Your Progress

5.8 Summary

The Trade Union Act, 1926

CHECKLIST

Object of the Act
To provide for the registration of Trade Union and in certain respects to define the law relating to registered Trade Unions.

Registration of trade Union
- Any 7 or more members of a trade union may, by subscribing their names to the rules of the trade union and its compliance.
- There should be at least 10% or 100 of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected.
- It has an the date of making application not less than 7 persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Sec. 5

Registration of trade Union
Prescribed form with following details.
- Names, occupations and address of the members' place of work.
- Address of its head office; and
- Names, ages, addresses and occupations of its office bearers.

Minimum requirements for membership of trade union
Not less than 10% or 100 of the workmen, whichever is less, subject to a minimum of 7, engaged or employed in an establishments etc. Sec. 9A

Cancellation of registration
- If the certificate has been obtained by fraud or mistake or it has ceased to exist or has wilfully contravened any provision of this Act.
- If it ceases to have the requisite number of members. Sec. 10

Criminal conspiracy in trade disputes
No office bearer or member of a registered trade union shall be liable to punishable under sub section (2) of conspiracy u/s 120B of IPC in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union. Sec. 17
5.9 Key Terms

**Statutory Authority:** Statutory authority means any authority or body established, appointed or constituted by any written law, and includes any local authority.

**Union shop:** A shop, business establishment, or part thereof, in which terms and conditions of employment for all employees are fixed by agreement between the employer and a labor union.

**Bonafide:** _Bona fide means_ "in good faith" in Latin. When applied to business deals and the like, it stresses the absence of fraud or deception.

5.10 Review Questions

Q1. What are the rights of a registered trade union? When can the registration of a trade union be cancelled or withdrawn?

Q2. Discuss the Trade union Act 1926 and also bring out the amendments of the Act.

Q3. Should we have a uniform law requiring the management to recognize a union? Is it desirable? Discuss the practicalities of having or not having such a law.

5.11 Further Reading and References

- P.N Singh & Neeraj Kumar, Employee Relations Management, Pearson India.

UNIT 6

LABOUR LEGISLATIONS IN INDIA

6.0 Introduction
6.1 Unit Objectives
6.2 Evolution of Labour Law in India
6.3 Need for Labour Legislation in India
6.4 Objectives
6.5 Principles of Labour Legislation
   6.5.1 Social Justice
   6.5.2 Social Equity
   6.5.3 National Economy
   6.5.4 International Uniformity
6.6 The Classification of Labour Laws
   6.6.1 Purpose
   6.6.2 Legislature
   6.6.3 Period of Enactment
6.7 The Factories Act, 1948
   6.7.1 Main Provisions of the Act
   6.7.1.1 Health and Hygiene (Sec 11-20)
   6.7.1.2 Safety Provisions (Sec 21-41)
6.8 Summary
6.9 Key Terms
6.10 Review Questions
6.11 Further Reading and References

6.0 Introduction

The term 'Labor Legislation' is used to cover all the laws which have been enacted to deal with "employment and non-employment" wages, working conditions, industrial relations, social security and welfare of persons employed in industries. The term 'labor legislation' is in India; is treated as an arm of the State for the regulation of working and living conditions of workers. Organized industry in a planned economy calls for the
spirit of co-operation and mutual dependence for attaining the common purpose of greater, better and cheaper production. Since this has not been happening voluntarily, the need was for State intervention.

6.1 Unit Objectives

After reading this unit, you should be able to:
- Evolution of Labor Laws in India
- The need, principles and objectives for Labour Legislations in India
- Classification of Labour Laws and basis of Classification
- Legislations related to Regulation of Working Conditions
  - Introduction to Factories Act, 1948
  - Factories Act - Main Provisions related to Health and Safety of Workers

6.2 Evolution of Labour Law in India

The law relating to labour and employment is also known as Industrial law in India. The history of labour legislation in India is interwoven with the history of British colonialism. The industrial/labour legislations enacted by the British were primarily intended to protect the interests of the British employers. Considerations of British political economy were naturally paramount in shaping some of these early laws. Thus came the Factories Act. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make India labour costlier the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile magnates of Manchester and Lancashire. Thus India received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfarist the real motivation was undoubtedly protectionist.

The earliest Indian statute to regulate the relationship between employer and his workmen was the Trade Dispute Act, 1929 (Act 7 of 1929). Provisions were made in this Act for restraining the rights of strike and lock out but no machinery was provided to take care of disputes.

The original colonial legislation underwent substantial modifications in the post-colonial era because independent India called for a clear partnership between labour and capital. The content of this partnership was unanimously approved in a tripartite conference in December 1947 in which it was agreed that labour would be given a fair wage and fair working conditions and in return capital would receive the fullest co-operation of labour for uninterrupted production and higher productivity as part of the strategy for national economic development and that all concerned would observe a truce period of three years free from strikes and lockouts. Ultimately the Industrial Disputes Act (the Act) brought into force on 01.04.1947 repealing the Trade Disputes Act 1929 has since remained on statute book.

Check Your Progress
1. Explain the Evolution of Labour Law in India.
6.3 Need for Labour Legislation in India

The need for labour legislation may be summarized as under:
- Necessary for the health, safety, and welfare of workers;
- Necessary to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power;
- To encourage and facilitate the workers in the organization;
- To deal with industrial disputes;
- To enforce social insurance and labour welfare schemes.

Check Your Progress
1. State the need for Labour Legislation in India.

6.4 Objectives

The objectives of labour legislations are two-fold:
- Preservation of the health, safety and welfare of workers; and
- Maintenance of good relations between employers and employees.

Check Your Progress
1. State the objectives of labour legislation.

6.5 Principles of Labour Legislation

6.5.1 Social Justice:
- The essence of democracy is ensuring social justice to all sections of the community.
- This demands the protection of those who cannot protect themselves.
- In modern industrial set-up, workers, left to themselves, are unable to protect their interest Therefore, the State has to intervene to help them by granting them freedom of association, the power of collective bargaining and by providing for mediation or arbitration in the case of industrial conflict.

6.5.2 Social Equity:
- Legislation based on this principle provides for achievement of definite standards. Standards in terms of living, position in society etc. of the working population.
- These standards for the working class can be achieved by bringing about changes in the Law of our land.
- Power to change the Law is exercised by the government
- Existing laws may be amended to meet the changed standards.

6.5.3 National Economy:
- Measures have to be provided through legislation to:
  - Ensure normal growth of industry for the benefit of the nation as a whole; Satisfy the physical and intellectual needs of the citizens;
  - Ensure the growth of industrial efficiency such as to adjust the wage system with a view to increase the productivity and prosperity of the workers.

6.5.4 International Uniformity:
Since its inception, securing minimum standards (for the working population – worldwide) on a uniform basis in respect of all labour matters has been the main objective of ILO.

To this end, conventions are passed at the conferences of ILO.

As a member of the ILO, adopting these conventions would require appropriate legislation to be brought about.

The influence of International labour conventions has been significant in shaping the course of labour legislation in India.

Check Your Progress
1. Describe the principles of Labour Legislation.

6.6 The Classification of Labour Laws

The various labour legislations can be classified in a number of ways depending upon the object of study. For example, they can be classified on any one of the following arbitrary bases:

6.6.1 Purpose:
   a) Regulation of working conditions (terms of employment, procedure for employment, safety + health+ welfare requirements)
   b) Social security (protection against loss in earning and risks)
   c) Regulation of wages and bonus
   d) Industrial relations and conflict prevention

6.6.2. Legislature: Central or state or both.
6.6.3 Period of Enactment: Early days, pre-Independence, post-Independence

The National Labour Commission (Second), in its report has also discussed the labour laws under the following classifications:
1. Employment Relations
2. Contract Labour
3. Laws on working conditions and welfare
4. Laws Relation to wages
5. Laws Relating to Social Security
6. Miscellaneous Matters

Check Your Progress
1. State the purpose of Labour Legislation in India.
2. State the classification of labour laws according to the National Labour Commission.

In this book we have used the classification based on the purpose of Enactment. According to this classification, the main enactments roughly fall under the following heads:

- **The Regulation of Working Conditions**
  1. The Factories Act, 1948
  2. The Shops and Establishments Act, 1953
  3. The Contract Labour (Regulation and Abolition) Act, 1970
Legislations Related to Social Security
1. Employee’s State Insurance Act, 1948
2. Workmen’s Compensation Act, 1923
3. The Payment of Gratuity Act, 1972
4. The Employee’s Provident Fund and Miscellaneous Provisions Act, 1952

Legislations Related to Wage and Bonus
1. The Payment of Wages Act, 1936
2. The Minimum Wages Act, 1948
3. The Payment of Bonus Act, 1965

Industrial Relations and Conflict Prevention
1. The Industrial Disputes Act, 1947
2. The Industrial Employment (Standing Orders) Act, 1946
3. The Trade Union Act, 1926

Check Your Progress
1. State the classification of Labour Laws.

In this chapter we are going to discuss the Factories Act, 1948 and its provisions related to Health & Safety. The other provisions are discussed in the chapter 7.

6.7 The Factories Act, 1948

Objective of the Act
- To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.
- To prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.

Check Your Progress

Scheme of the Act

The Act consists of 120 Sections and 3 Schedules.
Schedule 1 contains list of industries involving hazardous processes
Schedule 2 is about permissible level of certain chemical substances in work environment.
Schedule 3 consists of list of notifiable diseases.

Section 1. Short title, extent and commencement. -
(1) This Act may be called the Factories Act, 1948.
(2) It extends to the whole of India
(3) It shall come into force on the 1st day of April, 1949.

Section 2. Interpretation.-
In this Act, unless there is anything repugnant in the subject or context,-

• (a) "adult" means a person who has completed his eighteenth year of age;
• (b) "adolescent" means a person, who has completed his fifteenth year of age but has not completed his eighteenth year;
• (bb) "calendar year" means the period of twelve months beginning with the first day of January in any year;
• (c) "child" means a person who has not completed his fifteenth year of age;
• (ca) "competent person", in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to-
  o (i) the qualifications and experience of the person and facilities available at his disposal, or
  o (ii) the qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognised as a competent person in relation to a factory;
• (cb) "hazardous process" means any process or activity in relation to an industry specified in the 'First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would-
  o (i) cause material impairment to the health of the persons engaged in or connected therewith, or
  o (ii) result in the pollution of the general environment:
Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;
• (d) "young person" means a person, who is either a child or an adolescent;
• (e) "day" means a period of twenty-four hours beginning at midnight;
• (f) "week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;
• (g) "power" means electrical energy, or any other form of energy, which is mechanically transmitted and is not generated, by human or animal agency;
• (h) "prime-mover" means any engine, motor or other appliance, which generates or otherwise provides power;
• (i) "transmission machinery" means any shift, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime-mover is transmitted to or received by any machinery or appliance;
• (j) "machinery" includes prime-movers, transmission machinery and all other appliances, whereby power is generated, transformed, transmitted or applied;
• (k) "manufacturing process" means any process for-
  o (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
  o (ii) pumping oil, water, sewage, or any other substance; or
  o (iii) generating, transforming or transmitting power; or
(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;

1. "worker" means a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;

2. "factory" means any premises including the precincts thereof—
   (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
   (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952) or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place;

3. "occupier" of a factory means the person, who has ultimate control over the affairs of the factory,

Provided that-

1. (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
   (ii) in the case of a company, any one of the directors, shall be deemed to be the occupier;
   (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,

Section 3. Reference to time of day.-

In this Act references to time of day are references to Indian Standard Time being five and a half hours, ahead of Greenwich Mean Time:

Provided that for any area in which Indian Standard Time is not ordinarily observed the State Government may make rules-

1. (a) specifying the area,
   (b) defining the local mean time ordinarily observed therein, and
   (c) Permitting such time to be observed in all or any of the factories situated in the area.
Section 4. Power to declare different departments to be separate factories or two or more factories to be a single factory.-

The State Government may, on its own or on an application made in this behalf by an occupier, direct by an order in writing and subject to such conditions as it may deem fit, that for all or any of the purposes of this Act different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory.
Provided that no order under this section shall be made by the State Government on its own motion unless an opportunity of being heard is given to the occupier.

Section 5. Power to exempt during public emergency.-
In any case of a public emergency the State Government may, by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act except section 67 for such period and subject to such conditions as it may think fit:
Provided that no such notification shall be made for a period exceeding three months at a time.

Explanation. - For the purposes of this section 'public emergency' means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.

Section 6. Approval, licensing and registration of factories.-
(1) The State Government may make rules-
(a) requiring for the purposes of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;
(aa) requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;
(b) requiring for the purpose of considering applications for such permission the submission of plans and specifications;
(c) prescribing the nature of such plans and specifications and by whom they shall be certified;
(d) requiring the registration and licensing of factories, or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences;
(e) requiring that no licence shall be granted or renewed unless the notice specified in section 7 has been given.
(2) If on an application for permission referred to in clause (aa) of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, sent to the State Government or Chief Inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.
(3) Where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory,
applicant may within thirty days from the date of such refusal, appeal to the Central Government if the decision appealed for was of the State Government, and to the State Government in any other case.

Explanation. - A factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed, of the addition of any plant or machinery. If such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affects the environment conditions from the evolution or emission of steam, heat or dust or fumes which are injurious to health.

Section 7. Notice by occupier.-
(1) The occupier shall, at least fifteen days before he begins to occupy or, use any premises as a factory, send to the Chief Inspector a written notice containing-

- (a) the name and situation of the factory;
- (b) the name and address of the occupier;
- (bb) the name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93;
- (c) the address to which communication relating to the factory may be sent;
- (d) the nature of the manufacturing process-
  o (i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act, and
  o (ii) to be carried on in the factory during the next twelve months in the case of all factories;
- (e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate standby plant;
- (f) the name of the manager of the factory for the purposes of this Act;
- (g) the number of workers likely to be employed in the factory:
- (h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;
- (i) such other particulars as may be prescribed.

(2) In respect of all establishments, which come within the scope of the Act for the first time the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days from the date of the commencement of this Act.

(3) Before a factory engaged in a manufacturing process which is ordinarily carried out for less than one hundred and eighty working days in the year, resumes working, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) that least thirty days before the date of the commencement of work.

(4) Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge.

(5) During a period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.
Section 7A. General duties of the occupier.-

(1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

(2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include-

(a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
(b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
(c) the provision of such information, instruction, training and supervisions as are necessary to ensure the health and safety of all workers at work;
(d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such place as are safe and without such risks;
(e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

Section 7B. General duties of manufacturers, etc., as regards articles and substances for use in factories.-

(1) Every person who designs, manufactures, imports or supplies any article for use in any factory shall-

(a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;
(b) carry out or arrange for labs for carrying out of such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);
(c) take such steps as may be necessary to ensure that adequate information will be available-
   (i) in connection with the use of the article in any factory;
   (ii) about the use for which it is designed and tested; and
   (iii) About any conditions necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers:

Provided that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see-

(a) That the article conforms to the same standards if such article is manufactured in India, or
(b) If the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India that the article conforms to such standards

(2) Every person, who undertakes to design or manufacture any article for use in any factory, may carry out or arrange for the carrying out of necessary research with a view to the
discovery and, so far as is reasonably practicable, the elimination or minimization of any risks to the health or safety of the workers to which the design or article may give rise.

(3) Nothing contained in sub-sections (1) and (2) shall be construed to require a person to repeat the testing examination or research which has been carried out otherwise than by him or at his instance on so far as it is reasonable for him to rely on the results thereof for the purposes of the said sub-sections.

(4) And duty imposed on any person by sub-sections (1) and (2) shall extend only to things done in the course of business carried on by him and to matters within his control.

(5) Where a person designs, manufactures, imports or supplies an article on the basis of a written undertaking by the user of such article to take the steps specified in such undertaking to ensure, so far as is reasonably practicable, that the article will be, safe and without risks to the health of the workers when properly used, the undertaking shall have the effect of relieving the person designing, manufacturing, importing or supplying the article from the duty imposed by clause (a) of sub-section (1) to such extent as is reasonably having regard to the terms of the undertaking.

(6) For the purposes of this section, an article is not to be regarded as properly used if it is used without regard to any information or advice relating to its use which as been made available by the person who has designed, manufactured, imported or supplied the article.

Section 8. Inspectors-

(1) The State Government may, by notification in the Official Gazette, appoint such persons as possessing the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to powers conferred on Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(2A) The State Government may, by notification in the Official Gazette, appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.

(2B) Every additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointment under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the power of an Inspector throughout the State.

(3) No person shall be appointed under sub-section (1), sub-section (2), sub-section (2A) or sub-section (5), or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.
(5) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section, shall be deemed to be a public servant within the meaning of the Indian Penal Code (XLV of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

Section 9. Powers of Inspectors.-
Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,-

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

(b) make examination of the premises, plant, machinery, article or substance;

(c) enquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;

(d) require the production of any prescribed register or any other document relating to the factory;

(e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;

(f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);

(g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;

(h) in case of any article of substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

(i) exercise such other powers as may be prescribed.

Section 10. Certifying Surgeons.-
(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

(2) A certifying surgeon may, with the approval of the State Government, authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the
certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorized.

(3) No person shall be appointed to be, or authorized to exercise the powers of, a certifying surgeon, or having been so appointed or authorized, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory: Provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.

(4) The certifying surgeon shall carry out such duties as may be prescribed in connection with-
(a) the examination and certification of young persons under this Act;
(b) the examination of persons engaged in factories in such dangerous Occupations or processes as may be prescribed;
(c) the exercising of such medical supervisions as may be prescribed for any factory or class or description of factories where-
   (i) cases of illness have occurred, which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
   (ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process, or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
   (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Explanation. - In this section "qualified medical practitioner" means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or in the Schedule to the Indian Medical Council Act, 1933 (XXVII of 1933).

Check Your Progress
1. State the Scheme of the Factories Act, 1948.
2. State the meaning of the term hazardous process.
3. State the meaning of the term manufacturing process.
4. State the general duties of the occupier.
5. State the general duties of the manufacturer.
6. State the powers of Inspector.

6. 7.1 Main Provisions of the Act

The structure of the Factories Act, 1948 primarily aims at preserving the health, safety and welfare of the workers working in a factory.

6.7.1.1 HEALTH AND HYGIENE (Sec11-20)
Section 11 to 20 of the factories Act, 1948 detail out the health provisions that need to be followed in “factories”. In particular, provisions for health and hygiene comprise the following:

Section 11. Cleanliness.-
(1) Every factory shall be kept clean and free from effluvial arising from any drain, or other nuisance, and in particular-
(a) Accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages and disposed of in a suitable manner;
(b) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant where necessary, or by some other effective method;
(c) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided as maintained;
(d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall- (i) where they are painted otherwise than with washable water paint or varnished, be repainted or revarnished at least once in every period of five years;
(i) Where they are painted with washable water paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months;
(ii) Where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least one in every period of fourteen months by such methods as may be prescribed;
(iii) In any other case, be kept whitewashed, or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;
(dd) all doors and window-frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;
(e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.
(2) If, in view of the nature of the operations carried on in a factory or class or description of factories or any part of a factory or class or description of factories, it is not possible for the occupier to comply with all or any of the provisions of sub-section (1), the State Government may by order exempt such factory or class or description of factories or part from any of the provisions of that sub-section and specify alternative methods for keeping the factory in a clean state.

Section 12. Disposal of wastes and effluents.-
(1) Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.
(2) The State Government may make rules prescribing the arrangements to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed.
Section 13. Ventilation and temperature.-
(1) Effect and suitable provisions shall be made in every factory for securing and maintaining in every workroom-
   (a) adequate ventilation by the circulation of fresh air, and
   (b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health; and in particular,
   (i) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;
   (ii) Where the nature of the work carried on in the factories involves, or is likely to involve, the production of excessively high temperature, such adequate measures as are practicable shall be taken to protect the workers there from, by separating the process, which produces such temperature from the workroom, by insulating the hot parts or by other effective means.

(2) The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that proper measuring instruments, at such places and in such position as may be specified, shall be provided and such records, as may be prescribed, shall be maintained.

(3) If it appears to the Chief Inspector that excessively high temperature in any factory can be reduced by the adoption of suitable measures, he may, without prejudice to the rules made under sub-section (2), serve on the occupier, an order in writing specifying the measures which, in his opinion should be adopted, and requiring them to be carried out before a specified date.

Section 14. Dust and fume.-
(1) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes there from as are likely to be injurious to workers employed in the room.

Section 15. Artificial humidification.-
(1) In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,-
   (a) prescribing standards of humidification;
   (b) regulating the methods used for artificially increasing the humidity of the air;
   (c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
   (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.
(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(3) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

Section 16. Overcrowding.-
(1) No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of sub-section (1), there shall be in every workroom of a factory in existence on the date of commencement of this Act at least 9.9 cubic meters and of a factory built after the commencement of this Act at least 14.2 cubic meters of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than 4.2 metres above the level of the floor of the room.

(3) If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the Provisions of this section, be employed in the room.

(4) The Chief Inspector may, by order in writing exempt, subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

Section 17. Lighting.-
(1) In every part of a factory where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every factory all glazed windows and skylights used for the lighting of the workroom shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (3) of section 13 will allow, free from obstruction.

(3) In every factory effective provision shall, so far as is practicable, be made for the prevention of-
   (a) glare, either directly from a source of light or by reflection from a smooth or polished surface;
   (b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.

(4) The State Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

Section 18. Drinking water.-
(1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory and no such points shall be situated within
Section 19. Latrines and urinals.-
(1) In every factory-
   (a) Sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory;
   (b) Separate enclosed accommodation shall be provided for male and female workers;
   (c) Such accommodation shall be adequately lighted and ventilated and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage;
   (d) All such accommodation shall be maintained in a clean and sanitary condition at all times;
   (e) Sweepers shall be employed whose primary duty it would be to keep clean all latrines, urinals and washing places.
(2) In every factory wherein more than two hundred and fifty workers are ordinarily employed-
   (a) All latrine and urinal accommodation shall be of prescribed sanitary types;
   (b) the floors and internal walls, up to a height of ninety centimetres of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface;
   (c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.
(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the number of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

Section 20. Spittoons.-
(1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.
(2) The State Government may make rules prescribing the type and numbers of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.
(3) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

(4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

Check Your Progress
1. State the sections of Health and Hygiene.

6.7.1.2 Safety Provisions (Sec 21-41)

Section 21. Fencing of machinery.-
(1) In every factory the following, namely-
   (i) Every moving part of a prime-mover and every flywheel connected to a prime-mover, whether the prime-mover or flywheel is in the engine-house or not;
   (ii) The headrace and tailrace of every water-wheel and water-turbine;
   (iii) Any part of a stock bar which projects beyond the head stock of a lathe; and
   (iv) Unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely:-
      (a) Every part of an electric generator, a motor or rotary convertor;
      (b) Every part of transmission machinery; and
      (c) Every dangerous part of any other machinery; shall be securely fenced by safeguards of a substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing, are in motion or in use:

Provided that for the purpose of determining whether any part of machinery in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when-
   (i) it is necessary to make an examination of any part of the machinery aforesaid while it is in motion or, as a result of such examination to carry out lubrication or other adjusting operation while the machinery is in motion, being an examination of operation which it is necessary to be carried out while that part of the machinery is in motion. or
   (ii) in the case of any part of a transmission machinery used in such process as may be prescribed (being a process of a continuous nature, the carrying on of which shall be or is likely to be substantially interfered with by the stoppage of that part of the machinery), it is necessary to make an examination of such part of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts or lubrication, or other adjusting operation while the machinery is in motion, and such examination or operation is made or carried out in accordance with the provisions of sub-section (1) of section 22.

(2) The State Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the Provisions of this section.

Section 22. Work on or near machinery in motion.-
(1) Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or, as a result of such examination, to carry out-
   (a) In a case referred to in clause (i) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation; or
   (b) In a case referred to in clause (ii) of the proviso aforesaid, any mounting or shipping of belts or lubrication or other adjusting operation,
while the machinery is in motion, such examination or operation shall be made or carried out only by a 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 his appointment, and while he is so engaged,-
   (a) such worker shall not handle a belt at a moving pulley unless-
      (i) the belt is not more than fifteen centimetres in width;
      (ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case belt is not permissible);
      (iii) the belt joint is either laced or fixed with the belt;
      (iv) the belt, including the joint and the pulley rim, are in good repair;
      (v) there is reasonable clearance between the pulley and any fixed plant or structure;
      (vi) secure foothold and, where necessary, secure handhold, are provided for the operator; and
      (vii) any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person;
   (b) without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinions and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

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

(3) The State Government may, by notification in the Official Gazette prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when those parts are in motion.

Section 23. Employment of young persons on dangerous machines.-
(1) 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 the dangers arising in connection with the machine and the precautions to be observed, and-
   (a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.
(2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

Section 24. Striking gear and devices for cutting off power.-
(1) In every factory-
(a) suitable striking gear or other efficient mechanical appliance 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 so as to prevent the belt from creeping back on to the first pulley;  
(b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

(2) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom:
Provided that in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to workrooms in which electricity is used as power.
(3) When a device, which can inadvertently shift from "off" to "on" position, is provided in a factory- to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device it fitted.

Section 25. Self-Acting machines.-
No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outwards or inward traverse within a distance forty-five centimetres from any fixed structure which is not part of the machine:
Provided that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

Section 26. Casing of new machinery.-
(1) In all machinery driven by power and installed in any factory after the commencement of this Act,-
   (a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;
   (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.
(2) Whoever sells or lets on hire or, agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (1) or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.
(3) The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.

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

Section 28. Hoist and lifts.-
(1) In every factory-
   (a) every hoist and lift shall be-
       (i) of good mechanical construction, sound material and adequate strength;
       (ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;
   (b) every 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;
   (c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon;
   (d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;
   (e) every gate referred to in clause (b) or clause (d) shall be fitted with inter-locking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

   (2) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:-
       (a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;
       (b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;
       (c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

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

(4) The State Government may, if in respect of any class or description of hoist or lift, is of opinion that it would be unreasonable to enforce any requirements of sub-sections (1) and (2), by order direct that such requirement shall not apply to such class or description of hoist or lift.

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

Section 29. Lifting machines, chains, ropes and lifting tackles. -
(1) In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials: -
(a) All parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be-

- (i) of good construction, sound material and adequate strength and free from defects;
- (ii) properly maintained; and
- (iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing, and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked there on together with an identification mark and duly entered in the prescribed register; and where this is not practicable, a table showing the safe working load of every kind and size of lifting machine or chain, rope of lifting tackle in use, shall be displayed in prominent position on the premises;

c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within six metres of that place.

(2) The State Government may make rules in respect of any lifting machine or any chain, rope or lifting tackle used in factories-

- (a) Prescribing further requirements to be compiled with in addition to those set out in this section;
- (b) Providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.

(3) For the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

Explanation. - In this section,-

- (a) "Lifting machine" means a crane, crab, winch, pulley block, gin wheel, transporter or runway;
- (b) "lifting tackle" means any chain sling, rope sling, hook, shackle, swivel, coupling, socket, clamp, tray or similar appliance, whether fixed or movable, used in connection with the raising or lowering of persons, or loads by use lifting machines.

Section 30. Revolving machinery -

(1) In every factory in which the process of grinding is carried on there shall be permanently affixed to or placed ear each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measure shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, flywheel pulley, disc or similar appliance driven by power is not exceeded.
Section 31. Pressure plant -
(1) If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.
(2) The State Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1) and prescribing such other safety measures in relation thereto as may in its opinion, be necessary in any factory or class or description of factories.
(3) The State Government may, by rules, exempt, subject to such conditions as may be specified therein, any part of any plant or machinery referred to in sub-section (1) from the provisions of this section.

Section 32. Floors, stairs and means of access. -
In every factory-
(a) all floors, steps, stairs, passengers and gangways shall be of sound construction, and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails;
(b) there shall, so far as is reasonably practicable, be provided, and maintained safe means of access to 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.

Section 33. Pits, sumps, openings in floors, etc. -
(1) 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 a source of danger, shall be either securely covered or securely fenced.
(2) The State Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

Section 34. Excessive weights -
(1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him an injury.
(2) The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on in any specified process.

Section 35. Protection of eyes -
In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves-
(a) risk of injury to the eyes from particles or fragments thrown off in the course of the process,
(b) risk to the eyes by reason of exposure to excessive light, the State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

Section 36. Precautions against dangerous fumes, gases, etc.-
(1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, 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, vapour or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust 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, vapour 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.

Section 36A. Precautions regarding the use of portable electric light.-
In any factory-
   (a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided; and
   (b) if any inflammable gas, fume or dust is likely to be present in such chambers, tanks, pipes, flues or other confined spaces, no lamp or light other than that of flame-proof construction shall be permitted to be used therein.

Section 37. Explosive or inflammable dust, gas, etc._
Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by-
   (a) effective enclosure of the plant or machinery used in the process;
   (b) removal or prevention of the accumulation of such dust, gas, fume or vapour;
   (c) exclusion or effective enclosure of all possible sources of ignition.
(2) Where in any factory the plant or machinery used in a process such as is referred to in sub-section (1), is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents or other effective appliances.
(3) Where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely:-
   (a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part of any such pipe shall be effectively stopped by a stop-valve or other means;
(b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to a atmospheric pressure;
(c) where any such fastening as aforesaid has been loosened or removed effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part or pipe until the fastening has been secured, or, as the case may be, securely replaced:
Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.

(4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected, in any factory, to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or non-inflammable and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(5) The State Government may by rules exempt, subject to such conditions as may be prescribed, any factory or class or description of factories from compliance with all or any of the provisions of this section.

Section 38. Precautions in case of fire -

(1) In every factory, all practicable measures shall be taken to prevent 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 a fire, and
(b) the necessary equipment and facilities for extinguishing fire.

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

(3) The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the provisions of sub-sections (1) and (2).

(4) Notwithstanding anything contained in clause (a) of sub-section (1) or sub-section (2), if the Chief Inspector, having regard to the nature of the work carried on in any factory, the construction of such factory, special risk to life or safety, or any other circumstances, is of the opinion that the measures provided in the factory, whether as prescribed or not, for the purposes of clause (a) of sub-section (1) or sub-section (2), are inadequate, he may, by order in writing, require that such additional measures as he may consider reasonable and necessary, be provided in the factory before such date as is specified in the order.

Section 39. Power to require specifications of defective parts or tests of stability. -

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing requiring him before a specified date-
(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such buildings, ways, machinery or plant can be used with safety, or
(b) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

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

(2) If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety he may serve on the occupier or manager or both of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

Section 40A. Maintenance of buildings. -
If it appears to the Inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.

Section 40B. Safety Officers -
(1) In every factory-
   (i) Wherein one thousand or more workers are ordinarily employed, or
   (ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease or any other hazard to health, to the person employed in the factory, the occupier shall, if so required by the State Government by notification in Official Gazette, employ such number of Safety Officers as may be specified in that notification.

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

Section 41. Power to make rules to supplement this Chapter -
The State Government may make rules requiring the provision in any factory or in any class or description of factories of such further devices and measures for securing safety of persons employed therein as it may deem necessary.

Provisions relating to Hazardous Processes- Section 41A to 41H have been added dealing with the provisions for the hazardous process.

Section 41A. Constitution of Site Appraisal Committees
Section 41B. Compulsory disclosure of information by the occupier.
Section 41C. Specific responsibility of the occupier in relation to hazardous processes.
Section 41D. Power of Central Government to appoint Inquiry Committee.
Section 41E. Emergency standards
Section 41F. Permissible limits of exposure of chemical and toxic substances.
Section 41G. Workers' participation in safety management.
Section 41H. Right of workers to warn about imminent danger
Check Your Progress


6.8 Summary

Indian labour law refers to laws regulating Labor in India. Traditionally, Indian governments at federal and state level have sought to ensure a high degree of protection for workers, but in practice, legislative rights only cover a minority of workers. India is a federal form of government and because labour is a subject in the concurrent list of the Indian constitution, labour matters are in the jurisdiction of both central and state governments; both central and state governments have enacted laws on labour relations and employment issues. The Factories Act, 1948 has been enacted to consolidate and amend the law regulating the workers working in the factories. It extends to whole of India and applies to every factory wherein 20 or more workers are ordinary employed. Since the aim and object of the Act is to safeguard the interest of workers and protect them from exploitation, the Act prescribes certain standards with regard to safety, welfare and working hours of workers, apart from other provisions.

6.9 Key Terms

Legislations: Legislation is the act or process of making or enacting laws. The noun legislation refers to the actual law enacted by a legislative body at the national, state, or local level.

Official Gazette: A government gazette (official gazette, official journal, official newspaper or official diary) is a periodical publication that records the business and proceedings of a government and has been authorized to publish public or legal notices.

Exploitation: The action or fact of treating someone unfairly in order to benefit from their work.

Adolescent: Adolescent means a person, who has completed his fifteenth year of age but has not completed his eighteenth year.

Hazardous process: Hazardous process means any process or activity in relation to an industry specified in the 'First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, waste or effluents.

Prime-mover: Prime-mover means any engine, motor or other appliance, which generates or otherwise provides power.

Transmission machinery: Transmission machinery means any shift, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime-mover is transmitted to or received by any machinery or appliance.
Manufacturing process: Manufacturing process means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal.

Inspectors: The State Government may, by notification in the Official Gazette, appoint such persons as possessing the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

Certifying Surgeons: The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

6.10 Review Questions

Q1. Discuss the important provisions related to Health and safety of workers according to the Factory act, 1948.

Q2. What do you understand by the term “worker”, manufacturing process and factory under the Factory Act?

Q3. Discuss the principles of labour legislation and classification of labour laws in India.

6.11 Further Reading and References

- P.N Singh& Neeraj Kumar, Employee Relations Management, Pearson India
UNIT 7

THE FACTORIES ACT 1948
(Welfare and other Provisions)

7.0 Introduction

The Factories Act, 1948 is the principal legislation, which governs the health, safety and welfare of workers in factories. Various views given in the section provides an overview of the wide range of welfare amenities to be provided in the factories to the workers. This chapter also discusses ‘The shops and establishments Act, which was enacted to provide statutory obligation and rights to employees and employers in the unorganized sector of employment, i.e. shops and
establishments. It also discuss, The contract labor (Regulation and Abolition) Act, 1970 which applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months 20 or more workmen.

7.1 Unit Objectives

After reading this unit, you should be able to:

- Welfare Provisions related to Factories Act, 1948
- Working Hours, Weekly Offs and Spread-Overs and other provisions.
- The Shops and Establishments Act, 1953
- The Contract Labour (Regulation and Abolition) act, 1970

7.2 Welfare Provisions (Sec 42-50)

Section 42- Washing facilities.

(1) In every factory-
   (a) adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein;
   (b) separate and adequately screened facilities shall be provided for the use of male and female workers;
   (c) such facilities shall be conveniently accessible and shall be kept clean.
(2) The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

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

Section 44. Facilities for sitting.

(1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.
(2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room, are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.
(3) The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.
Section 45. First-Aid Appliances-
(1) There shall, in every factory, be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.
(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.
(3) Each first-aid box or cupboard shall be kept in the charge of a separate responsible person, who holds a certificate in first-aid treatment recognized by the State Government and who shall always be readily available during the working hours of the factory.
(4) In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

Section 46. Canteens
(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.
(2) Without prejudice in the generality of the foregoing power, such rules may provide for-
   (a) the date by which such canteen shall be provided;
   (b) the standard in respect of construction, accommodation, furniture and other equipment of the canteen;
   (c) the foodstuffs to be served therein and the charges which may be made therefor;
   (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
   (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;
   (e) the delegation to Chief Inspector subject to such conditions as may be prescribed, of the power to make rules under clause (c).

Section 47. Shelters, rest-rooms and lunch-rooms-
(1) In every factory wherein more than one hundred and fifty workers are ordinarily employed adequate and suitable shelters or rest-rooms and a suitable lunch-room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers:
   • Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section:
   • Provided further that where a lunch-room exists no worker shall eat any food in the work-room.
(2) The shelters or rest-room or lunch-room to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.
(3) The State Government may-
(a) Prescribe the standards, in respect of construction accommodation, furniture and other equipment of shelters, rest-rooms and lunch-rooms to be provided under this section;
(b) By notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

Section 48. Crèches -
(1) In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.
(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.
(3) The State Government may make rules-
   (a) prescribing the location and the standards in respect of construction, accommodation; furniture and other equipment of rooms to be provided, under this section;
   (b) requiring the provision in factories to which the section applies, of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;
   (c) requiring the provision in any factory of free milk or refreshment or both for such children;
   (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

Section 49. Welfare Officers -
(1) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.
(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

50. Power to make rules to supplement this Chapter. -
The State Government may make rules-
(a) Exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter,
(b) Requiring in any factory or class or description of factories that representatives of the workers employed in the factories shall be associated with the management of the welfare arrangements of the workers.

Check Your Progress
2. State the facilities for storing and drying clothing.
3. State the facilities for sitting in a factory.

Working Hours of Adults

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

Section 52. Weekly Holidays -

(1) No adult worker shall be required or allowed to work in a factory on first day of the week (hereinafter referred to as the said day), unless-
   (a) he has or will have a holiday for whole day on one of three days immediately before or after the said day, and
   (b) the manager of the factory has, before the said day or the substituted day under clause
       (a), whichever is earlier,-
       (i) delivered a notice at the office of the Inspector of his intention to require the worker
           to work on the said day and of the day which is to be substituted, and
       (ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be canceled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be canceled, whichever is earlier.

(3) Where, in accordance with the Provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Section 53. Compensatory holidays -

(1) Where, as a result of the passing of an order of the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

Section 54. Daily hours -

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day.

Provided that subject to the previous approval of the Chief Inspector the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.

Section 55. Intervals for rest -

(1) The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(2) The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for the reason specified therein, exempt any factory from the provisions of sub-section (1) so however that the total number of hours worked by a worker without an interval does not exceed six.
Section 56. Spread Over -
The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spreadover more than ten and a half hours in any day:
Provided that the Chief Inspector may, for reasons to be specified in writing, increase the spreadover up to twelve hours.

Section 57. Night shifts -
Where a worker in a factory works on a shift which extends beyond midnight,-
(a) for the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;
(b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

Section 58. Prohibition of overlapping shifts -
(1) Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.
(2) The State Government or subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of sub-section (1).

Section 59. Extra wages for overtime -
(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.
(2) For the purposes of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage acquiring through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.
(3) Where any workers in a factory are paid on a piece-rate basis, the time-rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar months during which the overtime work was done, and such time-rates shall be deemed to be the ordinary rates of wages of those workers:
Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time-rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done.
Explanation. - For the purposes of this sub-section in computing the earnings for the days on which the worker actually worked, such allowances including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, shall be included but any bonus or
wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.

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

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

*Explanation 2.* - "Adult consumption unit" means the consumption units of a male above the age of fourteen years, and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6, respectively of one adult consumption unit.

(5) The State Government may make rules prescribing-

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and

(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

**Section 60. Restriction on double employment.** -

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

**Section 61. Notice of periods of work for adults.** -

(1) There shall be displayed and correctly maintained in every factory in accordance with the provisions for sub-section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 55, 56 and 58.

(3) Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in such group.

(5) For each group, which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work.

(6) Where any group is required to work on system of shifts and the relays are to be subject to pre-determined periodical changes or shifts, the manager of the factory shall fix the periods during which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to pre-determined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts, where under the period during which any relay or group may be required to work and the relay which will be working at any time of the day shall be known for any day.
(8) The State Government may prescribe forms of the notice required by sub-section (1) and the manner in which it shall be maintained.

(9) In the case of a factory beginning work after the commencement of this Act, a copy of the notice referred to in sub-section (1) shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

(10) Any proposed change in the system of work in any factory which will necessitate a change in the notice referred to in sub-section (1) shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since that last change.

Section 62. Register of adult workers. -
(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing-
   (a) the name of each adult worker in the factory;
   (b) the nature of his work;
   (c) the group, if any, in which he is included;
   (d) where his group works on shift, the relay to which he is allotted; and
   (e) such other particulars as may be prescribed:
Provided that if the Inspector is of opinion that any muster-roll or register maintained as a part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster-roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

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

(2) The State Government may prescribe the form of the register of adult workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Section 63. Hours of work to correspond with notice under section 61 and register under section 62. -
No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

Section 64. Power to make exempting rule-
(1) The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the Chief Inspector to declare any person, other than a person defined by such rules as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed and the provision of this Chapter, other than the provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared:
Provided that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed the wage limit specified in sub-section (6) of section 1 of the Payment of Wages Act, 1936 (4 of 1936), as amended from time to time, be entitled to extra wages in respect of overtime work under section 59.

(2) The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed-

(a) Of workers engaged on urgent repairs, from the provisions of sections 51, 52, 54, 55 and 56;

(b) Of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of sections 51, 54, 55 and 56;

(c) Of workers engaged in work which is necessarily so intermittent that intervals during which they do not work while on duty, ordinarily amount to more than the intervals for rest required by or under section 55, from the provisions of sections 51, 54, 55 and 56;

(d) Of workers engaged in any work which for technical reasons must be carried on continuously from the provisions of sections 51, 52, 54, 55 and 56;

(e) Of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of section 51 and section 52;

(f) Of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons, from the provisions of section 51, section 52 and section 54;

(g) Of workers engaged in a manufacturing process, which cannot be carried on except at times dependent on the irregular action of natural forces, from the provisions of sections 52 and 55;

(h) Of workers engaged in engine-rooms of boiler-houses or in attending to power-plant or transmission machinery, from the provisions of section 51 and section 52; (i) of workers engaged in the printing of newspapers, who are held up on account of the breakdown of machinery, from the provisions of sections 51, 54 and 56.

Explanation - In this clause the expression "newspapers" has the meaning assigned to it in the Press and Registration of Books Act, 1867 (XXV of 1867);

(j) Of workers engaged in the loading or unloading of railway wagons or lorries or trucks, from the provisions of sections 51, 52, 54, 55 and 561;

(k) Of workers engaged in any work, which is notified by the State Government in the Official Gazette as a work of national importance, from the provisions of section 51, section 52, section 54, section 55 and section 56.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of section 61 which the State Government may deem to be expedient, subject to such conditions as it may prescribe.

(4) In making rules under this section, the State Government shall not exceed, except in respect of exemption under clause (a) of sub-section (2), the following limits of work inclusive of overtime:

(i) the total number of hours of work in any day shall not exceed ten;

(ii) the spread over, inclusive of intervals for rest, shall not exceed twelve hours in any one day:

Provided that the State Government may, in respect of any or all of the categories of workers referred to in clause (d) of sub-section (2), make rules prescribing the circumstances in which, and the conditions subject to which, the restrictions imposed
by clause (i) and clause (ii) shall not apply in order to enable a shift worker to work the whole or part of a subsequent shift in the absence of a worker who has failed to report for duty;

(iii) the total number of hours of work in a week including overtime, shall not exceed sixty;
(iv) the total number of hours of overtime shall not exceed fifty for any one quarter.

Explanation- "Quarter" means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October.

(5) Rules made under this section shall remain in force for not more than five years.

Section 65. Power to make exempting orders -
(1) Where the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is reasonable to require that the periods of work of any adult worker in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The State Government or, subject to the control of the State Government the Chief Inspector may, by written order, exempt on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional pressure of work.

(5) Any exemption granted under sub-section (2) shall be subject to the following conditions, namely:

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

Explanation. - In this sub-section "quarter" has the same meaning as in sub-section (4) of section 64.

Check Your Progress
1. State the sections of Working Hours of Adults.

Section 66. Further restriction on employment of women –

(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:-

(a) no exemption from the provisions of section 54 may be granted in respect of any woman;
(b) no woman shall be required or allowed to work in any factory except between the hours 6 A.M. and 7 P.M.;
• Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M.,

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

(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions, is necessary to prevent damage to, or deterioration in any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

Check Your Progress
1. State the restrictions on employment of women.

Employment of Young Persons

Section 67. Prohibition of employment of young children. -
No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

Section 68. Non-adult workers to carry tokens. -
A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory, unless -

(a) a certificate of fitness granted with reference to him under section 69, is in the custody of manager of the factory, and

(b) such child or adolescent carries while he is at work, a token giving a reference to such certificate.

Section 69. Certificate of fitness –

(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory, in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

(2) The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew-

(a) certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work;

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year and is fit for a full day's work in a factory:
Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

(3) A certificate of fitness granted or renewed under sub-section (2)-
   (a) shall be valid only for a period of twelve months from the date thereof;
   (b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring reexamination of the young person before the expiry of the period of twelve months.

(4) A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

(5) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

(6) Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.

(7) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Section 70. Effect of Certificate of fitness granted to Adolescent -
(1) An adolescent, who has been granted certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69, and who while at work in a factory carries a taken giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VIII;

(1A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.
Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,-
   (i) vary the limits laid down in this sub-section so, however, that no such section shall authorize the employment of any female, adolescent between 10 P.M. and 5 A.M.
   (ii) Grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

Section 71. Working hours for children. -
(1) No child shall be employed or permitted to work in any factory-
   (a) for more than four and a half hours in any day;
   (b) during the night.

Explanation. - For the purpose of this sub-section "night" shall mean a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M.

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

(3) The provisions of section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

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

(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

Section 72. Notice of period of work for children –

(1) There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (2) of section 108, a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.

(3) The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

Section 73. Register of child workers. -

(1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing -
   (a) the name of each child worker in the factory,
   (b) the nature of his work,
   (c) the group, if any, in which he is included,
   (d) where his group works on shifts, the relay to which he is allotted, and
   (e) the number of his certificate of fitness granted under section 69.

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

(2) The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Section 74. Hours of work to correspond with notice under section 72 and register under section 73. -

No child shall be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

Section 75. Power to require medical examination. -

Where an Inspector is of opinion -
   (a) that any person working in factory without a certificate of fitness is a young person, or
that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be shall be, examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

Section 76. Power to make rules. -
The State Government may make rules-
(a) prescribing the forms of certificate of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificate, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;
(b) prescribing the physical standards to be attained by children and adolescents working in factories;
(c) regulating the procedure of certifying surgeons under this Chapter;
(d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

Section 77. Certain other provisions of law not barred. -
The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938

Check Your Progress
1. State the sections of employment of young persons.
2. State the effect of certificate of fitness granted to adolescent.
3. State the power to require medical examination working in a factory.
4. Enumerate the powers given by State Government to make rules.

Annual Leave with Wages

Section 78. Application of Chapter.-
(1) The provisions of this Chapter shall not operate to prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement including settlement or contract of service:
Provided that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourable therein, the provisions of sections 79 to 82, so far as may be, shall apply.
Section 79. Annual leave with wages.-

(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of -
   (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;
   (ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

Explanation 1. - For the purposes of this sub-section-
   (a) any days of lay-off, by agreement or contract or as permissible under the standing orders;
   (b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and
   (c) the leave earned in the year prior to that in which the leave is enjoyed;

   Shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.

Explanation 2. –

(1) The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.
(2) A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (t) or, as the case may be, clause (ii) of sub-section (1) if he has worked for two-thirds of the total number of days in the remainder of the calendar year.
(3) If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in sub-section(1) or sub-section (2) making him eligible to avail of such leave, and such payment shall be made -
   (i) where the worker is discharged or dismissed or quits employments before the expiry of the second working day from the date of such discharge, dismissal or quitting; and
   (ii) where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.
(4) In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.
(5) If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year:

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child:

Provided further that a worker, who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down in sub-sections (8) and (9) or in contravention of sub-section (10) shall be entitled to carry forward the leave refused without any limit.

(6) A worker may at any time apply in writing to the manager of a factory not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year:

Provided that the application shall be made not less than thirty days before the date on which the worker wishes his leave to begin, if he is employed in a public utility service as defined in clause (n) of section 2 of the Industrial Disputes Act, 1947 (XIV of 1947):

Provided further that the number of times in which leave may be taken during any year shall not exceed three.

(7) If a worker wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (6); and in such a case wages as admissible under section 81 shall be paid not later than fifteen days, or in the case of a public utility service not later than thirty days from the date of the application for leave.

(8) For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee for the factory constituted under section 3 of the Industrial Disputes Act, 1947 (XIV of 1947), or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the grant of the leave allowable under this section may be regulated.

(9) A scheme lodged under sub-section (8) shall be displayed at some conspicuous and convenient place in the factory and shall be in force for a period of twelve months from the date on which it comes into force, and may thereafter be renewed with or without modification for a further period of twelve months at a time, by the manager in agreement with the Works Committee or a similar Committee, or as the case may be, in agreement with the representatives of the workers as specified in sub-section (8), and a notice of renewal shall be sent to the Chief Inspector before it is renewed.

(10) An application for leave which does not contravene the provisions of sub-section (6) shall not be refused, unless refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9).
(11) If the employment of a worker who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable under section 80 in respect of the leave not taken, and such payment shall be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination, and where a worker who quits his employment, on or before the next pay day.

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

Section 80. Wages during leave periods.-
(1) For the leave allowed to him under section 78 or section 79, as the case may be, a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the day on which he actually worked during the months immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of advantage accruing through the concessional sale to the worker of food grains and other articles: Provided that in the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles.]

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

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

Explanation 2. - "Adult consumption unit" means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years, and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

(3) The State Government may make rules prescribing -
(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and
(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

Section 81. Payment in advance in certain cases. -
A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child, shall, before his leave begins, be paid the wages due for the periods of the leave allowed.

Section 82. Mode of recovery of unpaid wages.-
Any sum required to be paid by an employer, under this Chapter but not paid by him, shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (IV of 1936).

Section 83. Power to make rules.-
The State Government may make rules directing managers of factories to keep registers containing such particulars as may be prescribed and requiring the registers to be made available for examination by Inspectors.

Section 84. Power to exempt factories.-
Where the State Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion, are not less favorable than those for which this Chapter makes provisions, it may by written order, exempt the factory from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.

Explanation. - For the purposes of this section, in deciding whether the benefits which are provided for by any leave rules are less favourable than those for which this Chapter makes provision, or not, the totality of the benefits shall be taken into account.

Check Your Progress
1. State the sections of Annual Leave with Wages.

Special Provisions

Section 85. Power to apply the Act to certain premises –

(1) The State Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that
(i) the number of persons employed therein is less than ten, if working with the aid of power, and less than twenty if working without the aid of power, or
(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:
Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, to be a worker.

Explanation. - For the purpose of this section "owner" shall include a lessee or mortgagee with possession of the premises.
Section 86. Power to exempt public institution-

The State Government may exempt, subject to such conditions as it may consider necessary, any workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education training, research or information, from all or any of the provisions of this Act:

Provided that no exemption shall be granted from the provisions relating to hours of work and holidays unless the persons having the control of the institution submit, for the approval of the State Government, a scheme of the regulation of the hours of employment, intervals for meals, and holidays of the persons employed in or attending the institution or who are inmates for the institution, and the State Government is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of the Act.

Section 87. Dangerous operations

Where the State Government is of opinion that any manufacturing process or operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may order or make rules applicable to any factory or class or description of factories in which manufacturing process or operation is carried on -

(a) specifying the manufacturing process or operation and declaring it to be dangerous;
(b) prohibiting or restricting the employment of women, adolescents or children in the manufacturing process or operation;
(c) providing for the periodical medical examination for persons employed or seeking to be employed, in the manufacturing process or operation, and prohibiting the employment of persons not certified as fit for such employment and requiring the payment by the occupier of the factory of fees for such medical examination;
(d) providing for the protection of all persons employed in the manufacturing process or operation or in the vicinity of the places where it is carried on;
(e) prohibiting, restricting or controlling the use of any specified materials or processes in connection with the manufacturing process or operation:
(f) requiring the provision of additional welfare amenities and sanitary facilities and the supply of protective equipment and clothing, and laying down the standards thereof, having regard to the dangerous nature of the manufacturing process or operation;

Section 87A. Power to prohibit employment on account of serious hazard-

(1) Where it appears to the Inspector that conditions in a factory or part thereof are such that they may cause serious hazard by way of injury or death to the persons employed therein or to the general public in the vicinity, he may, by order in writing to the occupier of the factory, state the particulars in respect of which he considers the factory or part thereof to be the cause of such serious hazard and prohibit such occupier from employing any person in the factory or any part thereof other than the minimum number of persons necessary to attend to the minimum tasks till the hazard is removed.

(2) Any order issued by the Inspector under sub-section (1) shall have effect for a period of three days until extended by the Chief Inspector by a subsequent order.

(3) Any person aggrieved by an order of the Inspector under sub-section (1), and the Chief Inspector under sub-section (2), shall have the right to appeal to the High Court.
(4) Any person whose employment has been affected by an order issued under sub-section (1), shall be entitled to wages and other benefits and it shall be the duty of the occupier to provide alternative employment to him wherever possible and in the manner prescribed.

(5) The provisions of sub-section (4) shall be without prejudice to the rights of the parties under the Industrial Disputes Act, 1947 (14 of 1947).

Section 88. Notice of certain accident-
(1) Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, in such form and within such time, as may be prescribed.

(2) Where a notice given under sub-section (1) relates to an accident causing death, the authority to whom the notice is sent shall make an inquiry into the occurrence within one month of the receipt of the notice or if there is no such authority, the Chief Inspector cause the Inspector to make an inquiry within the said period.

(3) The State Government may make rules for regulating the procedure inquires under this section.

Section 88A. Notice of certain dangerous occurrences.-
Where in a factory any dangerous occurrence of such nature as may be prescribed, occurs, whether causing any bodily injury or disability, or not, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

Section 89. Notice of certain diseases.-
(1) Where any worker in a factory contacts any disease specified in the Third Schedule the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

(2) If any medical practitioner attends on a person, who is or has been employed in a factory, and who is, or is believed by the medical practitioner to be suffering from any disease specified in the Third Schedule the medical practitioner shall without delay send a report in writing to the office of the Chief Inspector stating -
(a) the name and full postal address of the patient,
(b) the disease from which he believes the patient to be suffering, and
(c) the name and address of the factory in which the patient is, or was last employed.

(3) Where the report under sub-section (2) is confirmed to the satisfaction of the Chief Inspector, by the certificate of the certifying surgeon or otherwise, that the person is suffering from a disease specified in the Third Schedule, he shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land revenue from the occupier of the factory in which the person contacted the disease.

(4) If any medical practitioner fails to comply with the provisions of sub-section (2), he shall be punishable with fine which may extend to one thousand rupees.

(5) The Central Government may, by notification in the Official Gazette, and to or alter the Third Schedule and any such addition or alteration shall have effect as if it had been made by this Act.
Section 90. Power to direct inquiry into cases of accident or disease.-

(1) The State Government may, if it considers it expedient so to do, appoint a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in the Third Schedule has been, or is suspected to have been, contacted in a factory, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(2) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects and may also, so far as may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the inquiry to furnish any information, shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code (XLV of 1960).

(3) The person holding an inquiry under this section shall make a report to the State Government stating the cause of the accident, or as the case may be, disease, and any attendant circumstances, and adding any observations which he or any of the assessors may think fit to make. (4) The State Government may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom.

(5) The State Government may make rules for regulating the procedure of inquires under this section.

Section 91. Power to take samples.-

(1) An Inspector may at any time during the normal working hours of a factory, after informing the occupier or manager of the factory or other person for the time being purporting to be in-charge of the factory, take, in the manner hereinafter provided, a sufficient sample of any substance used or intended to be used in the factory, such use being -

(a) in the belief of the Inspector, in contravention of any of the provisions of this Act or the rules made there under, or
(b) in the opinion of the Inspector, likely to cause bodily injury to, or injury to the health of, workers in the factory.

(2) Where the Inspector takes a sample under sub-section (1), he shall, in the presence of the person informed, under that sub-section unless such person wilfully absents himself, divide the sample into three portions and effectively, seal and suitably mark them, and shall permit such person to add his own seal and mark thereto.

(3) The person informed as aforesaid shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section.

(4) The Inspector shall-

(a) Forthwith give one portion of the sample to the person informed under sub-section (1);
(b) Forthwith send the second portion to a Government analyst for analysis and report thereon;
(c) Retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.
(5) Any document purporting to be a report under the hand of any Government analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceeding instituted in respect of the substance.

Section 91A. Safety and occupational health surveys.-

(1) The Chief Inspector, or the Director-General of Factory Advice Service and Labour Institutes, or the Director-General of Health Services, to the Government of India, or such other officer as may be authorised in this behalf by the State Government or the Chief Inspector or the Director-General of Factory Advice Service and Labour Institutes or the Director-General of Health Services, may, at any time during the normal working hours of a factory, or at any other time as is found by him to be necessary, after giving notice in writing to the occupier or manager of the factory or any other person who for the time being purports to be in-charge of the factory, undertake safety and occupational health surveys and such occupier or manager or other person shall afford all facilities for such survey, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

(2) For the purpose of facilitating surveys under sub-section (1) every worker shall, if so required by the person conducting the survey, present himself to undergo such medical examinations as may be considered necessary by such person and furnish all information in his possession and relevant to the survey.

(3) Any time spent by a worker for undergoing medical examination or furnishing information under sub-section (2) shall, for the purpose of calculating wages and extra wages for overtime work, be deemed to be time during which such worker worked in the factory.

Explanation. - For the purposes of this section, the report, if any; submitted to the State Government by the person conducting the survey under sub-section (1) shall be deemed to be a report submitted by an Inspector under this Act.

Check Your Progress
1. State the sections of special provisions.
2. Enumerate the powers to apply the Act to certain premises.
3. State the powers to exempt public institution.
4. State the powers to prohibit employment on account of serious hazard.
5. State the powers to direct inquiry into cases of accident or disease.

Penalties and Procedure

Section 92. General penalty for offences-

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier or manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention is continued after conviction, with as further fine which may extend to one thousand rupees for each day on which the contravention is so continued.

Provided that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the
fine shall not be less than twenty-five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

Explanation - in this section and in section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of and phalanges of the hand or foot.

Section 93. Liability of owner of premises in certain circumstances –

(1) Where in any premises separate building are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation.

(2) The Chief Inspector shall have, subject to the control of the State Government, power to issue order, to the owner of the premises in respect of the carrying out of the provisions of sub-section (1).

(3) Where in any premises, independent or self-contained floor or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he was the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of -

(i) latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for those purpose in concerned;

(ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;

(iii) safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages;

(iv) precaution, in case of fire;

(v) maintenance of hoists and lifts; and

(vi) maintenance of any other common facilities provided in the premises.

(4) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (3).

(5) The provisions of sub-section (3) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupier, for use as separate factories:

Provided that the owner shall be responsible also for complying with the requirements relating to the provisions and maintenance of latrines, urinals and washing facilities.

(6) The Chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 46 or section 48.

(7) Where in any premises, portions of a room or a shed are leased to different occupiers, for use as separate factories; the owner of the premises shall be liable for any contravention of the provisions of -

(i) Chapter III, except sections 14 and 15;

(ii) Chapter IV, except sections 22, 23, 27, 34, 35 and 36:
Provided that in respect of the provisions of sections 21, 24 and 32 the owner's liability
shall be only in so far as such provisions relate to things under his control:
Provided further that the occupier shall be responsible for complying with the
provisions of Chapter IV in respect of plant and machinery belonging to or supplied by
him;
(iii) Section 42.
(8) The Chief Inspector shall have, subject to the control of the State Government, power to
issue orders to the owner of premises in respect of the carrying out of the provisions of sub-
section (7).
(9) In respect of sub-sections (5) and (7), while computing for the purposes of any of the
provisions of this Act the total number of workers employed, the whole of the premises
shall be deemed to be a single factory.

Section 94. Enhanced penalty after previous conviction.-
(1) If any person who has been convicted of any offence punishable under section 92 is again
found guilty of an offence involving a contravention of the same provision, he shall be
punishable on a subsequent conviction with imprisonment for a term which may extend to
three years or with fine, which shall not be less than ten thousand rupees but which may
extend to two lakh rupees or with both;
Provided that the Court may, for any adequate and special reasons to be mentioned in the
judgment, impose a fine of less than ten thousand rupees:
Provided further that where contravention of any of the provisions of Chapter IV or any rule
made thereunder or under section 87 has resulted in an accident causing death or serious
bodily injury, the fine shall not be less than thirty five thousand rupees in the case of an
accident causing death and ten thousand rupees in the case of an accident causing serious
bodily injury.
(2) For the purpose of sub-section (1), no cognizance shall be taken of any conviction made more
than two years before the commission of the offence for which the person is subsequently
being convicted.

Section 95. Penalty for obstructing inspector.-
Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or
under this Act, or fails to produce on demand by an Inspector any register or other documents
kept in his custody in pursuance of this Act or of any rules made thereunder, or conceals or
prevents any workers, in a factory from appearing before, or being examined by, an inspector,
shall be punishable with imprisonment for a term which may extend to six months or with fine
which may extend to ten thousand rupees or with both.

Section 96. Penalty for wrongfully disclosing results of analysis under section 91.-
Whoever, except in so far as it may be necessary for the purposes of a prosecution for any
offence punishable under this Act, publishes or discloses to any person the results of an analysis
made under section 91, shall be punishable with imprisonment for a term, which may extend to
six months or with fine, which may extend to ten thousand rupees or with both.

Section 96A. Penalty for contravention of the provisions of sections 41B, 41C and 41H.-
(1) Whoever fails to comply with or contravenes any of the provisions of sections 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues, after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

Section 97. Offences by workers.-

(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.

(2) Where a worker is convicted of an offence punishable under sub-section (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

Section 98. Penalty for using false certificate of fitness.-

Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allow it to be used, or an attempt to use it to be made by, another person, shall be punishable with imprisonment for a term, which may extend to two months or with fine which may extend to one thousand rupees or with both.

Section 99. Penalty for permitting double employment of child.-

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

Section 100- Omitted by Act 20 of 1987

Section 101. Exemption of occupier or manager from liability in certain cases.-

Where the occupier or manager of a factory is charged with an offence punishable under this Act he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court-

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,
that other person shall be convicted of the offence and shall be liable to the like punishment as if he was the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be, discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as afore said, the occupier or manager of the factory, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support, shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor:

Provided further that, if the person charged as the actual offender by the occupier or manager, cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved, convict the occupier or manager.

Section 102. Power of court to make orders.-

(1) Where the occupier or manager of a factory is convicted of an offence punishable under this Act the court may, in addition to awarding any punishment, by order in writing require him, within a period specified in the order (which the court may, if it thinks fit and on application in such behalf, from time to time extend) to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the occupier or manager of the factory, as the case may be, shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefor by the court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or both to undergo such imprisonment and to pay such fine as aforesaid.

Section 103. Presumption as to employment.-

If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory.

Section 104. Onus as to age.-

(1) When any act or omission would, if a person was under a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court prima facie under such age, the burden shall be on the accused to prove that such person is not under such age.

(2) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that worker.

Section 104A. Onus of proving limits of what is practicable, etc. -
In any proceeding for an offence for the contravention of any provision of this Act or rules made thereunder consisting of a failure to comply with a duty or requirement to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable or as the case may be, all practicable measures were taken to satisfy the duty or requirement.

Section 105. Cognizance of offences.-
(1) No court shall take cognizance of any offence under this Act except on complaint by, or which previous sanction in writing of, an Inspector.
(2) No court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

Section 106. Limitation of prosecution.-
No court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which he alleged commission of the offence, came to the knowledge of an Inspector. Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

Explanation. - For the purposes of this section,-
(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;
(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory the period of limitation shall be computed from the date on which the time so granted or extended expired.

Section 106A. Jurisdiction of a court for entertaining proceedings, etc., for offence.-
For the purposes of conferring jurisdiction on any court in relation to an offence under this Act or the rules made thereunder in connection with the operation of any plant, the place where the plant is for the time being situate, shall be deemed to be the place where such offence has been committed.

Check Your Progress
1. State the section of Penalties and Procedure.
2. State the penalty for obstructing inspector.
3. State the penalty for using false certificate of fitness.
4. State the penalty for permitting double employment of child.
5. State the exemptions of occupier or manager from liability.
6. Explain the Limitations of prosecution.

Supplemental

Section 107 Appeals.-
(1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Act or the occupier of the factory may, within thirty days of the service
of the order, appeal against it to the prescribed authority, and such authority may subject to 
rules made in this behalf by the State Government, confirm, modify or reverse the order.

(2) Subject to rules made in this behalf by the State Government (which may prescribe classes of 
appeals which shall not be heard with the aid of assessors), the appellate authority may, or if 
so required in the petition of appeal shall, hear the appeal with the aid of assessors, one of 
whom shall be appointed by the appellate authority and the other by such body representing 
the industry concerned as may be prescribed:
Provided that if no assessor is appointed by such body before the time fixed for hearing the 
appeal, or if the assessor so appointed fails to attend the hearing at such time, the appellate 
authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to 
hear the appeal without the aid of such assessor or if it thinks fit, without the aid of any 
assessor.

(3) Subject to such rules as the State Government may make in this behalf and subject to such 
conditions as to partial compliance or the adoption of temporary measures as the appellate 
authority may in any case think fit to impose, the appellate authority may, if it thinks fit, 
suspend the order appealed against, pending the decision of the appeal.

Section 108. Display of notices.-
(1) In addition to the notices required to be displayed in any factory by or under this Act, there 
shall be displayed in every factory a notice continuing such abstracts of this Act, and of the 
rules made thereunder as may be prescribed and also the name and address of the Inspector 
and the certifying surgeon.

(2) All notices required by or under this Act to be displayed in a factory shall be in English and 
in a language understood by the majority of the workers in the factory, and shall be displayed 
at some conspicuous and convenient place at or near the main entrance to the factory, and 
shall be maintained in a clean and legible condition.

(3) The Chief Inspector may, by order in writing serve on the manager of any factory, require 
that there shall be displayed in the factory any other notice or poster relating to the health, 
safety or welfare of the workers in the factory.

Section 109. Service of notices.-
The State Government may make rules prescribing the manner of the service of orders under this 
Act on owners, occupiers or managers of factories.

Section 110. Returns-
The State Government may make rules requiring owners, occupiers or managers of factories to 
submit such returns, occasional or periodical, as may in its opinion be required for the purpose of 
this Act,

Section 111. Obligations of workers.-
(1) No worker in a factory -
(a) shall wilfully interfere with or misuse any appliance, convenience or other things provided 
in a factory for the purposes of securing the health, safety or welfare of the worker therein;
(b) shall wilfully and without reasonable cause do anything likely to endanger himself or 
others; and
(c) shall wilfully neglect to make use of any appliances or other things provided in the factory for the purposes of securing the health or safety of the workers therein.

(2) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Section 111A. Right of workers, etc.-
Every worker shall have the right to -
(i) obtain from the occupier, information relating to worker's health and safety at work,
(ii) get trained within the factory wherever possible, or, to get himself sponsored by the occupier for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work,
(iii) Represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health or safety in the factory.

Section 112. General power to make rules.-
The State Government may make rule providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the provisions of this Act.

Section 113. Powers of Centre to give directions.-
The Central Government may give directions to State Government as to the carrying into execution of the provisions of this Act.

Section 114. No charge for facilities and conveniences.-
Subject to the provisions of section 46 no fee or charge shall be realized from any worker in respect of any arrangement or facilities to be provided, or any equipment or appliances to be supplied by the occupier under the provisions of this Act.

Section 115. Publication of rules.-
(1) All rules made under this Act shall be published in the official Gazette and shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall be not less than forty-five days from the date on which the draft of the proposed rules was published.
(2) Every rule made by the State Government under this Act shall be laid, as soon as may be, after it is made, before the State Legislature.

Section 116. Application of Act to Government factories.-
Unless otherwise provided this Act shall apply to factories belonging to Central or any State Government.

Section 117. Protection of the persons acting under this Act.-
No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Section 118. Restriction on disclosure of information.-
(1) No Inspector shall, while in service or after leaving the service disclose otherwise than in connection with execution, or for the purposes, of this Act, any information relating to any manufacturing of commercial business or any working process, which may come to his knowledge in the course of his official duties.

(2) Nothing in sub-section (1) shall apply to any disclosure of information made with the previous consent in writing of the owner of such business or process or for the purposes of any legal proceeding (including arbitration) pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise or, for the purposes of any report of such proceedings as aforesaid.

(3) If any Inspector contravenes the provisions of sub-section (1) he shall be punishable with imprisonment for a term, which may extend to six months or with fine, which may extend to one thousand rupees, or with both.

Section 118A. Restriction on disclosure of information.-
(1) Every Inspector shall treat as confidential the source of any complaint brought to his notice on the breach of any provision of this Act.

(2) No Inspector shall, while making an inspection under this Act, disclose to the occupier, manager or his representative that the inspection is made in pursuance of the receipt of a complaint:
Provided that nothing in this sub-section shall apply to any case in which the person who has made the complaint has consented to disclose his name.

Section 119. Act to have effect notwithstanding anything contained in Act 37 of 1970-
The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Contract Labour (Regulation and Abolition) Act, 1970 or any other law for the time being in force.

Section 120. Repeal and savings-
Provided that anything done under the said enactments, which could have been done under this Act, if it had been in force, shall be deemed to have been done under this Act.
In addition to the above sections there are 3 schedule in this act:
Schedule 1 contains list of industries involving hazardous processes
Schedule 2 is about permissible level of certain chemical substances in work environment.
Schedule 3 consists of list of notifiable diseases.

The Factories Act, 1948 (Act No. 63 of 1948), as amended by the Factories (Amendment) Act, 1987 (Act 20 of 1987)), serves to assist in formulating national policies in India with respect to occupational safety and health in factories and docks in India. It deals with various problems concerning safety, health, efficiency and well-being of the persons at work places.

The Act has been amended from time to time. For latest amendment visit the link provided:
http://labour.gov.in/latest-notificationamendments

Check Your Progress
1. State the obligations of workers in a factory.
2. Explain the restrictions on disclosure of information about factory.

Case let on Shifting of Weekly off (Factories Act):

BK Manufacturers Ltd decided to shift their weekly off to Tuesday. The daily normal working hours of the workmen are 8 hrs on all days except Sunday, when working hours are 4-3/4 hrs only. If piece rated workers were required to work beyond the aforesaid normal working hours, they were not given overtime payment for work up to 48hrs in a week.

a) Is this a contravention to the provision in the Factories act?
b) Is the overtime payment justified?

7.3 The Shops and Establishments Act, 1953

The Shops and Establishment Act is a state legislation and each state has framed its own Act and Rules for the Act. The object of this Act is to provide statutory obligation and rights to employees and employers in the unauthorized sector of employment, i.e., shops and establishments. This Act is applicable to all persons employed in an establishment with or without wages, except the members of the employers’ family.

This Act lays down the following rules:

- Working hours per day and week.
- Guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work.
- Employment of children, young persons and women.
- Rules for annual leave, maternity leave, sickness and casual leave, etc.
- Rules for employment and termination of service.

Check Your Progress
1. Explain The Shops And Establishments Act, 1953.

7.4 The Contract Labour (Regulation and Abolition) Act, 1970

This legislation regulates the employment of contract labourers in establishments and by contractors. The Rules for implementing the provisions of the Act vary from state to state.

Applicability of the Act

An establishment which engages 20 or more persons or engaged on any day of the preceding 12 months as contract labourers come under the purview of the legislation. The legislation is also applicable to contractors who employ workmen as contract labourers, or who employed on any day of the preceding 12 months.

Authorities under the Act
i. **Registering officer of the area** – The Registering Officer of the area is the person to whom application shall be made for the grant of certificate of registration, for the purpose of engaging contract labourers. Any change in the establishment shall be intimated to the Registering officer within 30 days of change, and an amendment to the certificate shall be made by applying to him.

ii. **Licensing officer of the area** – The Licensing officer is the person from whom a contractor shall obtain license for the purpose of engaging contractors. He is entitled to make such investigation as required in respect of the application received from a contractor. (Section 12)

iii. **Inspectors** - Under Section 28 Inspectors shall be appointed for a particular area the local limits for which shall be defined. He has the power to enter at all reasonable hours any place where contract labour takes place, for the purpose of verifying registers, records or notices, to examine persons, to collect information, to seize or take copies of registers, records of wages, or notices, and to exercise such other powers as is prescribed.

**Main Provisions of Contract Labour Act 1970**

- Every principal employer who intends to employ contract Labor in his Establishment/Factory shall make an application in specified form to the concerned authority of the area in which the establishment sought to be registered is located.
- Every application by a contractor for the grant of a License shall be made triplicate in specified form to the licensing officer of the area in which the establishment locates, In relation to which he is the contractor, and every application for the grant of a Licence shall be accompanied by a certificate by the principal employer in specified form to the effect that the Applicant has been employed by him as a contractor in relation to his establishment.
- Every contractor shall apply to the licensing officer for renewal of the license in specified form in triplicate and shall be made not less than thirty days before the date on which licence expires along with the prescribed fee.
- Every contractor shall display the abstract of the Act, and rules in English and in the language spoken by the majority of workers in such form as may be approved by the labour commissioner.
- Notices showing of the rate of wages, hours of work, wage period, dates of payment of unpaid wages shall be displayed in English and in the local language understood by the majority of the workmen.

**Check Your Progress**


   *The Act has been amended from time to time. For latest amendment visit the link provided: [http://labour.gov.in/latest-notificationamendments]*

**7.5 Summary**

The Welfare provisions under factories Act 1948 ensures that every factory shall provide and maintain facilities for the welfare of the workers. From readily accessible first-aid boxes or
cupboards equipped with the prescribed contents to the canteen facilities and much more. There are other provisions related to the working hours, weekly offs and spread overs for the workers and the employment of Women and Young persons.

The shop and Establishments Act, 1953 is a state legislation. This act restricts timing of opening and closing hours of Shops and Commercial Establishment. It keeps control on daily and weekly hours of work of the employees, interval for rest, Spread over. It provide overtime wages, paid holiday and Leave with wages to employees.

The Contract Labour (Regulation and Abolition) Act, is an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected there with. It is primarily concerned about the exploitation of workers under the contract labour system.

7.6 Key Terms

"Principal Employer" means-- (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf, (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948) the person so named, (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named, (iv) in any other establishment, any person responsible for the supervision and control of the establishment.

"Workman" means any person employed in or in connection with the work of any establishment to do any skilled, semiskilled or un-skilled manual, supervisory, or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-- (A) who is employed mainly in a managerial or administrative capacity; or (B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per annum, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or (C) who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the Principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

7.7 Review Questions
Q1. What are the working hours for children and woman in a factory? Under the factories act, 1948, what are the main provisions of restrictions regarding the employment of young persons? How the register of children workers be maintained in the factory?

Q2. What are the basic objectives of the The Shops and Establishment act?

Q3. Who are the major authorities as per The contract labour (regulation and abolition) Act, 1970

7.8 Further Reading and References

- P.N Singh& Neeraj Kumar, Employee Relations Management, Pearson India
UNIT 8

INDUSTRIAL DISPUTES ACT 1947

8.0 Introduction
8.1 Unit Objectives
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8.0 Introduction

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

The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavorable to disputes than with machinery for their settlement.

The next stage in the development of industrial law in this country was taken under the stress of emergency caused by the Second World War. Rule 81-A of the Defense of India Rules was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. This rule also put a blanket ban on strikes which did not arise out of genuine trade disputes.

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

8.1 Unit Objectives

After reading this unit, you should be able to:

- Meaning of Industrial disputes & the important aspects of Industrial Disputes Act, 1947
- The Prohibition of Strikes and Lockout
- The Provisions for Lay-Off and Retrenchment as per the act
- Dispute settlement authorities under the act
8.2 Definition of Industrial Disputes

An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions. When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other. The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.

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

Check Your Progress
1. Define the term Industrial Disputes.

8.2.1 Objective of the Act
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 negotiations.

The Act also lays down:
(a) The provision for payment of compensation to the Workman on account of closure or lay off or retrenchment.
(b) The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
(c) Unfair labour practices on part of an employer or a trade union or workers.

Check Your Progress
1. State the objectives of the Industrial Disputes Act.

8.2.2 Applicability
The Industrial Disputes Act extends to whole of India and applies to every 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 > 1600 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.

8.2.3 Definitions
**Appropriate Government [Sec. 2(a)]:** Appropriate Government means the Central Government in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, any industry carried on by a Railway Company, any controlled industry specified by the Central Government, The Unit Trust of India. Corporations under the Central Statutes, Banking company, Insurance company, Mines. Oil field, Cantonment board, Major ports, etc. In relation to any other industrial dispute, the appropriate Government is the State Government.

**Award [Sec 2 (b)]** means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

**Industry [Sec. 2(j)]:** Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

**Industrial Dispute [Sec. 2(k)]:** means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

**Settlement [Sec. 2(p)]:** Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between an employer and a workman arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised by the Appropriate Government and the Conciliation Officer.

**Wages [Sec. 2(rr)]:** Wages mean all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied were fulfilled, be payable to a workman in respect of his employment or of the work done in such an employment and includes:

(i) Such allowances (including dearness allowance) as the workman is for the time being entitled to;
(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
(iii) Any traveling concession. But the following are excluded:

(a) Any bonus.
(b) Any contribution paid or payable to any pension fund or provident fund, or for the benefit of the workman under any law for the time being in force.
(c) Any gratuity payable on the termination of his service.
2(n) "Public utility service" means -

(i) any railway service or any transport service for the carriage of passengers or goods by air;
(ii) any service in, or in connection with the working of, any major port or dock;
(iii) any postal, telegraph or telephone service;
(iv) any industry which supplies power, light or water to the public;
(v) any system of public conservancy or sanitation;
(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification.

8.2.4 Dismissal, Etc., Of an Individual Workman to Be Deemed To Be an Industrial Dispute. [Sec 2A]

Difference in between the workman and his employer connected arising out of following activities shall be deemed to the industrial dispute.
- Dismissal of workman
- Discharge of workman
- Retrenchment of the workman
- Termination of workman from his services

[Sec 2A (2)]
Workman having the disputes can make a application to the conciliation officer to settle the dispute. After the expiry of 3 months of time conciliation officer fails to settle the dispute, workman can make a direct application to labour courts or tribunals for adjudication.

[Sec 2A (3)]
Workman should make an application to labour courts or tribunals for adjudication before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination of service of workman.

Check Your Progress
1. Define the term Appropriate Government.
2. Define the term Award.
3. State the meaning of Public utility service.

8.3 Strikes and Lockouts

The Act prohibits strikes and lockouts subject to the following terms:
Strike [Sec. 2 (q)]: Strike means "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 number of persons who are or have been so employed, to continue to work or to accept employment". Mere stoppage of work does not come within the meaning of strike unless it can be shown that such stoppage of work was a concerted action for the enforcement of an industrial demand.

Procedure of Strikes

According to Sec. 22(1) No person employed in a public utility service shall go on strike in breach of contract- 

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

Lockout [Sec. 2(1)]: Lockout means "the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him". Lockout is the antithesis of strike.

1. It is a weapon of the employer while strike is that of the workers.
2. Just as a strike is a weapon in the hands of the workers for enforcing their industrial demands, lockout is a weapon available to the employer to force the employees to see his points of view and to accept his demands.
3. The Industrial Dispute Act does not intend to take away these rights.
4. However, the rights of strikes and lockouts have been restricted to achieve the purpose of the Act, namely peaceful investigation and settlement of the industrial disputes.

Procedure of Lockouts

According to Sec. 22(2) 

No person employed in a public utility service shall go on Lockout in breach of contract- 

(a) without giving to the employer notice of Lockout, as hereinafter provided, within six weeks before lockout; or 
(b) within fourteen days of giving such notice; or 
(c) before the expiry of the date of lockout specified in any such notice as aforesaid; or 
(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
Notice of lock-out or strike

According to Sec. 22 (3) the notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service.

Prohibits an employer from declaring a lockout in any of the eventualities mentioned therein [Section 22(2) of the Industrial Disputes Act 1947] No employer carrying on any public utility service shall lock-out any of his workman

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
(b) within fourteen days of giving such notice; or
(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Legal strikes and Lockouts [Section 24 of ID Act 1947]

A strike or a lockout shall be illegal, if employers or worker who ever disobeys or fails to follow [Sec 22, 23, 10(3), 10-A (4-A)] for commencing strikes or lockout, those strikes and lockout are said to illegal.

Section 22 Prohibition of strikes and Lockouts (Notice is mandatory in public utility services)
Sec 23 General prohibition of strikes and Lockouts (if said matter is pending before board, a Labour Court, Tribunal or national tribunal or arbitrator as mention under Sec 10 & 10A or settlement or about is in operation)
Sec 10 Reference of disputes to Boards, courts or Tribunals
Sec 10A Voluntary reference of disputes to arbitration

(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.

General prohibition of strikes and lock- outs [Section 23] of The Industrial Disputes Act, 1947, General prohibition of strikes and lock- outs.- 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] [10A. Voluntary reference of disputes to arbitration]
(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.

No notice of strike and lockout is necessary in industrial establishments except in public utility services.

_Such establishments are:_
1. Industrial establishments in which less than 50 workmen are employed, on an average per working day.
2. Industrial establishments which are of a seasonal character and in which work is performed only intermittently.

Employees employed in the above said establishments do not have right for laid-off compensation. However if there is any agreement between employer and employee for that purpose or on the grounds of social justice, laid-off competition can be paid.

Case: In _South India Corporation Ltd. v. All Kerala Cashewnut Factory Workers’ Federation_ the Court held that if any establishment is not covered within the scope of this Chapter V-A, the Tribunal has no right to grant relief on the basis of any fanciful notions of social justice.

Except above said industrial establishments, all other industrial establishments (50 workmen and above industrial establishments which are not of seasonal character) have provisions relating to lay off of the employees by the employer.

**Check Your Progress**
1. Enumerate the procedure of strikes.
2. State the meaning of Lockout.
3. Enumerate the Procedure of Lockouts.

**Right of Compensation by workmen laid-off**

_[Right of workmen laid-off for compensation] Industrial Disputes Act,1947 Section 25-C_ workman has right to lay-off compensation subject to the following conditions, they are:
1. Workman name should be borne on muster rolls of the establishment and he/she is not a badli workman or a casual workman; and
2. The workman should have completed not less than one year continuous service as defined under Section 25-B; and
3. The workman should have laid-off, continuously or intermittently;
4. Then the workman shall be entitled to lay-off compensation for all days during which he was so laid-off;
5. However, the workman shall not be paid lay-off compensation for such weekly holidays as may intervene the period of lay-off.
6. The lay-off compensation is equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him, if he had not been so laid off.

Explanation: "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this. Section, if he has completed one
year of continuous service in the establishment.

Case: In *Vijay Kumar Mills v. Labour Court*, the Madras High Court held that the badli workman is one whose name is not borne on muster rolls of the establishment. If his name is found on the muster roll, even if he is a badli workman, he is entitled to lay-off compensation.

Maximum days allowed to Layoff of employee by employer

According to section 25C of Industry and dispute Act 1947, maximum days allowed to Layoff of employee by employer is 45 days, for those days, employee who is laid-off is entitled for compensation equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him, had he not been so laid off.

However, if this contingency is prolonging beyond a reasonable time, say 45 days, it would be matter of serious concern both to the employer and to the workmen because both of them are put to a loss of 50% wages i.e. The employer is required pay lay-off compensation without extracting work from workmen and workmen too, would be losing 50% wages which he would have earned had he not been so laid-off. Therefore the parties can enter into an agreement not to continue lay-off after a period of 45 days in a year.

Compulsory permission from competent authority by employer to lay off of workmen

Section 25M of Industrial Dispute act 1947

For Industrial establishments in which not less than 100 workmen are employed, on an average per working day and are of not being seasonal character and in which work is performed only intermittently, have to seek prior permission from competent authority by the employer to layoff workman. If the employer does not apply to seek prior permission or where such permission is refused by the competent authority specified above, to effect lay-off, such lay-off shall be considered as illegal and the workmen laid-off shall be entitled to all benefits as if they have not been laid-off.

Can an employer avoid the lay-off compensation?

Section 25A of Industrial Dispute act 1947

**Following establishments can avoid lay off compensation according to the Section 25E**
1. Industrial establishments in which less than 50 workmen are employed, on an average per working day, but not to industrial establishments in which more than 100 workmen are employed.
2. Industrial establishments which are of a seasonal character and in which work is performed only intermittently.

Workmen not entitled to compensation in certain cases [Section 25E] of Industrial Dispute act 1947
(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;
(ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;
(iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

Check Your Progress
1. Enumerate the rights of compensation by workmen laid-off.

8.4 Retrenchment

8.4.1 Definition of retrenchment of employee[Section 2(oo)]

"Retrenchments" 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
43[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or]
(c) termination of the service of a workman on the ground of continued ill-health;]

Case: In Duryodhan Naik v. Union of India, the Court held that the discharge of surplus labour by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action is called retrenchment, but where the services of all workmen have been terminated by the employer on a real and bona fide closure of business or the undertaking is taken over by another employer, it has no application of retrenchment.

Case: In Santosh Gupta v. State Bank of India, a female employee was discharged on the grounds that she failed to qualify herself in the prescribed test for confirmation of services. The Tribunal held that the termination does not amount to retrenchment. But the Supreme Court reversed the decision of the Tribunal and ordered reinstatement of the employee with full back wages. The Supreme Court further held that the expression “termination of service for any reason whatsoever” is wide enough to include every kind of termination of service except those which are expressly excluded by the proviso to the definition of retrenchment as given in Section 2(oo)
Case: In *Tatanagar Foundry Co. v. Their Workmen*, it was held that employer cannot lay-off the workmen with mala fide intention or by way of victimization.

8.4.2 Procedure for retrenchment [Section 25G]

The principle of 'last come; First go':-

Where any workman in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

8.4.5 Re-employment of retrenched workmen [Section 25H]

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

8.4.6 Retrenchment conditions

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 [50 but not more than 100] workmen were employed on an, average per working day for the preceding twelve months.[Section 25A]

*According to the Section 25F*  [Conditions precedent to retrenchment of workmen]

1. Employee should have continuous service for not less than one year under an employer
2. One month’s notice in writing indicating the reasons for retrenchment or payment for the period of the notice
3. 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.
4. Notice in the prescribed manner is served on the appropriate government

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 [one hundred] workmen were employed on an, average per working day for the preceding twelve months. [Section 25K]

Penalty for lay-off and retrenchment without previous permission [Section 5Q ]

This section applies 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 [one hundred] workmen were employed on an, average per working day for the preceding twelve months.[Section 25K]

- Compulsory permission from competent authority by employer to lay off of Workmen [Section 25M] of Industrial Dispute act 1947
Section 25N [Conditions precedent to retrenchment of workmen]

Any employer who contravenes the provisions of section 25M or section 25N 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.

- On the part of employers and trade unions of employers

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say, -
   (a) Threatening workmen with discharge or dismissal, if they join a trade union;
   (b) Threatening a lock-out or closure, if a trade union is organised; and
   (c) Granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say: -
   (a) An employer taking an active interest in organising a trade, union of his workmen; and
   (b) An employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.

3. To establish employer-sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say: -
   (a) Discharging or punishing a workman, because he urged other workmen to join or organise a trade union;
   (b) discharging or dismissing a workman for taking part in any strike (not being a strike which it deemed to be an illegal strike under this Act);
   (c) Changing seniority rating of workmen because of trade union activities;
   (d) Refusing to promote workmen to higher posts on account of their trade union activities;
   (e) Giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;
   (f) Discharging office bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen -
   (a) By way of victimization;
   (b) Not in good faith, but in the colourable exercise of the employer's rights;
   (c) By falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
   (d) For patently false reasons;
   (e) On untrue or trumpet up allegations of absence without leave;
   (f) In utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
   (g) For misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to a disproportionate punishment.
6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

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

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

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

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

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

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

13. Failure to implement award, settlement or agreement.

14. To indulge in acts of force or violence.

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

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

II- On the part of workmen and trade unions of workmen

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

2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say –
   (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
   (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

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

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

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

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

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

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

8.4.7 Prohibition of unfair labor practice

According to [section 25T]

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

8.4.7.1 Penalty for committing unfair labor practices

According to [section 25U]

Any person who commits any unfair labor practice shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs.1000/- or with both.

Check Your Progress
1. Select any industry or sector and trace the incidents of industrial unrest and conflicts.
2. Analyze the trend with regard to causes, and discuss how they could have been prevented or resolved.

Check Your Progress
1. Define the term Retrenchment.
2. State the procedures for retrenchment.
3. Enumerate the conditions precedent to retrenchment of workmen.

8.5 Dispute Settlement Authorities under the Act

The I.D. Act provides elaborate and effective machinery for the investigation and amicable settlement of industrial disputes by setting up the various authorities. These are:

1. Works Committee;
2. Conciliation Officer;
3. Conciliation Board;
4. Court of Enquiry;
5. Labour Court;
6. Industrial Tribunal;
7. National Tribunal;
8. Arbitrators;

8.5.1 Works Committee [Sec. 3]: In the case of an industrial establishment in which 100 or more workmen are employed, the appropriate Government may require the employer to constitute a 'Work Committee'. It consists of equal number of representatives of employers and workmen engaged in the establishment. The representatives of the workmen shall be chosen from amongst the workmen engaged in the establishment and in consultation with the registered trade union, if any. Works committee deals with the workers problem arising day to day in the industrial establishment.

8.5.2 Conciliation Officer [Sec. 4]: The appropriate Government is empowered to appoint any number of persons, as it thinks fit, to be conciliation officers. The conciliation officer having duty of mediating and acts as the mediators in between the parties to resolve the dispute.

In the case of public utility services matters like strikes and lockouts the conciliation officer can initiate the conciliation proceeding ad tries to settle the dispute in between the parties.

If the conciliation officer fails to resolve the dispute between the parties, he should report to the appropriate government. If necessary the dispute shall be referred to the Board, Labour Court, Tribunal or National Tribunal, by the appropriate government. [Sec 12 (5)]
Duties of conciliation officers [Sec 12]
- Hold conciliation proceedings relating to Strikes and lockouts procedural matters of public utility services.
- Investigate the matters of the disputes.
- Conciliation officers shall induce the parties to come to a fair and amicable settlement of the dispute.
- Duty to send the report of settlement of dispute and memorandum of the settlement signed by the parties to the dispute to the government or his superior.
- In case of failure of settlement of dispute in between parties, duty to send them to the government or his superior, report of facts and circumstances relating to the disputes and in his opinion, a settlement could not be arrived at,
- Duty to send the report to the government or his superior within 14 days from the commencement of the proceeding. or within such shorter period as may be fixed by the appropriate Government.

8.5.3 Conciliation Board [Sec. 5]: as occasion arises appropriate Government is also authorised to constitute a Board of conciliation for promoting the settlement of an industrial dispute. It consists of a chairman who shall be an independent person, and two or four other members. The members appointed shall be in equal numbers to represent the parties to the dispute. On the dispute being referred to the Board it is the duty of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to fair and amicable settlement.

If there are many parties relating to or in the dispute the government may appoint the conciliation board consisting of the above said members

According to [Sec 10 (2)] when parties in the industrial dispute apply to the government to refer dispute to the Conciliation Board and if government satisfies it shall make the reference to the Conciliation Board.

Duties of Board [Sec 13]
- It shall be the duty of the Board to endeavor to bring about a settlement of dispute.
- Investigate the matters relating to the dispute between parties and inducing the parties to come to a fair and amicable settlement of the dispute.
- In case of failure of settlement of dispute in between parties, duty to send to the government the report of facts and circumstances relating to the disputes and board opinion, a settlement could not be arrived at,
- The Board shall submit its report under this section within 2 months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government.

Check Your Progress
1. State the duties of conciliation officer.
2. State the duties of Conciliation Board.
8.5.4 Court of Enquiry [Sec. 6]: as occasion arises, Government can initiate a Court of Inquiry. This Court of Inquiry was to find out matters connected with or relevant to an industrial dispute. Where a Court consists of two or more members, one of them shall be appointed as the chairman.

A Court of Inquiry looks into only matters which are referred to it by Government and submits its report to the Government ordinarily within certain period from the date of reference.

8.5.5 Adjudication

Labour Court [Sec. 7]: The appropriate Government is empowered to constitute one or more Labour Courts. Its function is the adjudication of industrial disputes relating to any matter specified in the Second Schedule.

Matters within the Jurisdiction of Labour Courts.

First Schedule
1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
   • According to [Sec 10 (1) (c)] matters specified in THIRD SCHEDULE, dispute not effecting more than 100 workers can be referred to labour court.
   • According to [Sec 10 (2)] when parties in the industrial dispute apply to the government to refer dispute to the labour court and if government satisfies it shall make the reference to the labour courts.
   • According to [Sec 10 (6)] no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal.

A Labour Court consists of one person only. A person is qualified to be appointed as presiding officer of a Labour Court, if:

(a) he is, or has been a judge of a High Court, or
(b) he has been a District judge or an Additional District judge for at least three years, or
(c) he has held the office of the chairman or any other member of the Labour Appellate Tribunal or of any Tribunal for at least two years, or
(d) he has held any judicial office in India for not less than seven years, or
(e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for at least five years.
(f) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least 7 years’ experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer:
(g) as the case may be, before being appointed as the presiding officer; or (g) he is an officer of Indian Legal Service in Grade III with three years’ experience in the grade.”

**Industrial Tribunal [Sec. 7A]:** The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

**Second Schedule**

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and

**Third Schedule**

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

According to [Sec 10 (2)] when parties in the industrial dispute apply to the government to refer dispute to the industrial tribunal and if government satisfies it shall make the reference to the industrial tribunal.

- According to [Sec 10 (6)] no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal.

A Tribunal consists of one person only.

For appointment as the presiding officer of a Tribunal
- he is, or has been, a Judge of a High Court; or
- he has, for a period of not less than 3 years, been a District Judge or an Additional District Judge;
- he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least 7 years’ experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer:
Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may he, before being appointed as the presiding officer; or he is an officer of Indian Legal Service in Grade III with three years’ experience in the grade.”

**National Tribunal [Sec. 7 (B)]:** The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals. Its main function is the adjudication of industrial disputes which involve questions of national importance or affecting the interest of two or more States.

**According to [Sec 10 (1-A)]** dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State, whether it relates to any matter specified in the Second Schedule or the Third Schedule, the government will order in writing refer to National Tribunal for adjudication.

**According to [Sec 10 (2)]** when parties in the industrial dispute apply to the government to refer dispute to the National Tribunal and if government satisfies it shall make the reference to the National Tribunal.

The Central Government shall appoint a National Tribunal consisting of one person only.

- A person to be appointed a presiding officer of a National Tribunal must be, or
- must have been, a judge of a High Court or
- must have held the office of the chairman or
- any other member of the Labour Appellate Tribunal for a period of not less than two years.

The Central Government may appoint two persons as assessors to advise the National Tribunal.

**8.5.6 Arbitration**

**Voluntary reference of disputes to arbitration. [sec. 10 (a)]:** An arbitrator is appointed by the Government. Whether the dispute is before Labour Court, or Industrial Tribunal or National Tribunal, the parties can go to arbitration by written agreement. The arbitrators conduct the investigation in to the dispute matters and give arbitration award (final decision or settlement or decree) as for making reference of an industrial dispute. If an industrial dispute exists or is apprehended and the employer and the workman agree to refer the dispute to arbitration, they may refer the dispute to arbitration. But such reference shall be made before the dispute has been referred under Sec. 19 to a Labour Court or Tribunal or National Tribunal by a written agreement. The arbitrator may be appointed singly or more than one in number. The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

**Grievance Settlement Authority [Sec. 9 (c)]:** This Section is incorporated as a new chapter II B of the Act. As per this Section, the employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding
twelve months, shall provide for, in accordance with the rules made in that behalf under this Act, a Grievances Settlement Authority.

Every industrial establishment employing 20 or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

- The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.
- The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.
- The total number of members of the Grievance Redressal Committee shall not exceed more than 6: Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members is more than two, the number of women members may be increased proportionately.
- The Grievance Redressal Committee may complete its proceedings within forty-five days on receipt of a written application by or on behalf of the aggrieved party.
- The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned.
- Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned.”

8.5.7 Awards (decree) [Sec 16, 17, 17A]

- The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer. [Sec 16(2)].
- Every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. [Sec 17(1)].
- The award published shall be final and shall not be called in question by any Court in any manner whatsoever. [Sec 17 (2)].

8.5.8 Period of Operation of Settlements and Awards. [Sec 19]

- A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.
- An award shall remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A: Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:
  - the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit, so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.
Eg: If the court orders the employer to reinstate the workman in case of unreasonable removal or discharge, the employer is bind over for one year or in some cases, the period specified by the courts.

The Act was amended in the year 1956 providing for consulting Labour courts and National Industrial tribunals. The subject of labour having been in the Concurrent list of the Constitution of India, both the centre and the states have the power to legislation Labour matters.

Several states have amended the Central Act, 1947 so as to suit to them, while others have enacted their own acts.

The Act has been amended from time to time. For latest amendment visit the link provided: http://labour.gov.in/latest-notificationamendments

Check Your Progress
1. Describe the period of operation of settlements and awards.

8.6 Summary

Industrial peace and harmony aims at preventing conflict in an organization. The industrial disputes generally arise due to disagreement in an industrial relation. In India the Industrial Disputes act, 1947 is the main legislation for the investigation and settlement of industrial disputes. The Act enumerates the contingencies when a strike or lockout can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenchment, discharging or dismissing a workman and other matters related to industrial employees and employers. The I.D. Act provides elaborate and effective machinery for the investigation and amicable settlement of industrial disputes by setting up the various authorities. The focus therefore has to be on the prevention of conflict in the organizations.

8.7 Key Terms

Concurrent List: Under the Constitution of India, Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Tribunal: An Industrial tribunal constituted under Section 7A and includes an Industrial Tribunal constituted before 10 March 1957, under this Act.

Trade Union: A trade union registered under the trade union Act, 1926

Labour Court: A court in some countries that deals with cases or disagreements involving employers and employees.
8.8 Review Questions

1. Discuss the provisions in the ID Act, 1947 with regard to (i) strikes (ii) layoffs (iii) retrenchment (iv) unfair labour practices.

2. Discuss the Dispute settlement authorities under the ID Act, 1947

8.9 Further Reading and References

- P.N Singh & Neeraj Kumar, Employee Relations Management, Pearson India
UNIT 9

SOCIAL SECURITY LEGISLATIONS IN INDIA

9.0 Introduction
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9.4 Payment of Gratuity Act, 1972
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9.0 Introduction

Before independence, British Government was not much interested in the welfare of working class so less legislations existed at that time. Fatal Accident Act, 1885 and Workmen’s Compensation Act, 1923 were in force for the protection of workers and to compensate after any kind of mishap, but the provisions of these Acts provided limited help to workers and it was very expensive and complicated to claim compensation under these Acts. After independence, Indian Government took keen interest to provide social security to workers. So, the parliament amended the existing legislations to make them more suitable and beneficial for the workers. The social security legislations enacted were: Employees’ State Insurance Act, 1948; Employees’ Provident Fund Act, 1952; Maternity Benefit Act, 1961; Payment of Gratuity Act, 1972.

The E.S.I. Act is treated as landmark in the history of social security in the process of evolution of social security schemes. It was first comprehensive scheme which provided social insurance to all employees. The Act is a legislation which aims at bringing about social and economic justice to poor labour class of the land. It aims at labour welfare.
The Workmen’s Compensation Act is a mechanism for providing relief to victims of work-connected injuries. It places the cost of these injuries only upon the employer which ultimately lies on consumers of product whose wants call his business into existence. The Employees’ Provident Fund and Miscellaneous Provisions Act was constituted to safeguard the future of workers after the retirement, to help the dependents in case of his early death and to cultivate the spirit of saving among the workers. The Maternity Benefit Act is a milestone for women workers and protects their job during the period of maternity and the payment of gratuity Act is an additional benefit order than provident fund and pension. The main feature of this Act is that it is a noncontributory type of scheme. Employee has not to deposit any amount to avail it but only employer deposits money for his employee at the prescribed rate. Thus social security envisages that employees shall be protected against all types of social risks.

9.1 Unit Objective

After reading this unit, you should be able to:
- Employee State Insurance Act, 1948
- Payment of Gratuities Act, 1972
- The Workmen’s Compensation Act, 1923
- Maternity Benefit Act, 1961

9.2 Employee State Insurance Act, 1948

9.2.1 Introduction to the Act

The Employee State Insurance Act, [ESIC] 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain others matters incidental thereto. The Act in fact tries to attain the goal of socio-economic justice enshrined in the Directive principles of state policy under part 4 of our constitution, in particular articles 41, 42 and 43 which enjoin the state to make effective provision for securing, the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The act strives to materialize these avowed objects through only to a limited extent. This act becomes a wider spectrum than factory act. In the sense that while the factory act concerns with the health, safety, welfare, leave etc of the workers employed in the factory premises only. But the benefits of this act extend to employees whether working inside the factory or establishment or elsewhere or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment.

Related Legislations: ESI (Central) Rules, 1950 and ESI (General) Regulations, 1950

9.2.2 Origin

The Employee State Insurance act was promulgated by the Parliament of India in the year 1948. To begin with the ESIC scheme was initially launched on 2nd February 1952 at just two
industrial centers in the country namely Kanpur and Delhi with a total coverage of about 1.20 lakh workers. Thereafter the scheme was implemented in a phased manner across the country with the active involvement of the state governments.

9.2.3 Objectives:
The ESI Act is a social welfare legislation enacted with the object of providing certain benefits to employees in case of sickness, maternity and employment injury. Under the Act, employees will receive medical relief, cash benefits, maternity benefits, pension to dependents of deceased workers and compensation for fatal or other injuries and diseases.

9.2.4 Definitions
According to Section 2 (m) of Factories Act, 1948, **Factory** means any premises including the precincts thereof -

(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

but does not include a mine subject to the operation of Mines Act, 1952 or a railway running shed;

According to Section 2 (k) of Factories Act, "**manufacturing process**" means any process for –

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

(vi) preserving or storing any article in cold storage;

According to Section 2 (h) of The Minimum Wages Act, "**wages**"- means all remuneration capable of being expressed in terms of money which would if the terms of the contract of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include -

(i) the value of -

(a) any house accommodation supply of light water medical attendance or

(b) any other amenity or any service excluded by general or special order of the appropriate government;

(ii) any contribution paid by the employer to any person fund or provident fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling 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

Check Your Progress

2. State the origin of Employee State Insurance act.
3. State the meaning of factory.
4. State the meaning of manufacturing process.

9.2.5 Applicability:
- The ESI Act extends to the whole of India.
- It applies to all the factories including Government factories (excluding seasonal factories), which employ 10 or more employees and carry on a manufacturing process with the aid of power and 20 employees where manufacturing process is carried out without the aid of power.
- The act also applies to shops and establishments. Generally, shops and establishments employing more than 20 employees are covered by the Act.

“Shop” according to the Delhi Shops and Establishment Act, 1954 means any premises where goods are sold either by retail or wholesale or where services are rendered to customers, and includes an office, a store-room, godown, warehouse or workhouse or work place, whether in the same premises or otherwise, used in or in connection with such trade or business but does not include a factory or a commercial establishment.

“Establishment” means a shop, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other places of public amusement or entertainment to which this Act applies and includes such other establishment as Government may, by notification in the Official Gazette, declare to be an establishment for the purpose of this Act. According to the Delhi Shops and Establishment Act, 1954,

“Commercial Establishment” means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860, and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto, journalistic and printing establishments, contractors and auditors establishments, quarries and mines not governed by the Mines Act, 1952, educational or other institutions run for private gain, and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, but does not include a shop or a factory registered under the Factories Act, 1948, or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusements or entertainment. Form 01 – Employers’ Registration Form also requires a copy of the registration certificate or licence obtained under the Shops and Establishment Act to be attached along with this form. From this it is quite evident that ESI Act will be applicable to shops and establishments. Again the definition of shops and establishment will vary from state to state depending on the shops and establishment act of that particular state.
The act does not apply to any member of Indian Naval, Military or Air Forces.

All employees including casual, temporary or contract employees drawing wages less than Rs 10,000 per month are covered. The ceiling limit has been raised from Rs.7500 to Rs.10000 with effect from 01.10.06.

Apprentices covered under the Apprenticeship Act are not covered under this Act. According to Apprenticeship Act 1961, “apprentice” means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

- The apprentices under any scheme as the name suggests come to learn the tricks of the trade and may not count much so far as the output of the factory is concerned, with that end in view, the apprentices are exempted from the operation of laws relating to labour unless the State Government thought otherwise. -- *Regional Director ESIC v. M/s Arudyog 1987 (1) LLJ 292.*

A factory or establishment, to which this Act applies, shall continue to be governed by its provisions even if the number of workers employed falls below the specified limit or the manufacturing process therein ceases to be carried on with the aid of power subsequently.

Where a workman is covered under the ESI scheme,

- Compensation under the Workmen's Compensation Act cannot be claimed in respect of employment injury.
- No benefits can be claimed under the Maternity Benefits Act.

**Check Your Progress**

1. State the meaning of the term Commercial Establishment.

**Some Important Case laws**

1. Where by some club not only sporting facilities but a kitchen is also maintained, wherein a big number of members come, it is not necessary that they are participating only in sports activities, they are also entertaining themselves and their guests by partaking beverages and tea served by the club. Activity in the kitchen has a direct connection with the activities carried on in the rest of the club premises. It is necessary that the club be registered under ESI Act as regards all the employees engaged by the club irrespective of the fact in which department they are working. Cricket Club of India satisfies the definition of the term ‘factory’ under s. 2(12) of the Act hence covered by it. -- *Cricket Club of India v. ESI Corporation 1994 (69) FLR 19.*

2. Where in an establishment activities like that of clearing and forwarding is going on, it would fall within the expression “shop” even though clearing of documents is done in customs house meant for export and import of goods. Person involved in such business is catering to the needs of exporters and importers and others wanting to carry the goods further. – *AIR 1993 SC 252.*
3. Where the work of fixing the marble is extended to a contractor by a marble manufacturing company, duty of the contractor is only to complete the work while marble, cement etc., is supplied by the manufacturing company, workers employed by the contractor would be the employees of the factory as under s. 2(9) of the Act.-- 1992 (2) CLR 881.

9.2.6 Areas Covered
The ESI Scheme is being implemented area-wise by stages. The Scheme is being implemented in almost all union territories and states except Nagaland, Manipur, Tripura, Sikkim, Arunachal Pradesh and Mizoram.

9.2.7 Administration of the Act
The provisions of the Act are administered by the Employees State Insurance Corporation. It comprises members representing employees, employers, the central and state government, besides, representatives of parliament and medical profession. A standing committee constituted from amongst the members of the corporation, acts as an executive body. The medical benefit council, constituted by the central government, is another statutory body that advises the corporation on matters regarding administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters.

9.2.8 Registration
The employer should get his factory or establishment registered with the ESI Corporation within 15 days after the Act becomes applicable to it and also obtain the employer’s code number. Application should be made in Form 01 and after having being satisfied with the application form, the regional office will allot a code number to the employer, which must be quoted in all documents and correspondence.

Identity Card
An employee is required to file a declaration form upon employment in factory or establishment to show that he is covered under the Act.

On registration every insured person is provided with a ‘temporary identification certificate’ which is valid ordinarily for a period of three months but may be extended, if necessary, for a further period of 3 months. Within this period, the insured person is given a permanent ‘family photo identity card’ in exchange for the certificate. The identity card serves as a means of identification and has to be produced at the time of claiming medical care at the dispensary / clinic and cash benefit at the local office of the corporation. In the event of change of employment, it should be produced before the new employer as evidence of registration under the scheme to prevent any duplicate registration.

The identity card bears the signature/thumb impression of the insured person. Since medical benefit is also available to the families of Insured persons, the particulars of family members entitled to medical benefit are also given in the identity card affixed with a postcard size family photo. If the identity card is lost, a duplicate card is issued on payment as prescribed.

9.2.9 Employers’ / Employees’ Contribution
Like most of the social security schemes, the world over, ESI scheme is a self-financing health insurance scheme. Contributions are raised from covered employees and their employers as a fixed percentage of wages. Presently covered employees contribute 1.75% of the wages, whereas as the employers contribute 4.75% of the wages, payable to the insured persons. Employees earning less than and up to Rs. 50 per day are exempted from payment of contribution.

The contribution is deposited by the employer in cash or by cheque at the designated branches of some nationalized banks. The responsibility for payment of all contributions is that of the employer with a right to deduct the employees share of contribution from employees’ wages relating to the period in respect of which the contribution is payable.

There are two contribution periods each of six months duration and two corresponding benefit periods. Cash benefits under the scheme are generally linked with contribution paid. Contribution period - 1st April to 30th September, its corresponding Cash Benefit period is 1st January to 30th June of the following year.

Contribution period - 1st October to 31st March, its corresponding Cash Benefit period is 1st July to 31st December of the following year.

9.2.10 Benefits under the Scheme
Employees covered under the scheme are entitled to medical facilities for self and dependants. They are also entitled to cash benefits in the event of specified contingencies resulting in loss of wages or earning capacity. The insured women are entitled to maternity benefit for confinement. Where death of an insured employee occurs due to employment injury or occupational disease, the dependants are entitled to family pension. Various benefits that the insured employees and their dependants are entitled to, the duration of benefits and contributory conditions thereof are as under:

Medical benefits
• From day one of entering insurable employment for self and dependants such as spouse, parents and children own or adopted.
• For self and spouse on superannuation subject to having completed five years in insurable employment on superannuation or in case of having suffered permanent physical disablement during the course of insurable employment.

Sickness benefits
• Sickness benefit is payable to an insured person in cash, in the event of sickness resulting in absence from work and duly certified by an authorised insurable medical officer/ practitioner.
• The benefit becomes admissible only after an insured has paid contribution for at least 78 days in a contribution period of 6 months.
• Sickness benefit is payable for a maximum of 91 days in two consecutive contribution period.

Extended sickness benefit
• Extended sickness benefit is payable to insured persons for the period of certified sickness in case of specified 34 long-term diseases that need prolonged treatment and absence from work on medical advice.
• For entitlement to this benefit an insured person should have been in insurable employment for at least 2 years. He/she should also have paid contribution for a minimum of 156 days in the preceding 4 contribution periods or say 2 years.
• ESI is payable for a maximum period of 2 years on the basis of proper medical certification and authentication by the designated authority.
• Amount payable in cash as extended sickness benefit is payable within 7 days following the submission of complete claim papers at the local office concerned.

**Enhanced sickness benefit**

• This cash benefit is payable to insured persons in the productive age group for undergoing sterilization operation, viz., vasectomy/tubectomy.
• The contribution is the same as for the normal sickness benefit.
• Enhanced sickness benefit is payable for 14 days for tubectomy and for seven days in case of vasectomy.

**Maternity benefit**

• Maternity benefit is payable to insured women in case of confinement or miscarriage or sickness related thereto.
• For claiming this an insured woman should have paid for at least 70 days in 2 consecutive contribution periods i.e. 1 year.
• The benefit is normally payable for 12 weeks, which can be further extended up to 16 weeks on medical grounds.
• The rate of payment of the benefit is equal to wage or double the standard sickness benefit rate.
• The benefit is payable within 14 days of duly authenticated claim papers.

**Disablement benefit**

• Disablement benefit is payable to insured employees suffering from physical disablement due to employment injury or occupational disease.

**Dependants benefit**

• Dependants benefit [family pension] is payable to dependants of a deceased insured person where death occurs due to employment or occupational disease.
• A widow can receive this benefit on a monthly basis for life or till remarriage.
• A son or daughter can receive this benefit till 18 years of age.
• Other dependants like parents including a widowed mother can also receive the benefit under certain condition.
• The rate of payment is about 70% of the wages shareable among dependants in a fixed ratio.
• The first installment is payable within a maximum of 3 months following the death of an insured person and thereafter, on a regular monthly basis.
Funeral Benefit

This benefit is payable to the eldest surviving member of the family after the death of the insured person to perform death ceremony. In case of absence of family member the benefit is paid to the person who performs the cremation and does the expenditure. The benefit has to be claimed within the three months of the day of death or within such extended period allowed by the Corporation. Presently the amount of funeral benefit is 5000.

Check Your Progress

1. Enumerate the different benefits given to employees.

9.2.11 Obligations of Employers
1. The employer should get his factory or establishments registered with the E.S.I. Corporation within 15 days after the Act becomes applicable to it, and obtain the employers Code Number.
2. The employer should obtain the declaration form from the employees covered under the Act and submit the same along with the return of declaration forms, to the E.S.I. office. He should arrange for the allotment of Insurance Numbers to the employees and their Identity Cards.
3. The employer should deposit the employees’ and his own contributions to the E.S.I. Account in the prescribed manner, whether he has sufficient resources or not, his liability under the Act cannot be disputed.

Check Your Progress

1. Enumerate the obligations of Employer.

9.2.12 Records To Be Maintained For Inspection By ESI authorities
1. Attendance Register / Muster Roll
2. Salary / Wage Register / Payroll
3. EC (Employee’s & Employer’s Contribution) Statement
4. Employees’ Register
5. Accident Book
6. Return of Contribution
7. Return of Declaration Forms
8. Receipted Copies of Challans
10. Form of annual information on company

Check Your Progress
1. State the records which are maintained by ESI authorities for inspection.

9.2.13 Employees Insurance Court
Any dispute arising under the ESI Act will be decided by the Employees Insurance Court and not by a Civil Court. It is constituted by the State Government for such local areas as may be specified and consists of such number of judges, as the Government may think fit. It shall adjudicate on the following disputes and claims.

9.2.14 Reforms

Rajiv Gandhi Sharmik Kalyan Yojna (RGSKY)

The Employees’ State Insurance Corporation (ESIC) introduced ‘Rajiv Gandhi Sharmik Kalyan Yojna’ for insured persons to assist them at the time of unemployment w.e.f. April, 1, 2005. It provides unemployment allowance to the insured persons who have been rendered unemployment involuntarily due to the closure of establishment, retrenchment or permanent invalidity arising out of employment injury. Medical care and health facilities are also provided to affected workers and their families from the ESI hospitals or dispensaries during unemployment period.

Rashtriya Swasthya Bima Yojna (RSBY)

A new health insurance scheme is launched in April, 1st 2008 for Below Poverty Line (BPL) families entitled ‘Rashtriya Swasthya Bima Yojna’ (RSBY). This scheme is implemented by the state government whereas, the medical facilities for the scheme is taken from the Employees’ State Insurance Corporation. Central Government through Medical, Health & Family Welfare Ministry contributes 75 per cent of premium amount. Total five members of a BPL family will be eligible for the cashless transation of 30,000 through smart cards issued after this scheme.

IT Roll-Out Plan In August 2009

The ESIC has started IT Roll-Out plan named ‘Project Panchdeep’ to online connectivity of the ESIC branches, offices, dispensaries, hospitals regional/sub-regional offices, State Directorates and the ESIC headquarters 365 IT network for better services and fast information. According to this with 24 project the workers will provide a pair of ‘Magnetic Plastic Card’ in place of existing paper cards, one for worker and another for his family with the use of this ‘Pehchan Card’ insured person and his family can be able to get the ESI benefits throughout the country.


An Act to provide for the institution of provident funds, pension funds and deposit linked insurance fund for the employees in the factories and other establishments. The Act extends to the whole of India except the State of Jammu and Kashmir.
9.3.1 Applicability

All factories and establishments in which 20 or more are employed.

9.3.2 Schemes under the Act

Three beneficial schemes-
1. Employees Provident Fund Scheme 1952
2. Employees Pension Scheme 1995
3. Employees Deposit Linked Insurance 1976

9.3.3 Membership

An employee at the time of joining the employment and getting wages up to Rs.6500/- is required to become a member.

An employee is eligible for membership of fund from the very first date of joining a covered establishment. 52

9.3.4 Contribution to EPF

- Employees’ share: 12% of the Basic + DA
- Employer’s contribution: 12% to be deposited as:
  - 8.33% to be deposited in Pension Fund A/C No 10 and
  - the balance, i.e., 3.67% to be deposited in Provident Fund A/C No 01 along with Employees’ share of 12%
- Administration charges:
  - @ 1.1% of the total wages/salary disbursed by deposit to A/C No 02,
  - Employees Deposit Linked Insurance @ 0.5% of the total wages/salary by deposit to A/C No. 21 and
  - Administration of EDLI @ 0.01% of the wages/salary by deposit to A/C. No. 22.

9.3.5 Duties of employer

- Employer to furnish information about:
  (a) Ownership and names of responsible persons of the establishment.
  (b) Declaration and nomination.
  (c) Joining and leaving of service by the members in form 5 and form 10 respectively
  (d) Form 12A with monthly challans of deposit.
  (e) Form 9 for details of employees.
  (f) Form 3A/6A at the end of the financial year.
  (g) Any other information as may be required under Para 76 of the scheme

9.3.6 Benefits to employees

- Provident Fund Benefits
- Pension Benefits
- Death Benefits

Provident Fund Benefits

- Employer also contributes to Members’ PF @ 3.67% (1.67% in case of sick industry - eg: beedi)
- EPFO guarantees the Employer contribution and Govt. gives a decent interest to PF
• accumulations
• Member can withdraw from this accumulations to cater financial exigencies in life -
• No need to refund unless misused
• On resignation, the member can settle the account. i.e., the member gets his PF
• contribution, Employer Contribution and Interest

Pension Benefits
- Pension to Member
- Pension to Family (on death of member)
- Scheme Certificate
  - This Certificate shows the service & family details of a member
  - This is issued if the member has not attained the age of 58 while leaving an establishment and he applies for this certificate
  - Member can surrender this certificate while joining another establishment and the service stated in the certificate is added with the service he is gaining from the new establishment.
  - After attaining the age of 50 or above, the member can apply for Pension by surrendering this scheme certificate (if total service is at least 10 years) 54
  - This is a better choice than Withdrawal Benefit, that if a member dies holding a valid scheme certificate, his family will get pension (Death when NOT in service)
- Withdrawal Benefit
  - if not eligible for pension, member may withdraw the amount accumulated in his pension account
  - the calculation of this amount is based only on (i) Last average salary and (ii) Service (Not based on actual amount available in Pension Fund Account)
  - No amount is taken from Member to give Pension to the Member. Employer and Govt. contribute to Pension fund @8.33% and @1.16% respectively
  - EPFO guarantees pension to members, even if the Employer has not contributed to Pension Fund.
  - Pension calculation is similar to that of Govt. Employee

Death Benefits
- Provident Fund Amount to Family (or to Nominee)
- Pension to Family (or to Parent / Nominee)
- Capital Return of Pension
- Insurance (EDLI) amount to Family (or to Nominee)
  - No amount is taken from Member for this facility. Employer contributes for this.
  - Nominee is basically determined as per the information submitted by the member at this office through FORM-2

The ‘Employees’ Provident Fund Act’ was amended in May, 1958 to extend the benefits of provident fund to establishments belonging to government or local authority. 26 The EPF Act has amended a lot of time to make it more beneficial and practical.

For example:  Computerization Plan
The Employees’ Provident Fund Organization (EPFO) was started as a new computerized plan in 2009 to connect all the EPFO offices with internet and to provide better services to its members. There is a plan to cover near about 27 EPFO offices till March 2010. 96 crore have been approved for the first phase of implementation of this plan. The EPFO has covered 5.73 lakh establishment of both category (exempted and un exempted) and 4.71 crore members till March, 2009. 28 This plan is formulated for the help of both (employees and employers) after the proper implementation of the plan an employee can check his provident fund money time to time through internet, he can receive more and more information about this scheme. Even in the new system the workers can apply for advances or loans through internet and electronic payment would be paid through National Electronic Fund Transfer (NEFT) mode. This will be ensure that claims once done will be credited to members’ account within 2 days instead of sending cheque by post which is time consuming. Thus the new computerized system will increase the efficiency and transparency in the implementation of the scheme.

Check Your Progress

2. State the Contribution to EPF.
3. Enumerate the duties of employer.
4. State the benefits to employee.
5. Enumerate the Provident Fund Benefits.
6. State the Pension Benefits to employee.
7. State the Death Benefits to employee.

9.4 Payment of Gratuity Act, 1972

9.4.1 Applicability of the Act
The 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 Act enforces the payment of ‘gratuity’, a reward for long service, as a statutory retirement benefit. Every employee irrespective of his wages is entitled to receive gratuity if he has rendered continuous service of 5 years or more than 5 years. It is not paid to an employee gratuitously or merely as a matter of boon. It is paid for the service rendered by him to the employer (Delhi Cloth and General Mills Co; Ltd Vs the Workmen). Gratuity is payable to an employee on termination of his employment after he has rendered continuous service for not less than five years:

- on his superannuation
- on his resignation
- on his death or disablement due to employment injury or disease

The payment of gratuity is a type of retirement benefit which provides financial assistance to an employee to secure his old age. It is an additional benefit order than provident fund and pension. The main feature of this Act is that it is a noncontributory type of scheme. Employee has not to deposit any amount to avail it but only employer deposits money for his employee at the prescribed rate. It is not a new concept its roots found in ancient Indian society. At the time of kings, hard working and efficient workers got the reward after completing their service to live
with ease and comfort. After passing time, many industries were established and some of them provided cash gratuity to its employees, but at that time it was voluntary in character. So any strong legislation was needed to make it compulsory for every employer. To regulate the payment of gratuity the Working Journalists (Conditions of Service) and Miscellaneous Act, 1955 was passed, subsequently, Kerala passed Gratuity Act in 1971 for its Employees and West Bengal also follow it with constitution of Employees’ Payment of Compulsory Gratuity Act, 1971. Further, some other states also enacted Act in this respect but a integrated central legislation was necessary for the uniformity in payment of gratuity throughout the country. In the State Labour Ministers’ Conference and also in the Indian Labour Conference held at New Delhi on August 1971, and October 1971 respectively discussed about the matter. After this discussion the then Labour Minister placed the Payment of Gratuity Bill, 1971 in Parliament on December 10, 1971. Then the Bill was referred to the Select Committee and after its recommendations Parliament passed it in the same form as Select Committee suggested. The Act came into force from September 16, 1972 and implemented whole over the India. This Act is amended in 1984, 1987, 1994, 1998 and 2008 and recently in 2010.

Most of the Gratuity schemes are tenable under the following circumstances:
(a) On retirement or superannuation; (b) On voluntary retirement or resignation after a specified periods of service; (c) On physical or mental incapacity which may under an employee unfit to continue in service; (d) On termination of service by the company for the reasons other than misconduct or indiscipline; and (e) On death in permanent service. Thus this Act is an important measure of social security for the employees at that time whenever necessity is before them but resources are greatly reduced.

9.4.1 Objective of the Act

The aim of the Act is to provide benefit to those workers who rendered long but now they are retired or unable to work however, financial necessity is still before them. At that time economic assistance is given through this Act so that aged workers can survive in a better manner in the society and be self dependent.

9.4.2 Scope and Coverage

The Act is applicable to whole of India but so far as it relates to plantation or ports, it shall not extended to the State of Jammu & Kashmir. It shall applicable to every shop, plantation, port, oilfield, railway company, motor transport undertakings or other establishment employing ten or more persons but in the amendment in 2010, it can also cover the educational institution. A shop and establishment to which this Act has become applicable shall continue to be governed by this Act even then whenever the number of the workers falls below ten. Benefits The Act provides cash benefits after superannuation. The employees have to complete five years continuous service in the establishment to become eligible for the benefits of this Act but if he has fired out from work before five years not due to his own fault but because of lay-off, lockout, strike he can claim gratuity. Except it, the completion of five years shall not be necessary where the termination of any worker is due to death or disablement. In case of death the nominee get the amount of gratuity, if he/she is minor, then employer deposited the money in bank till his/her getting the age of 18 years. If the termination of employment is due to any act of willful omission or negligence causing any damage and loss to employer, the gratuity can be forfeited to the extent of the damage caused.
The section-2(A) of Gratuity Act explains if a worker works below the ground in a mine he has to work for 190 days in a year and 240 days in another cases for the claim of gratuity of completed year. Permanent workers receive 15 days wages as gratuity, however, seasonal workers get seven days gratuity for every completed years of service. If a worker works less than prescribed days in a completed year he will not be eligible for this year gratuity. The total amount of gratuity payable to any employee was 3,50,000, till 2010 but now it can be exceeded 10,00,000.

While giving the gratuity to an employee following days have also been included during the year: - (i) Absenteeism due to lay-off or lock out; (ii) Earned leave with full wages; (iii) Absent from work due to temporary disablement; (iv) Maternity leave of a female worker. Exemption Those employers or establishment which is not under the control of Central or State Government is liable to obtain insurance in the manner prescribed. The employer can deposit the gratuity amount in LIC of India established under LIC of India Act, 1956 or any other prescribed insurer.

Appropriate government can exempt any establishment from the implementation of this Act but only when an establishment has already running any such type of gratuity scheme and employee working over there are quite satisfied with this scheme. An establishment, having the strength of 500 workers can adopt this scheme only. Government can constitute a Board of Trustees for the proper implementation of such scheme. If an employee becomes unable to pay premium of insurance timely then he has to pay the amount to Controlling Authority of Gratuity Act including the interest.

9.4.3 Administration

The Payment of Gratuity Act is not administered by any autonomous and independent body like ESI, EPF but any appropriate government can appoint Controlling Authority to administer the Act. Different controlling authorities can also be appointed for different areas. The Central Government is the appropriate government in relation to an establishment, factory having the branches more than one state and also various mines, Railway Company, major ports work under the control of Central Government. Apart from these establishments, state government work as appropriate government.

Appropriate government can appoint inspectors for the proper implementation of Gratuity Act. If more than one inspector has been appointed for any area then appropriate government can distribute areas and allocate work to them. Every inspector is considered as a public servant under Indian Penal Code, 1860 (45 of 1860). An inspector can ask for proper information to employer. He can inspect any establishment with any public authority or assistant to check the necessary registers and records which is required to maintain for the Gratuity Act. An inspector is powered to examine any matter took in his notice by employee or employer of any factory. Controlling Authority also handles all the disputes raised in the matter of gratuity payment. The Working Journalists and Other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955, provides for payment of gratuity. As such, three years of continuous service is required for eligibility for Gratuity.

The payment of gratuity shall be forfeited:
- to the extent of the damage or loss caused by the employee to the property of the employer
- where the service of the employee is terminated due to misconduct
According to Sec.2(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied,[and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity].

According to Sec.2A (1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act.

(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer –
(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -
   (i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
   (ii) two hundred and forty days, in any other case;
(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than -
   (i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
   (ii) one hundred and twenty days, in any other case;

Explanation: For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which -
(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
(ii) he has been on leave with full wages, earned in the previous year;
(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and
(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

(3) where an employee employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period. In the case of a monthly rated employee,
the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees. The total amount of gratuity payable to any employee was 3, 50,000, till 2010 but now it is exceeded 10, 00,000.

Check Your Progress

2. Explain the Applicability of the Payment of Gratuity Act, 1972.
3. State the objective of the Payment of Gratuity Act, 1972.
5. Explain the Administration of the Payment of Gratuity Act, 1972.

9.4.4 Responsibility of the Employer:

Every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer:

The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed.

Where an employer fails to make any payment by way of premium to the insurance or by way of 'contribution to all approved gratuity fund, he shall be liable to pay the amount of gratuity due 91 under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

Whoever contravenes the provision above shall be punishable with fine which may extend to Rs 10,000/- and in the case of a continuing offence with a further fine which may extend to Rs 1000/- for each day during which the offence continues.

Check Your Progress

1. Enumerate the responsibilities of the employer.

9.5 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.
9.5.1 Act does not apply where workman covered under ESI Act - Since a workman is entitled to get compensation from Employees State Insurance Corporation, a workman covered under ESI Act is not entitled to get compensation under Workmen’s Compensation Act, as per section 53 of ESI Act, 1948

Meaning of Workman (Sec.2 (n))

"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 - (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), 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 (ia)
(a) a master, seaman or other member of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,
(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or (ii) 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; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

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.

9.5.2 Employees Entitled To Compensation:
Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of employers 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.

9.5.3 Employers Liability for Compensation (Accidents)
The employer of any establishment covered under this Act, is required to compensate an employee:

a. 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 b. Who has contracted an occupational disease.

Employer Shall Not Be Liable:
a. In respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding three days;
b. In respect of any injury not resulting in death, caused by an accident which is directly attributable to
i) the workmen having been at the time thereof under the influence or drugs, or
ii. the wilful disobedience of the workman to an order expressly given, or to a rule expressly
framed, for the purpose of securing the safety of workmen, or
iii. the wilful removal or disregard by the 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 contacted 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.

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

Disablements 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.

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 totalled 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.

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.

**Check Your Progress**

1. State the Workmen's Compensation Act, 1923.
2. State the meaning of Workman.
3. State the liabilities of employers for compensation.
4. Define the term Disablement.

**Amount of compensation**

The amount of compensation payable will be as follows, namely:

(a) where death results an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees, whichever is more;

(b) where permanent total an amount equal to disablement results from sixty the injury per cent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of sixty thousand rupees, whichever is more; For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due. Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only;

(c) where permanent partial disablement results from the injury (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

(d) Where temporary a half monthly payment of the sum disablement, whether equivalent to twenty-five per cent of total or partial, results monthly wages of the workman, to from the injury be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day - (i) from the date of disablement where such disablement lasts for a period of twentyeight days or more; or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:
Provided that - (a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation: Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the provision.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of one thousand rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.

9.5.5 General principles of the Act

- There must be a casual connection between the injury and the accident and the work done in the course of employment;
- The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury; 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
- 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.

Employer’s fault is immaterial

The compensation is payable even when there was no fault of employer. In *New India Assurance Co. Ltd. v. Pennamna Kuriern* - (1995) 84 Comp. Cas. 251 (Ker HC DB), claim of workmen for compensation under Motor Vehicle Act was rejected due to negligence of employee, but compensation was awarded under Workmen’s Compensation Act on the principle of ‘no fault’.

Compensation payable even if workman was careless

Compensation is payable even if it is found that the employee did not take proper precautions. An employee is not entitled to get compensation only if (a) he was drunk or had taken drugs (b)
he willfully disobeyed orders in respect of safety (c) he willfully removed safety guards of machines.

However, compensation cannot be denied on the ground that workman was negligent or careless.

**Number of Workmen Employed Is Not Criteria**
In definition of ‘workman’ in schedule II, in most of the cases, number of workmen employed is not the criteria. In most of cases, employer will be liable even if just one workman is employed.

**Payment of compensation only through Commissioner** - A Commissioner for Workmen’s Compensation is appointed by Government. The compensation must be paid only through the Commissioner in case of death or total disablement. Any lump sum payment to workman under the Act must be made only through Commissioner. Direct payment to workman or his dependents is not recognized at all as compensation.

Since the passing of this legislation, a lot of amendments have been made in this Act to make it up to date. The Act was subsequently amended in 1987, 2000 and in 2008. Recently in August 8, 2008, Union Cabinet gave its approval to present the Workmen’s Compensation Act (Amended) Bill 2008 in Parliament and the amendments are as follow: (i) The approval is given to the recommendation of Second National Labour Commission to change the name of the Act to make it gender neutral. The term 'workmen' is substituted by the term 'employees'. (ii) The restricted clauses in schedule II are removed to make the Act applicable to all classes of employees. (iii) This amendment enables the central government to revise the wage ceiling and enactment of funeral expenses from time to time.

**Check Your Progress**

1. Explain the amount of compensation.
2. State the general principles of the Workmen’s Compensation Act, 1923.

**9.6 Maternity Benefit Act, 1961**

Motherhood is a very special experience in a woman’s life. A woman needs to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income. That is where the concept of maternity leave and the benefits it entails, comes in handy.

The Maternity Benefits Act, 1961, gives her the assurance that her rights will be looked after while she is at home to care for her child. The object of the Act is to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits.

**9.6.1 Applicability of the Act**

This act applies to women who work in factories, mines, plantations, circus industry, shops and establishment with more than 10 employees. It does not apply to employees covered by the
Employees State Insurance Act, 1948. It can be extended to other establishments by the State Governments.

9.6.2 Important definitions under the Act

"Child" includes a still-born child. (Sec 3(b)
"Delivery" means the birth of a child. (Sec.3(c)

"Employer" means –

(i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
(ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
(iii) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person. (Sec. 3 (d)

"Establishment" means—

(i) a factory;
(ii) a mine;
(iii) a plantation;
(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
(iv) a shop or establishment; or]
(v) an establishment to which the provisions of this Act have been declared under subsection (1) of section 2 to be applicable. (Sec. 3(e)

"Miscarriage" means the expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the cause of which is punishable under the Indian Penal Code, 1860. (Sec.3 (j)

"Wages" means remuneration paid or payable in cash to a woman and includes dearness and house rent allowance, incentive bonus and the money value of the concessional supply of food grains and other articles. It does include any other kind of bonus, overtime earnings, any contribution towards the pension fund or provident fund and any gratuity payable on the termination of service. (Sec.3 (n)

Check Your Progress

2. State the applicability of the Maternity Benefit Act, 1961.
3. Define the term employer.
4. Define the term establishment.
9.6.3 Persons entitled to maternity benefit

Every woman is entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

The average daily wage is calculated on the basis of the amount payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she has absented herself on account of maternity, or one rupee a day, whichever is higher.

To be eligible for maternity benefit, a woman should have worked in an establishment for not less than 160 days in the twelve months immediately prior to the date of her expected delivery. The maximum period for which any woman can be entitled to maternity benefit is twelve weeks. This includes six weeks up to and including the day of her delivery and six weeks immediately following that day. If a woman dies during this period, the maternity benefit will be payable only for the days up to and including the day of her death. However, if she delivers a child and dies during the delivery or during the period of six weeks following the delivery, the employer will be liable for the maternity benefits of the entire period of six weeks immediately following the day of her delivery. If the child dies during this period, the liability will be only up to and including the day of the death of the child.

In case the woman dies before receiving the benefit, the amount must be paid to her nominee or legal representative.

In the event of a miscarriage, the woman must produce relevant proof that she has suffered a miscarriage. This will entitle her to receive leave with wages at the rate of the maternity benefit, for a period of six weeks immediately following the date of the miscarriage. Women who are ill on account of pregnancy, delivery, and premature birth of a child or a miscarriage are also entitled to a period of absence or to leave with wages at the rate of maternity benefit for a maximum period of one month. However, they must submit proof of their illness.

9.6.4 Notice of claim for maternity benefit

A pregnant woman is required to give her employer a notice in writing, stating that the maternity benefit that she is entitled to should be given to her or any person nominated by her and that she will not be working during the period in which she receives the benefit. This notice should start from the date when she was absent from work, provided that date is not earlier than six weeks from the date of her expected delivery. This notice can also be given soon after the delivery.

On receiving the notice, the employer is bound to permit the woman to absent herself from work until the expiry of six weeks after the delivery. In case a woman fails to give notice, this does not disentitle her from claiming maternity benefit. The employer is still liable to pay her the amount due to her.

9.6.5 Dismissal during absence on account of pregnancy

When a woman absents herself from work on account of illness during pregnancy, she may not be discharged or dismissed by her employer or issued notice for dismissal. It is equally unlawful for the employer to alter any of the conditions of her service to her disadvantage.
If she is discharged or dismissed from service, she should still be entitled to receiving maternity benefit or medical bonus. She cannot be deprived of these. The woman can be dismissed only if she is guilty of gross misconduct. In this case, the employer is well within his rights to deprive her of the maternity benefit or medical bonus.

A woman who has been deprived of maternity benefit or medical bonus may, within sixty days from the date on which the order was communicated to her, appeal to the relevant authority. This authority has the final say on whether the woman should or should not be deprived of these benefits.

If a woman continues to report to work during the period when she is entitled to maternity benefit, she forfeits her claim to the maternity benefit for the period. However, individual companies may allow the woman to take her leave as late as possible so that she may have more time to nurse the baby later on.

9.6.6 Punishment under the Act

An employer who violates the provisions of the Maternity Benefits Act can be punishable with imprisonment up to three months or with fine up to five hundred rupees or both. Besides, if the violation is related to the non-payment of maternity benefit or any other amount, the court can recover this amount as if it is a fine and pay it to the aggrieved person.

After its constitution the Act was amended in 1972, 1973, 1976, 1988, 1995 and recently in 2008 & 2017 to provide better maternity facilities to woman employees.

All the Acts have been amended from time to time. For latest amendment visit the link provided: [http://labour.gov.in/latest-notificationamendments](http://labour.gov.in/latest-notificationamendments)

Check Your Progress

1. Is a woman, who is entitled to maternity benefit, also entitled to any medical bonus?
2. When is the lump sum compensation payable under the Workmen’s Compensation Act?

9.7 Summary

The proper beginning of social security in India started with the passing of the Workmen’s Compensation Act. Prior to passing of this Act there was only one enactment to provide compensation to workers and it was the Indian Fatal Accident Act, 1885. Only in rare cases the dependents of a deceased worker could claim damages. Then in 1921, government made proposals for the grant of compensation and circulated them for opinion. The proposals received public support and as a result, the Workmen’s Compensation Act was passed in the March 1923 and was put into force on July 1st, 1924. This legislation was constituted to provide monetary compensation to industrial workers at the time of injury, accident or occupational disease.
Industrial workers had to work in dangerous and unsafe working conditions. The main objective of the Act is to provide a feeling of security to industrial workers at the time contingencies come. This Act is a major step in the direction of social insurance. It provides for the grant of cash benefits to the employees in the contingencies of sickness, employment injury and maternity. It also provides for medical benefit to the employees and their families. All the three schemes running under Employees’ provident fund and Miscellaneous Provisions act, 1952 provides various benefits i.e. retirement benefits, medical care, housing, fulfillment of family obligations, education of children, finances of insurance policies etc.

The objective of the Maternity Benefit Act is to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child. It regulates employment of women in certain establishments for a certain period before and after child birth and provide for maternity and other benefits. The payment of gratuity is a type of retirement benefit which provides financial assistance to an employee to secure his old age.

**9.8 Key Terms**

**Basic wages:** Sec.2(b) of the EPF Act defines “basic wages” as follows: “Basic wages” means all emoluments which are earned by an employee while on duty or (on) leave or on holidays with wages in either case) in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include – (i) The cash value of any food concession; (ii) Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment; (iii) Any presents made by the employer;

**Dearness Allowance**: Dearness Allowance (DA) is a cost of living adjustment allowance. It is calculated as a percentage of an Indian citizen's basic salary to mitigate the impact of inflation on people.

**Retirement**: The act of retiring or of leaving one's job, career, or occupation permanently, usually because of age.

**Factory**: Factory means any premises including the precints thereof -whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on.

**Manufacturing process**: Manufacturing process means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

**Apprentice**: Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.
**Employee:** Employee means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work.

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

**Miscarriage:** Miscarriage means the expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the cause of which is punishable under the Indian Penal Code, 1860.

### 9.9 Review Questions

1. Define the following terms as used in the Payment of Gratuity Act, 1972:
   a) Continuous service
   b) Completed year of service
   c) Employer
   d) Employee

2. What are the objectives of Maternity Benefit Act, 1961. What establishments are covered under this Act?

3. Does a conviction of an insured person eligible to receive any benefits under the ESI Act?

4. Under what circumstances is an employer not liable to pay compensation under the Workmen’s compensation Act?

### 9.10 Further Reading and References

2. India, 2009, Ministry of Broadcasting, Government of India
UNIT 10

WAGE LEGISLATION IN INDIA

10.0 Introduction

10.1 Unit Objectives

10.1 The Payment of Wages Act, 1936

10.1.1 Application of the Act:

10.1.2 Meaning of Wages

10.1.3 Responsibility for Payment of Wages

10.1.4 Wage Period for Payment of Wages

10.1.5 Deductions from Wages Allowable Under the Act

10.1.6 Maintenance of Registers and Records

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10.1.9 Payment In Case Of Death of the Employed Person whose Wages Are Not Disbursed

10.2 Minimum Wages Act, 1948

10.2.1 Employer’s Checklist for Minimum Wages

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10.3 The Payment of Bonus Act, 1965

10.3.1 Eligibility for Bonus

10.3.2 Calculation for Working Days In An Accounting Year

10.3.3 Disqualification for Bonus

10.3.4 Minimum and Maximum Bonus Payable

10.3.5 Time Limit for Payment

10.3.6 Calculation of Bonus

10.3.7 Duties / Rights of Employer

10.3.8 Recovery of Bonus Due

10.3.9 Offences and Penalties

10.4 Summary
10.0 Introduction

Article 43 of the Constitution of India states “the State shall endeavour to secure by suitable legislations or economic organization or in any other way, to all workers-agricultural, industrial or otherwise, work, a living wage, condition of work ensuring decent standard of life and full enjoyment of leisure and social and cultural objectives. The main objective of the State regulation of wages is related to promote industrial peace, preventing inflationary pressure and also maintaining economic stability thereby narrowing the gap between marginal productivity of labour and the actual level of wages as the average.

10.1 Unit Objectives

After reading this unit, you should be able to:

- The Payment of wages act, 1936
- Minimum wages Act, 1948
- The payment of bonus act, 1965

10.1 The Payment of Wages Act, 1936

10.1.1 Application of the Act:

The Act will apply to persons employed in any factory or employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration, and to persons employed in an industrial or other establishment. Here "factory" means a factory as defined in section 2(m) of the Factories Act, 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under section 85(1) thereof.

"Industrial or other establishment" means any-
(a) Tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
(b) Air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;
(c) Dock, Wharf or Jetty;
(d) Inland vessel, mechanically propelled;
(e) Mine, Quarry or Oil-field;
(f) Plantation;
(g) Workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;
(h) Establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation, or to the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.

2. This Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed Rs 6500/- per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the Central Government may, after every five years, by notification in the Official Gazette, specify."

Check your Progress
1. State the Payment of Wages Act, 1936.
2. State the application of the Payment of Wages Act, 1936.

10.1.2 Meaning of wages

"Wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

(a) Any remuneration payable under any award or settlement between the parties or order of a court;
(b) Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
(c) Any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
(d) Any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
(e) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, But does not include

1. any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
2. the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
3. Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
4. Any traveling allowance or the value of any traveling concession;
5. Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
6. Any sum as gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).}
10.1.3 Responsibility for Payment of wages

Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,-
(a) In factories, if a person has been named as the manager of the factory under clause (f) of subsection (1) of section 7 of the Factories Act, 1948 (63 of 1948);
(b) In industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;
(c) Upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;
(d) In the case of contractor, a person designated by such contractor who is directly under his charge; and
(e) In any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment It shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.

10.1.4 Wage period for payment of wages

The person responsible for payment of wages shall decide the wage period. But the period shall not exceed one month.
The wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than 1000 persons are employed, shall be paid before the expiry of the 7th day after the last day of the wage-period in respect of which the wages are payable Any other railway, factory or industrial or other establishment that is where more than 1000 people are employed, shall be paid before the expiry of the 10th day, after the last day of the wage-period in respect of which the wages are payable.
In the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the 7th day from the day of such completion.
Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the 2nd working day from the day on which his employment is terminated.
But where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the 2nd day from the day on which his employment is so terminated.

10.1.5 Deductions from Wages allowable under the Act

Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:
(a) Fines: The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to 3% of the wages payable to him in respect of that wage-period. No fine shall be imposed on any employed person who is under the age of fifteen years. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed. No fine imposed on any employed person shall be recovered from him by installments or after the expiry of 90 days from the day on which it was imposed.

(b) Deductions for absence from duty;

c) Deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(d) Deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;

e) Deductions for such amenities and services supplied by the employer as the State Government or any officer specified by it in this behalf may, by general or special order, authorize.

Explanation: The word "services" in 23[this clause] does not include the supply of tools and raw materials required for the purposes of employment;

(f) Deductions for recovery of advances of whatever nature (including advances for traveling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages. Recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for traveling-expenses.

(ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;

(ff) deductions for recovery of loans granted for house-building or other purposes approved by the State Government and the interest due in respect thereof;

(g) Deductions of income-tax payable by the employed person;

(h) Deductions required to be made by order of a court or other authority competent to make such order;

(i) Deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or any recognized provident fund as defined or any provident fund approved in this behalf by the State Government, during the continuance of such approval;

(j) deductions for payments to co-operative societies approved by the State Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office, and

(k) deductions, made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation Act of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in
any Post Office Savings Bank in furtherance of any savings scheme of any such government.]

(kk) deductions, made with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act, 1926 (16 of 1926), for the welfare of the employed persons or the members of their families, or both, and approved by the State Government or any officer specified by it in this behalf, during the continuance of such approval;

(kkk) deductions, made with the written authorization of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926);

(l) Deductions, for payment of insurance premium on Fidelity Guarantee Bonds;

(m) Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

(n) Deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carriage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;

(o) Deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;

(p) Deductions, made with the written authorization of the employed person, for contribution to the Prime Minister’s National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;

(q) Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees. The total amount of deductions which may be made above in any wage-period from the wages of any employed person shall not exceed-

(i) in cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) above, 75% of such wages, and

(ii) in any other case, 50% of such wages:

Where the total deductions authorized exceed 75% or, as the case may be, 50% of the wages, the excess may be recovered in such manner as may be prescribed.

Check your Progress

1. State the Meaning of wages.
2. Explain the responsibilities for Payment of wages.
3. State the deductions from Wages allowable under the Payment of Wages Act, 1936.

10.1.6 Maintenance of registers and records

It is the responsibility of the employer to maintain such registers and records giving particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages and such other particulars. Every record and register maintained shall be preserved for a period of 3 years after the date of last entry made therein.
10.1.7 Rights of employees

Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, than following persons may apply to such authority:

(1) Such person himself,
(2) Any legal practitioner or
(3) Any official of a registered trade union authorized in writing to act on his behalf, or
(4) Any Inspector under this Act, or
(5) Any other person acting with the permission of the authority appointed by the state government.

Every such application shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Any application may be admitted after the said period of 12 months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

When any application made is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount:

(1) Deducted, or
(2) The payment of the delayed wages, together with the payment of such compensation as the authority may think fit. The amount of such compensation shall:

a) Not exceeding 10 times the amount deducted in the case where deduction has been wrongly made from the wages and;
b) Not exceeding Rs 3000/- but not less than Rs 1500/- in the case where there is delay in payment of wages.

Even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding Rs 2000/-. A claim under this Act shall be disposed of as far as practicable within a period of 3 months from the date of registration of the claim by the authority.

Also no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

(a) A bona fide error or bona fide dispute as to the amount payable to the employed person; or
(b) The occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence.

If the authority hearing an application under this section is satisfied-

(a) That the application was either malicious or vexatious, the authority may direct that a penalty not exceeding Rs 375/-to be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or
(b) That in any case in which compensation is directed to be paid under the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a
penalty not exceeding Rs 375/- to be paid to the State Government by the employer or other person responsible for the payment of wages.

A single application can also be made by the unpaid group of the employed persons. Employed persons can be said to belong to Unpaid Group:

(1) If they are borne by the same establishment, and
a. If deductions have been made from their wages for the same wage period in contravention of the Act, or
b. Their wages for the same wage period have remained unpaid after the day fixed by the Act.

An appeal can be made against an order dismissing either wholly or part of an application made. The appeal can be made within 30 days of the date on which the order or direction was made. The appeal has to be made before the court of small causes or the District Court by following persons:

(1) By an employed person or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector under this Act, if the total amount of wages claimed to have been withheld from the employed person exceeds Rs 20/- or from the unpaid group to which the employed person belongs or belonged exceeds Rs 50, or
(2) By the employer or other person responsible for the payment of wages, if the total sum directed to be paid by way of wages and compensation exceeds Rs 300/- or such direction has the effect of imposing on the employer or the other person a financial liability exceeding Rs 1000/-, or
(3) By any person directed to pay a penalty.

Check your Progress
1. State the Rights of employees under the Payment of Wages Act, 1936.

10.1.8 Penalties

(1) Whoever being required under this Act to maintain any records or registers or to furnish any information or return-
(a) Fails to maintain such register or record; or
(b) Willfully refuses or without lawful excuse neglects to furnish such information or return; or
(c) Willfully furnishes or causes to be furnished any information or return which he knows to be false; or
(d) refuses to answer or willfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act, shall, for each such offence, be punishable with fine which shall not be less than Rs 1500/- one but which may extend to Rs 7500/-. 
(2) Whoever-
(a) Willfully obstructs an Inspector in the discharge of his duties under this Act; or
(b) refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act in relation to any railway, factory or industrial or other establishment; or
(c) Willfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or

(d) prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act; shall be punishable with fine which shall not be less than Rs 1500/- one but which may extend to Rs 7500/-.

(3) If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which shall not be less than Rs 3750/- but which may extend to Rs 22500/-.

(4) If any person fails or willfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to Rs 750/- for each day for which such failure or neglect continues.

Check your Progress
1. State the penalties under the Payment of Wages Act, 1936.

10.1.9 Payment in case of death of the employed person whose wages are not disbursed

Where the amount payable to an employed person as wages could not be paid on account of his death before payment or on account of his whereabouts not being known;

(a) Be paid to the person nominated by him in this behalf.

(b) Where no such nomination has been made or where for any reasons such amount cannot be aid to the person nominated, be deposited with the prescribed authority.

Check Your Progress

Are the provisions of Section 9(2) of the Payment of Wages Act permitting deduction in Wages for participation in illegal strike affected by the provisions of section 26 of the industrial Disputes Act providing for penalty for illegal strikes? Do an internet search for relevant case laws on this matter and discuss.

10.2 Minimum Wages Act, 1948

The concept of Minimum Wages was first evolved by ILO in 1928 with reference to remuneration of workers in those industries where the level of wages was substantially low and the labour was vulnerable to exploitation, being not well organised and having less effective bargaining power. The need for a legislation for fixation of minimum wages in India received boost after World War – II when a draft bill was considered by the Indian Labour Conference in 1945. On the recommendation of the 8th Standing Labour Committee, the Minimum Wages Bill was introduced in the Central Legislative assembly on 11.4.1946 to provide for fixation of minimum wages in certain employments.
The Minimum Wages Bill was passed by the Indian Dominion Legislature and came into force on 15th March, 1948. Under the Act both State and Central Government are “Appropriate Governments” for fixation/revision of minimum rates of wages for employments covered by the Schedule to the Act. The minimum rates of wages also include Special Allowance (Variable Dearness Allowance) linked to Consumer Price Index Number which are revised twice a year effective from April and October. The rates of wages once fixed are revised at an interval not exceeding of five years.

The National Minimum Wage has been considered at various fora in the past. However, State/UT Governments are not unanimous on the need of a National Minimum Wage as socioeconomic conditions vary from state to state, region to region and also from industry to industry due to different geographical, topographical and agro-climatic factors. The Six Regional Minimum Wages Advisory Committees set up in 1987 to reduce regional disparities among States have been broadened and renamed as Regional Labour Ministers’ Conferences.

10.2.1 Employer’s Checklist for Minimum Wages

The employer must pay every employee wages as fixed by the Government.
(a) Wages must be paid in cash.
(b) For the fixation of minimum wages, the employment must have been in Schedule originally or added to the Schedule by a notification under Section 27 of the Act.
(c) The employer can take actual work on any day up to 9 hours in a 12 hours shift, but he must pay double the rate for any hour or part of an hour of actual work in excess of 9 hours or for more than 48 hours in any week.
(d) Once a minimum wage is fixed according to the provisions of the Act, the employer must pay to every employee engaged in a Scheduled employment, minimum wages notification for that class of employees.
(e) The employer should fix wage-period for the payment of wages at intervals not exceeding one month or such other larger period as may be prescribed.
(f) The employer should pay wages on a working day within seven days of the end of wage period or within 10 days if 1000 or more persons are employed in an establishment.
(g) The employer should pay the wages to a person discharged not later than the second working day after his discharge.
(h) Every employer should maintain a register of wages at workplace specifying the following particulars for each wage period in respect of each employed person:
   i. Minimum rate of wages payable;
   ii. The number of days in which overtime was worked;
   iii. The gross wages;
   iv. The wages actually paid and the date of payment.
(i) Every employer should get the signature or the thumb impression of every person employed on the wage book and the wage slips.
(j) The employer should exhibit at main entrance to the establishment and its offices, a notice in respect of the following in English and local language:
   i. Minimum rates of wages;
   ii. Abstracts of the Acts and rules made there under;
   iii. Name and address of the Labour Inspector/ Asst. Commissioner of Labour etc.
The minimum wages cover all workers in the sectors agricultural, industrial and small-scale sectors.

This means:
- Farm labourers
- Landless labourers
- Factory workers
- People working in cottage industries
- Construction workers etc.

The issue of fixation of minimum wages is of primary importance in a country like India where 300 million people are employed in the informal sector with no collective bargaining power. This is 93 percent of the workers. The enactment of the Minimum Wages Act in 1948 is a landmark in the labour history of India. The Act provides for fixation of minimum wages for notified scheduled employment.

As per Government of India, for all the States, the minimum wages have been fixed at about Rs 40 to 60 per day per person, average about Rs 50 per day for 25 days per month. There are 45 scheduled employments in the Central sphere and 1232 in the state sphere for which minimum wages have been fixed. To protect the wages against inflation they were linked to rise in the Consumer Price Index.

The variable dearness allowance (VDA) came into being in 1991 and the allowance is revised twice a year.

At present 22 states /Union Territories have these provisions. The states and Union Territories were further directed to ensure that minimum wages are not below Rs 45 per day for any scheduled employment.

**10.2.3 Fixation of Minimum Wage Rate in India**

Minimum rate of the wages fixed or revised consists of the following:

- A basic rate of wages and a special allowance, viz., cost of living allowance;
- A basic rate of wages with or without cost of living allowance and cash value of concessions for supplies of essential commodities;
- An all inclusive rate, i.e. basic rate, cost of living allowance and cash value of concessions. The Government may fix the minimum rates of wages either by the hour, by the day, by the month or by such wage period as may be prescribed.

The minimum wage rate may be fixed at
- Time rate,
- Piece rate,
- Guaranteed time rate and
- Overtime rate.

The Act provides that different minimum wage rate may be fixed for:
- Different scheduled employments,
- Different works in the same employment,
Also, such minimum wage may be fixed by
a) An hour,
b) Day,
c) Month, or
d) Any other period as may be prescribed by the notified authority

10.2.4 Norms for fixing minimum wage:
- Three consumption units per earner,
- Minimum food requirement of 2700 calories per average Indian adult,
- Cloth requirement of 72 yards per annum per family, 118
- Rent corresponding to the minimum area provided under the government's Industrial Housing Scheme and
- Fuel, lighting and other miscellaneous items of expenditure to constitute 20 per cent of the total minimum wage
- Fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total Minimum Wages,
- Children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage etc. should further constitute 25% of the total minimum wage

Check your Progress
1. State the MINIMUM WAGES ACT, 1948.
3. State the Norms for fixing minimum wage.

10.2.5 Cost of Living Allowance:
The minimum basic wages fixed are linked to consumer price index as a counter measure against inflation. The cost of living is set twice in a year. The Commissioner of Labour notifies the rate 1st of April and 1st of October. The rates are fixed on the basis of the average rise in the State industrial workers consumer price index numbers for half year ending December and June respectively.

10.2.6 Variable Dearness Allowance:
Dearness Allowance is payable to monthly, daily and piece rate earners. Every six months the respective State Governments issues the Cost of Living Index number for each and every scheduled employment.
For checking the minimum wage rate log on to http://www.paycheck.in/main/officialminimumwages. It gives state wise updated minimum wage rate with their effective date.
Check Your Progress

The object of the Minimum Wages Act is not fully served as the wage levels are mostly decided on the basis of collective bargaining- Comment

10.3 The Payment of Bonus Act, 1965

The payment of Bonus Act provides for payment of bonus to persons employed in certain establishments of the basis of profits or on the basis of production or productivity and for matters connected therewith.
It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year.

10.3.1 Eligibility for Bonus

Every employee receiving salary or wages up to Rs. 10,000 p.m. and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.
Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent, of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.
However employees of L.I.C., Universities and Educational institutions, Hospitals, Chamber of Commerce, R.B.I., IFCI, U.T.I., IDBI, NABARD, SIDBI, Social Welfare institutions are not entitled to bonus under this Act.

10.3.2 Calculation for Working Days in An Accounting Year

An employee shall be deemed to have worked in an establishment in any accounting year also on the days on which--
(a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
(b) he has been on leave with salary or wage;
(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
(d) the employee has been on maternity leave with salary or wage, during the accounting year.

10.3.3 Disqualification for Bonus
Notwithstanding anything contained in the act, an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behaviour while in the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

10.3.4 Minimum and Maximum Bonus Payable
**Minimum Bonus**

- The minimum bonus which an employer is required to pay even if he suffers losses during the accounting year or there is no allocable surplus is 8.33% of the salary or wages during the accounting year, or
- Rs. 100 in case of employees above 15 years and Rs 60 in case of employees below 15 years, at the beginning of the accounting year, whichever is higher.

**Maximum Bonus**

If in an accounting year, the allocable surplus, calculated after taking into account the amount ‘set on’ or the amount ‘set off’ exceeds the minimum bonus, the employer should pay bonus in proportion to the salary or wages earned by the employee in that accounting year subject to a maximum of 20% of such salary or wages.

**10.3.5 Time Limit for Payment**

The bonus should be paid in cash within 8 months from the close of the accounting year or within one month from the date of enforcement of the award or coming into operation of a settlement following an industrial dispute regarding payment of bonus. However if there is sufficient cause extension may be applied for.

**10.3.6 Calculation of Bonus**

The method for calculation of annual bonus is as follow:

1. Calculate the gross profit in the manner specified in
   a. First Schedule, in case of a banking company, or
   b. Second Schedule, in any other case.

2. Calculate the Available Surplus.
   
   \[
   \text{Available Surplus} = A + B, \text{ where } A = \text{Gross Profit} - \text{Depreciation admissible u/s 32 of the Income tax Act} - \text{Development allowance} - \text{Direct taxes payable for the accounting year (calculated as per Sec.7)} - \text{Sums specified in the Third Schedule.}
   \]

   \[
   B = \text{Direct Taxes} (\text{calculated as per Sec. 7}) \text{ in respect of gross profits for the immediately preceding accounting year} - \text{Direct Taxes in respect of such gross profits as reduced by the amount of bonus, for the immediately preceding accounting year.}
   \]

3. Calculate Allocable Surplus
   
   Allocable Surplus = 60% of Available Surplus, 67% in case of foreign companies.

4. Make adjustment for ‘Set-on’ and ‘Set-off’. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set on and set off from the previous years, as illustrated in Fourth Schedule.

5. The allocable surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year. In case of an employee receiving salary or wages above Rs. 3,500 the bonus payable is to be calculated as if the salary or wages were Rs. 3,500 p.m. only.
Check your Progress
2. State the eligibility for Bonus.
3. Enumerate the methods for calculation of annual bonus.

10.3.7 Duties / Rights of Employer

Duties
- To calculate and pay the annual bonus as required under the Act.
- To submit an annual return of bonus paid to employees during the year, in Form D, to the Inspector, within 30 days of the expiry of the time limit specified for payment of bonus.
- To co-operate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.
- To get his account audited as per the directions of a Labour Court/Tribunal or of any such other authority.

Rights

An employer has the following rights:
- Right to forfeit bonus of an employee, who has been dismissed from service for fraud, riotous or violent behaviour, or theft, misappropriation or sabotage of any property of the establishment.
- Right to make permissible deductions from the bonus payable to an employee, such as, festival/interim bonus paid and financial loss caused by misconduct of the employee.
- Right to refer any disputes relating to application or interpretation of any provision of the Act, to the Labour Court or Labour Tribunal.

Rights of Employees

- Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.
- Right to refer any dispute to the Labour Court/Tribunal Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.
- Right to seek clarification and obtain information, on any item in the accounts of the establishment.

Check your Progress

10.3.8 Recovery of Bonus Due

- Where any bonus is due to an employee by way of bonus, employee or any other person authorised by him can make an application to the appropriate government for recovery of the money due.
If the government is satisfied that money is due to an employee by way of bonus, it shall issue a certificate for that amount to the collector who then recovers the money.

Such application shall be made within one year from the date on which the money became due to the employee.

However the application may be entertained after a year if the applicant shows that there was sufficient cause for not making the application within time.

10.3.9 Offences and Penalties

For contravention of the provisions of the Act or rules the penalty is imprisonment upto 6 months or fine up to Rs.1000, or both.

For failure to comply with the directions or requisitions made the penalty is imprisonment upto 6 months or fine up to Rs.1000, or both.

In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal officer responsible for the conduct of its business, as the case may be, shall be deemed to be guilty of that offence and punished accordingly, unless the person concerned proves that the offence was committed without his knowledge or that he exercised all due diligence.

The Acts have been amended from time to time. For latest amendment visit the link provided http://labour.gov.in/latest-notificationamendments

10.4 Summary

Wages refers to all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money which would (if the terms of employment, express or implied, are fulfilled) be payable to a person employed in respect of his employment or of work done in such employment. There are three main legislations governing wages. The Payment of wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them. The Minimum Wages Act, 1948 was enacted to safeguard the interests of workers, mostly in the unorganised sector by providing for the fixation of minimum wages in certain specified employments. It binds the employers to pay their workers the minimum wages fixed under the Act from time to time. The Payment of Bonus act, 1965 was enacted to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or productivity and for the matters connected therewith.

10.5 Key Terms

Bonus: A bonus is an additional compensation given to an employee above his/her normal wage. A bonus can be used as a reward for achieving specific goals set by the company, or for dedication to the company.
Available Surplus: Bonus payable under the Act is linked with profits. The employer has to calculate "gross profits" of his establishment in the manner specified in section 4. Then from "gross profits" so calculated he has to deduct the sums referred to in section 6 as prior charges. The balance is called "available surplus".

Allocable surplus: A percentage of the available surplus calculated in accordance with the provisions of sub-section (4) of section 2 is called "allocable surplus". Where, in respect of any year the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer must pay to every employee in respect of that year bonus in proportion to the salary or wage earned by the employee during the year subject to a maximum of twenty percent of such salary or wage. {Subsection 2(4), 4, 5, 6 & 11}

10.6 Review Questions

Q1. What is the object of the payment of Wages Act, 1936?

Q2. To which establishments in the payment of Bonus act, 1965 applicable? Who are entitled to be paid under The Payment of Bonus act, 1965?

Q3. What is the objective of minimum wages act, 1948? Is the task of the government over once it fixes minimum rates of wages under the Minimum Wages Act, 1948?

10.7 Further Reading and References

- P.N Singh & Neeraj Kumar, Employee Relations Management, Pearson India
UNIT 11

EMPLOYEE GRIEVANCES & DISCIPLINE

11.0 Introduction
11.1 Unit Objective
11.2 Contents of Grievance
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11.4 Approaches to Grievance Handling
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11.8 Model Grievance Procedure
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11.11 Role of Personnel Department, Manager and Supervisor in Handling Grievances
11.12 Common Pitfalls That Management Commits In Grievance Handling
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11.15 Discipline: The Union Context
11.16 Factors to Consider
11.17 Approaches to Discipline
11.18 Douglas McGregor’s “Hot Stove Rule”
11.19 Code of Discipline in Industry
11.0 Introduction

A well-defined grievance procedure is an important element of sound industrial relation machinery. Prompt and effective disposal of worker’s grievance is the key to industrial peace. A dissatisfaction, which is orally made known by one employee to another, is known as a complaint. A complaint becomes a grievance when this dissatisfaction related to work is brought to the notice of the management. Grievances are feelings, something real, sometime imagined, which an employee may have in regard to his employment situations. Grievances give rise to unhappiness, frustration, discontent, indifference to work, poor morale and they ultimately lead to the inefficiency and low productivity of workers. The cost of grievance can be high in terms of time lost, poor work, damage, poor customer services and goodwill of the organization. Maintenance of harmonious human relations in an organization depends upon the promotion and maintenance of discipline. No organization can prosper without discipline. Discipline has been a matter of utmost concern for all organizations. Maintenance of effective discipline in an organization ensures the most economical and optimum utilization of various resources including human resources. Thus, the objective of discipline in an organization is to increase and maintain business efficiency.

11.1 Unit Objective

After reading this unit, you should be able to:

- Grievances and its reasons in the enterprise
- Approaches and steps to Grievance Handling
- Grievance identification techniques
- Grievance procedure & Model grievance procedure
- Advantages of having a grievance procedure & role of personnel department, manager and supervisor in Handling Grievances.
- Common pitfalls that management commits in grievance handling.
- Evaluation of Grievance Redressal Machinery
- Defining Discipline, its features & objectives
- Reasons for disciplining employees
- Types of Discipline, Discipline policy & Disciplinary actions
- Approaches to discipline & Douglas McGregor’s “Hot stove Rule”
11.2 Contents of Grievance

Basically, a grievance is a complaint of one or more workers, which has following contents:


While dealing with grievances of subordinates it is necessary to keep in mind the following points: (a) A grievance may or may not be real. (b) Grievances may arise out of not one cause, but multifarious causes. (c) Every individual does not give expression to his grievances.

Grievances, whether genuine or imaginary, require prompt attention in the form of explanation or redressal, for an unredressed grievance adversely affects an employee’s morale, productivity or attitude. Therefore, immediate redressal and settlement of grievances are must. The three cardinal principles of grievance settlement are:

(a) Settlement at the lowest level.
(b) Settlement as quickly as possible.
(c) Settlement to the satisfaction of the aggrieved

Check Your Progress
1. State the Contents Of Grievance.

11.3 Typical Reasons for Employee Grievances

- Disagreement over wages
- Inequitable work schedules
- Disagreement over hours of work
- Unfair conditions of employment
- Discrimination against a worker
- Harassment of a worker
- Inconsistent performance standards
- Inappropriate use of disciplinary process

Check Your Progress
1. State the typical reasons for employee grievances.

11.4 Approaches to Grievance Handling

Since no one grievance-handling practice serves the purpose of all concerned, employers adopt different approaches to grievance-handling machinery. This depends upon various factors
including the attitude of management and employees to the question of grievance handling. Especially in the Indian context managements are more prone to be legalistic in their approach because of the widespread influence of legal framework on industrial relations. Researchers have shown that, in this framework managements are likely to be bigger gainers in legal handling of industrial conflict. Also, many management follow a human-relations approach towards their workers. Sometimes, they also follow an open-door and step-ladder policy in this regard.

There are three approaches documented reflecting the attitude of management and employees to handling of grievance.

These are:
(a) Legalistic View Approach.
(b) Human Relations Approach.
(c) Open-Door or Step-Ladder Approach

**a. Legalistic View Approach**

Managements following legalistic approach often cite the negotiated contract when an employee raises a complaint or grievance. They argue that the situation has been taken care of in the negotiated contract. The management and the worker follow the provisions therein. Grievances are those defined by the contract, and the process for dealing with the grievances is clear to all concerned and specified with the time span for each stage.

**b. Human Relations Approach**

The basis of the emergence of this philosophy is human relations school. The employee and his specific problem is the major concern. The manager sympathetically listens to grievances in a professional manner so as to help the individual overcome his problem, the fundamental assumption being that individuals are more important than production targets. It is quite likely that understanding their needs and grievances will help in attaining production targets, but primarily individuals are the end rather than a means to an end. The legalistic and the human relations approach can have various variations individually or in combination in different situations. Different organisations have combinations of both.

**C. Open-Door and Step-Ladder Approach**

Channels of handling grievances should be carefully developed and its information should be disseminated amongst the employees. It is necessary that employees know the channels through which they ventilate their grievance. There are two procedures for the settlement of grievances - open-door policy and step-ladder procedure. Some companies have an informal and open - door policy for grievances handling and employees are free to go up the top-level executives with their grievances for redressal.

**Under step-ladder procedure**, an aggrieved employee will first present his grievance to the first line supervisor. If he is not satisfied with the decision of the supervisor, he presents his grievance to the second level, namely, the head of department. At the third step, a joint grievance
committee reviews the grievance. Grievances still unsettled are referred to the chief executive of the company.

**Check Your Progress**

1. State the approaches to grievance handling.
2. State the Legalistic View Approach.
4. State the Open-Door or Step-Ladder Approach.

### 11.5 Steps in Grievance Handling

The following steps will provide a measure of guidance to the manager dealing with grievances.

**[I] Define or Describe the Nature of the Grievance as clearly and as fully as possible**

Defining or describing a grievance implies that it has been expressed. This is concerned with:

1. **Determining the Correct Grievance** - Many grievances, after being ‘settled’, turn up again to plague management. The trouble in such instances invariably is that the wrong grievance has been handled. The chances of getting at the right grievances are increased if care is used in the initial contact with the employee. Encouraging a person to talk is one means of getting closer to the truth. And the practice of asking the aggrieved to put the case in writing is also desirable.
2. **Discovery of Unexpressed Grievances** - There are cases, however, when individual grievances go unexpressed and unexposed for long periods of time. Various methods are useful in this connection. Statistical studies of turnover, complaints, transfers, earnings and sources of suggestions can provide clues to actual or probable grievances. Skills in observations of the behaviorisms, attitudes and habits of one’s subordinates are particularly helpful in detecting signs of changes due to unexpressed grievances.

**[II] Gathering Facts**

Having defined grievances as accurately as possible, the next step is to gather all relevant facts about the issue. It is important to know the alleged grievance was first experienced, whether or not it has been repeated, how and where it took place.

**[III] Establishing Tentative Solutions**

After getting a clear picture of the grievance, the next step in the procedure calls for the establishment of tentative solutions or answers. In handling grievances, management must make a list of alternative solutions and later test them. In compiling possible solutions, management need not at the time make them known to the worker. It is usually better to reserve judgment until some opportunity is afforded to check them. If an immediate answer is required, the selection of the right answer will be dependent upon the experience, training and good judgment of the executive involved.
[Iv] Checking Tentative Solutions

The executive has two possible courses of action:

(a) He can rely on trial and error. He can check by applying a decision. This is risky course; but often, it must be done because of the lack of time for further analysis. (b) He can evaluate alternatives on the basis of his own experience(s) of others. This presupposes that there exists information on past successes and failures with similar cases.

[V] Applying Solutions

Having received a decision, it seems common sense that it should be applied. The decision, having finally been reached, should then be passed along in clear, unequivocal terms. After all, a grievance cannot be handled just by listening to an employees’ complaint; something must be done about it. The ultimate decision is the tool of action.

[Vi] Follow-Up of the Grievance

It is unsafe to conclude that a grievance has been well handled until a check is made to determine whether the employee’s attitude has been favourably changed. To assure themselves along these lines, executives concerned need a timetable and a method of follow up, or feedback.

Check Your Progress

1. Enumerate the steps in grievance handling.

11.6 Grievance Identification Techniques

1. **Observation**
   Knowledge of human behavior is requisite quality of good manager. From the changed behavior of any employee, he should snuff the causes of grievances, without its knowledge to the employee.

2. **Gripe Boxes**
   The suggestion boxes, for instance are placed at easily accessible spots to most employees in the organization. The employees can file anonymous complaints about their dissatisfaction in these boxes.

3. **Open Door Policy**
   Most of the organizations still don’t practice this but open door policy demands that the employees, even at the lowest rank, should have easy access to the Chief Executive to get his grievances redressed.

4. **Exit Interview**
These interviews are conducted to know the reasons for leaving the job. Properly conducted exit interviews can provide significant information about the strengths and weaknesses of the organization and can pave way for further improvements.

**Check Your Progress**
1. State the grievance identification techniques.

**11.7 Grievance Procedure**

Grievance procedure is another method of resolving disputes. All labour agreements contain some form of grievance procedure. And if the procedure is followed strictly, any dispute can easily be resolved.

A typical example of grievance procedure followed in a public sector unit is as follows:

1. **First Stage:**
The aggrieved employee shall, first submit his grievance in writing to his Sectional Head in the prescribed form. The sectional head should study the grievance carefully with the least possible delay and the aggrieved employee should be given an opportunity to present his case in person if he requests for the same. If the employee so desires, he may take the assistance of a co-worker or a union representative. A written reply shall be given to the employee before the end of the fifth working day, if reply is not given before the end of the fifth working day, the concerned officer should record reasons for the delay which should be communicated to the aggrieved employee.

2. **Second Stage:**
In case the said employee is not satisfied with the reply of the sectional head, or if the Sectional Head fails to give a reply within the stipulated time as in First stage above, he shall be free to register his grievance in writing in the prescribed form with his Departmental Head. Departmental head shall, after careful study, give an opportunity to the concerned person to present his case before him. The head of the department should study the grievance and the points brought out by the employee in the personal hearing and give a reply at the end of the fifth working day from the day of receipt of such complaint.

3. **Third Stage:**
If the employee is not satisfied with the decision of the departmental head or if the latter fails to give any decision within the stipulated period, the employee will be entitled to lodge an appeal to the Divisional Head or any other officer nominated by the management for this purpose. This officer should also follow the same procedure as prescribed in Stages I and II and a reply should be given before the end of the tenth working day.

4. **Fourth Stage:**
If the aggrieved employee is not satisfied with the decision of the divisional head, he can refer the case to THE EMPLOYEE’S UNION within 10 days. The Union may discuss the subject if they deem fit, in the periodical management union meetings which will be held within one month from the day, such reference is made by the Union to the management.

**Check Your Progress**
1. Enumerate the grievance procedure.
11.8 Model Grievance Procedure

The Model Grievance Procedure suggested by the National Commission on Labour has provided for the successive time bound steps each leading to the next in case of lack of satisfaction.

At the outset an aggrieved worker shall approach the foreman and informs his grievance orally and seeks the redressal of his grievance. If it is not redressed to his satisfaction he approaches the supervisor who has to give reply to the complaint worker within 48 hours. If the decision (answer) is not acceptable to the worker or if the superior does not give an answer, the worker can go to the next step. At the third stage the worker can, either in person or accompanied by his departmental representative, approach the head of the department who has to give an answer before the expiry of three days. If the department head fails to do so or if the decision given by him is not acceptable to the worker then the worker can resort to the Grievance Committee which comprises of the representatives of employers and employees. This Committee shall communicate its recommendations to the manager within seven days of the grievance reaching it. If there are unanimous decisions, these shall be implemented by the management. In case, unanimous decisions have not been arrived at, the views of the members of the Committee shall be recorded and all the relevant records shall be placed before the manager for decision. The manager shall communicate his decision within three days. The worker has got a right to appeal against the manager’s decision. These appeals shall be decided within a week. If the aggrieved desires, he can take along with him a union official for discussion with the authority. In case a decision has not been arrived at, at this stage, the union and management may refer the grievance to voluntary arbitration within a week of receipt of the management’s decision by the worker. In this stage, the union and management may refer the grievance to voluntary arbitration within a week of receipt of the management’s decision by the worker.

The Tata Iron and Steel Company (works), for example, has grievance procedure which consists of several stages (Monappa 1985) have shown in figure 1.
Check Your Progress
1. State the Model of grievance procedure.

11.9 Union Employee Grievances Handling

Union employee grievances are handled differently:
The are often resolved through:

- Arbitration - A hearing before someone empowered to resolve the dispute.
- Mediation - Negotiation between two parties, using a neutral intermediary to assist in settling a dispute.

Check Your Progress
1. Enumerate the Union Employee grievances handling.

11.10 Advantages of having a Grievance Procedure

In order to develop mutual trust and cooperation in day-to-day relations at the shop floor level, it is necessary that an effective system of grievance redressal be provided. If the grievance redressal system is effective it will reduce the incidence of dissatisfaction amongst employees.
and may even prevent work interruptions. This also helps in cementing a long-term understanding and cooperation between the worker and the management.

The following are some of the distinct advantages of having a grievances handling procedure:

(a) The management can know the employees’ feelings and opinions about the company’s policies and practices. It can feel the ‘pulse’ of the employees. To the management, the grievance procedure provides a means “to keep check on relevant diagnostic data on the state of the organizations health.”

(b) With the existence of a grievance handling procedure, the employee gets a chance to ventilate his feelings. He can blow off his ‘steam’ through an official channel. Certain problems of workers cannot be solved by first line supervisors, for these supervisors lack the expertise that the top management has, by virtue of their professional knowledge and experience.

(c) It keeps a check on the supervisor’s attitude and behaviour towards their subordinates. They are compelled to listen to subordinates patiently and sympathetically.

(d) The morale of the employees will be high with the existence of proper grievance handling procedure. Employees can get their grievances redressed in a just manner.

Check Your Progress
1. State the advantages of grievance procedure.

11.11 Role of Personnel Department, Manager and Supervisor in handling Grievances

A. Role of Personnel Department in handling Grievances

Grievance handling is not the monopoly of a specialist or of a functional department. The role of personnel department in this regard should be: (a) to devise a sound grievance procedure which can serve as an effective upward communication in the organisation; (b) to advise the line people about the importance of a sound grievance handling system and its implementations; (c) to train the staff people, especially the front-line supervisors, in effective grievance handling and in counseling skills; (d) to implement promptly the decisions taken by the grievance committee, and for that matter to maintain effective and close liaison with all concerned; (e) to maintain records of the activities of the grievance committee such as meetings held, actions taken and their implementation; (f) to take necessary follow-up action, review the procedure, and if necessary, modify the existing procedure to suit the changing circumstances; and (g) to follow up individual cases of grievances settled and identify its effect on the concerned individual workers and its impact on other employees of the organisation.

Check Your Progress
1. State the role of personnel department in handling grievances.

B. Managerial Approach in Dealing with Grievances effectively
While dealing with grievances, a manager cannot depend upon any readymade solutions. Every case has to be dealt differently in different situations. The following guidelines may be followed to deal effectively with the grievances:

(a) Way you treat a man with the grievance matters a lot. Show concern for the employee. 
(b) Attend to him with promptness. (c) Listen to grievance well. (d) Understand the true nature of grievance and decode the message. (e) Get the facts so as to identify the problem. In this process try to avoid emotional overtones of the employee. (f) Deeper analysis of grievance may help identify the real causes. (g) Take action best suited to the situation immediately and communicate to the employee. (h) If grievance is imaginary or unfounded, attempt may be made to counsel the employee.

Check Your Progress
1. State the managerial approach in dealing with grievances effectively.

C. Role of a Supervisor in handling Grievances of employees

Some guiding points are as under:
(a) All supervisors should know how to handle a grievance. Then we can do something about preventing grievances. 
(b) Supervisor should not pass the buck to somebody else. 
(c) If he cannot do anything, he should bring to the attention of his supervisor. 
(d) Handling grievance encourages fact rather than perceptions. 
(e) Have problem-solving approach, not a battle to be won. 
(f) Role of first line supervisor is important as his findings last:
• Immediacy of action. 
• Show concern for employee.

Check Your Progress
1. State the role of a supervisor in handling grievances of employees.

11.12 Common Pitfalls that Management Commits in Grievance handling

Some of the common pitfalls that management commits in grievance handling relate to: (a) Stopping the search for facts too soon; (b) Expressing a management opinion before gathering full facts; (c) Failing to maintain proper records; (d) Arbitrary exercise of executive discretion; and (e) Settling wrong grievances. The management should attempt to avoid these errors. Indeed, effective handling of grievance facilitates the integration of interests.

11.13 Evaluation of Grievance Redressal Machinery

It is advisable for an organization to periodically evaluate its formal grievance procedures against three criteria:
(i) the grievance rate; 
(ii) the settlement rate; and
Pigors and Myers suggest the following test questions that a personnel administrator should ask if he is keen on evaluating the success of the redressal machinery on any given grievance: (a) Was the case handled in such a way that the parties involved in it were able to identify, and agree upon, what was at stake? (b) Was the incident closed with a sense of satisfaction on the part of everyone immediately involved in the original complaint?

**Check Your Progress**
1. State the evaluation of grievance redressal machinery.

11.14 Employee Discipline

11.14.1 Meaning:
In simple words, the word discipline connotes orderly behaviour by the members/employees. In other words, discipline implies behaving in a desired manner. By that we mean that employees confirm to the rules and regulations framed by the organisation for an acceptable behaviour. Following definitions of discipline will make its meaning more clear.

According to Richard D. Calhoon’, “Discipline may be considered as a force that prompts individuals or groups to observe the rules, regulations and procedures which are deemed to be necessary for the effective functioning of an organisation”.

William R. Spreigel and Edward Schultz define discipline as “the force that prompts an individual or a group to observe the rules, regulations and procedures which are deemed to be necessary to the attainment of an objective, it is force or fear of force which restrains an individual or a group from doing things which are deemed to be destructive of group objectives

11.14.2 Features

The main features or characteristics of discipline that flow from above definitions are:

1. Discipline is self-control:
   It refers to one’s efforts at self-control to conform to organisational rules, regulations and procedures which have been established to ensure the successful attainment of organisational goals.
2. It is a negative approach:
It means discipline encourages people to undertake some activities, on the one hand, and restrains them from undertaking others, on the other.

3. It is a punitive approach:
It means that discipline also imposes penalty or punishment if the rules and regulations framed by the organisation are not obeyed or ignored by the members. Punishment is imposed not to change past behaviour but to prevent its recurrence in future.

Check Your Progress
1. Define the term discipline.
2. State the features or characteristics of discipline.

11.14.3 Objectives of Discipline
The objectives of discipline are to:

1. Motivate an employee to comply with the company’s performance standards:
Employee receives discipline after failing to meet some obligation of job. The failure could be either directly related to the tasks performed by the employee or ignoring rules and regulations that define proper conduct at work.

2. Maintain respect and trust between the supervisor and employee:
Discipline if not properly administered can create problems like low morale, resentment, and ill-will between the employees. In such case, improvement in employee’s behaviour, if any, will be relatively short-lived and the supervisor will need to discipline the employee again and again. On the contrary, properly administered discipline will not only improve employee behaviour but will also minimize future disciplinary problems through good relationship between the supervisor and the employee.

3. Improve the performance of the employee:
Discipline for poor task performance should not be applied while employees are on training or learning the job. Nor should employees be disciplined for problems beyond their control, for example, failure to meet output standards due to the lack of raw materials. Yes, discipline should be exercised when employees are found responsible for unsatisfactory performance.

4. Increase the morale and working efficiency of the employees.
5. Foster industrial peace which is the very foundation of industrial democracy.

Why Disciplining Employees?

- Employees experience conflict at work and sometimes break the rules.
- It then becomes your job to minimize the conflict and get things going back on track.
- Disciplinary policies and actions play the prime role in prohibiting unwanted employee behaviors.

Check Your Progress
1. State the objectives of discipline.

11.14.4 Typical Reasons for Disciplining Employees

Fig2

<table>
<thead>
<tr>
<th>Issues Related to Conduct</th>
<th>Tardiness</th>
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<tr>
<td>Absenteeism</td>
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<td>Insubordination</td>
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<td>Negligence</td>
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<td>Fighting</td>
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<td>Stealing</td>
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<td>Falsification of documents</td>
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<td>Abusiveness</td>
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<td>Harassment</td>
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<td>Use of obscene language</td>
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<td>Possession of a controlled substance</td>
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<td>Reporting to work under the influence of alcohol or other controlled drug</td>
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<td>Substance abuse</td>
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<td>Infractions of published work rules (for example, dress code, safety procedures, and so on)</td>
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<th>Low productivity</th>
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<td></td>
<td>High error rate, overall</td>
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<tr>
<td></td>
<td>Repetition of a specific error</td>
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</tbody>
</table>
Check Your Progress
1. State the reasons for disciplining employees.

11.14.5 Types of Discipline

Discipline is classified as either positive or negative. Characteristics are as follows

Positive discipline

It implies a sense of duty to observe the rules regulations and is also called self discipline. It involves creation of a favourable atmosphere in the organization where by employees willingly conform to the established rules and regulations. Positive discipline can be achieved through rewards and effective leadership. It is more effective than negative discipline.

"Negative discipline

It is also known as punitive or corrective discipline involves imposition of penalties or punishment to force workers to obey rules and regulations objective is to ensure that employees do not violate the rules and regulations. Negative disciplinary action involves such techniques as fines reprimand, demotion, layoff, transfer etc.

Negative discipline does not eliminate undesirable behaviour, it merely oppresses it. It requires regular monitoring causing wastage of time. Punishment also causes resentment and hostility. While exercising negative discipline, management should proceed in a sequential manner viz. an oral reprimand, a written reprimand, a warning, temporary suspension and dismissal or discharge.

Check Your Progress
1. State the types of discipline.

11.14.6 Disciplinary Policy Ground Rules

• Employees should know what they can and can’t do.
• You should clearly communicate the discipline that will take place if employees break your rules.
• For this reason, company need to have a good disciplinary policy in place and well communicated to everyone.

Disciplinary Policy

• The policy must be communicated to employees by periodically providing a copy, posting it, or including it in an employee handbook.
• Employees should be required to sign an acknowledgment that they have received and read the policy.
• The policy also should be covered in new employee orientation.

11.14.7 Types of Disciplinary Actions
There are four general types of disciplinary action available:

1. **Verbal counseling:**
   - This is generally the first step. However, for a serious problem, skip this step.
   - Verbal warnings should always be done privately.
   - Verbal counseling sessions should be documented by a formal memo or informal note in the employee’s personnel file.

2. **Written Warning**
   It should include, at a minimum, the following elements:
   - The date of the warning
   - The employee’s name
   - The name of the supervisor administering the warning
   - A description of the misconduct or inadequate performance
   - The date of the misconduct or poor performance
   - A signature line for the supervisor
   - A signature line for the employee, indicating his receiving only.
   - A signature line for the witness.
   - An action plan to fix the behavior in a given time frame

3. **Suspension**
   - This may range from one day to two weeks or more, depending upon the circumstances, and is almost always unpaid.
   - Next step may be suspension of increasing length or directly go to termination.
   - Whatever it is, should be stated in the suspension letter

4. **Termination**
   - Before termination, the personnel file and all relevant documents must be reviewed to ensure that the termination is appropriate and defensible in a subsequent lawsuit
   - Some behavior warrants automatic dismissal, like:
     - Violent behavior or threats of violence;
     - Drug and alcohol use on duty;
     - Carrying a weapon on company property;
     - Theft, destruction of company property
     - Insubordination;
     - Abandonment of job

5. **Other forms of discipline.**
   - Demotion,
   - Transfer and
   - Reduced raises or bonuses.
Check Your Progress
1. State the rules for disciplinary policy ground.
2. State the types of disciplinary actions.

11.14.7.1 Alternatives to Punishment
Alternatives to punishment in eliminating undesired behaviour include the following:

**Extinction:** Find out what reinforces the undesired behaviour. For example, the unruly subordinate may be getting praise and recognition from peers. Then get those peers to co-operate with you by ignoring the unruly behaviour. When such behaviour is not reinforced, it will eventually lose strength and extinguish.

**Environment Engineering:** Rearrange the features of the environment so that the Stimulus situation does not evoke the undesired response but some other response. Skinner (1953) tells the story of a manager who had a traffic problem caused by women hurrying down the corridor as soon as the end of the workday was signaled. The manager solved his problem by placing wall mirrors along the corridor. The stimulus situation that had evoked stampeding down the hallway was transformed into one which encouraged a more leisurely and orderly walk-and-stop sequence.

**Reward:** Reward either desirable or natural behaviour, which is physically incompatible with the undesired behaviour. If children are rewarded for taking exercise or for performing light outdoor chores before dinner, they are prevented from excessive snacking and television watching.

**Adjustment:** Allow adjustment, development, or maturation to take its course. New or inexperienced employees make many mistakes and do many wrong things that they will learn to avoid, given a reasonable period of adjustment: punishment may not hasten this process, and it causes undue anxiety, it can actually retard this process.

11.15 Discipline: The Union Context

- If a union represent your employees, your disciplinary system is most likely governed by your collective bargaining agreement or CBA.
- All of your managers and supervisors are well trained on how to follow the disciplinary procedure in the CBA.
- The CBA will most likely have progressive discipline steps and provide that the employee can grieve any disciplinary action.

Disputes that are not resolved through the grievance process end up in the hands of an arbitrator

11.16 Factors to Consider

- *Mitigating factors*
- long service with the company
- history of satisfactory appraisals
- prior commendations or awards

**Aggravating factors**
- short length of service
- history of unsatisfactory performance
- prior instances of performance/conduct/attendance problems

11.17 Approaches to Discipline

Effective discipline is a sign of sound human and industrial relations and organizational health. The different approaches to discipline include,

(i) Human relations approach,
(ii) Human resources approach,
(iii) Group discipline approach,
(iv) The leadership approach, and
(v) Judicial approach.

The employee is treated as a human being and his acts of indiscipline will be dealt from the viewpoint of values, aspirations, problems, needs, goals behaviour etc. Under **human relations approach** the employee is helped to correct his deviations.

Under **the human resources approach**, the employee is treated as a resource and the acts of indiscipline are dealt by considering the failure in the areas of development, maintenance and utilization of human resources.

The group as a whole sets the standards of discipline, and punishments for the deviations. The individual employees are awarded punishment for their violation under the **group discipline approach**.

Every superior administers the rules of discipline and guides, trains and controls the subordinates regarding disciplinary rules **under the leadership approach**.

**In Judicial approach**, in disciplinary cases are dealt on the basis of legislation and court decisions. The Industrial Employment (Standing Orders) Act, 1946, to a certain extent, prescribed the correct procedure that should be followed before awarding punishment to an employee in India. No other enactment prescribed any procedure for dealing with disciplinary problems. But over a period of time, a number of principles regarding the basic formalities to be observed in disciplinary procedures emerged, gradually resulting from the awards of several Industrial Tribunals, High Courts and the Supreme Court.

Check Your Progress

1. State the approaches to discipline.

11.18 Douglas McGregor's “Hot Stove Rule”
Regardless of how long you’re in management, there will come a time when you will have to face the prospect of offering some kind of discipline to a staff member. Although thought of as being punishment, discipline should be seen as a way of convincing someone there are higher standards to attain, and you are offering the individual the chance to improve.

While progressive discipline is generally the most effective method of dealing with discipline, it must be practiced within a larger framework. To increase the likelihood of positively influencing employee performance and protecting against legal action, keep Douglas McGregor’s “hot stove rule” in mind:

**Foreseeable:** Just as the flames or red coils provide warning that you will be burned by touching the stove, your employees should know in advance that poor conduct or performance will result in specific, pre-determined consequences.

**Immediate:** When you touch a hot stove, you know instantaneously that you have done something wrong. Similarly, an employee should be quickly told if he or she is failing to meet expectations.

**Impersonal:** The fact that you are burned is a function of the stove, not who you are. Likewise, the discipline applied in a particular situation should reflect the offence, not the person who committed it.

**Consistent:** Regardless of who touches a hot stove, the result will be the same each and every time. This is also true of discipline; it should not be applied randomly or by chance, nor should it differ, for the same offence, from one person to the next.

**Check Your Progress**
1. State the Douglas McGregor’s “Hot Stove Rule”.

### 11.19 Code of Discipline in Industry

To maintain harmonious relations and promote industrial peace, a Code of Discipline has been laid down in an industry which applies to both public and private sector enterprises. It specifies various obligations for the management and the workers with the objective of promoting cooperation between their representatives.

### 11.19.1 The basic objectives of Code of Discipline are to:
- Maintain peace and order in industry.
- Promote constructive criticism at all levels of management and employment.
- Avoid work stoppage in industry
- Secure the settlement of disputes and grievances by a mutually agreed procedure
• Avoiding litigations
• Facilitate a free growth of trade unions
• Eliminate all forms of coercion, intimidation and violations of rules and regulations governing industrial relations.

**Check Your Progress**
1. State the basic objectives of Code of Discipline.

11.19.2 The Code is based on the following principles:

- There should be no strike or lockout without prior notice.
- No unilateral action should be taken in connection with any industrial matter.
- Employees should follow go slow tactics
- No deliberate damage should be caused to a plant or property
- Acts of violations, intimidation and coercion should not be resorted
- The existing machinery for the settlement of disputes should be utilized.

**Check Your Progress**
1. State the principles of Code.

11.20 Key Terms

**Aggravating factors:** Any fact or circumstance that increases the severity or culpability of a criminal act.

**Mitigating factors:** A *mitigating factor*, in law, is any information or evidence presented to the court regarding the defendant or the circumstances of the crime that might result in reduced charges or a lesser sentence.

**Exit Interview:** Exit Interview interviews are conducted to know the reasons for leaving the job. Properly conducted exit interviews can provide significant information about the strengths and weaknesses of the organization and can pave way for further improvements.

**Discipline:** Discipline may be considered as a force that prompts individuals or groups to observe the rules, regulations and procedures which are deemed to be necessary for the effective functioning of an organisation”.

**Negative discipline:** Negative discipline is also known as punitive or corrective discipline involves imposition of penalties or punishment to force workers to obey rules and regulations
objective is to ensure that employees do not violate the rules and regulations. Negative disciplinary action involves such techniques as fines reprimand, demotion, layoff, transfer etc

11.21 Summary

Grievances are some symptoms of conflicts in enterprise. So they should be handled very promptly and efficiently. Coping with grievances forms an important part of manager’s job. The manner in which he deals with grievances determines his efficiency in dealing with the subordinates. A manager is successful if he is able to build a team of satisfied workers by removing their grievances.

Discipline in the workplace is the means by which supervisory personnel correct behavioural deficiencies and ensure adherence to established company rules. The purpose of discipline is correct behaviour. It is not designed to punish or embarrass an employee. Both the concepts are very essential for the conducive work environment at workplace.

11.22 Review Questions

Q1. Schematically explain the Model grievance procedure. Do you think it is of much importance in the era of computers and intranet? Suggest an alternative grievance procedure for a modern business organization.

Q2. How effective has the Code of Discipline been in preventing industrial conflict? Is it really effective as a moral force in Industrial relations-Comment?

11.23 Further Readings and References


UNIT 12

COLLECTIVE BARGAINING & WORKER’S PARTICIPATION IN MANAGEMENT

12.0 Introduction
12.1 Unit Objective
12.2 Defining Collective Bargaining
12.3 Features of Collective Bargaining
12.4 Subjective Matter of Collective Bargaining
12.5 Importance of Collective Bargaining
12.5.1 Importance to Employees
12.5.2 Importance to Employers
12.5.3 Importance to Society
12.6 Nature and Content of Collective Bargaining
12.7 Forms of Collective Bargaining
12.8 Collective Bargaining Process
12.9 Collective Bargaining As a Method of Settlement of Disputes
12.10 Tactics or Strategies in Collective Bargaining
12.11 Workers Participation in Management
12.12 Implications of Workers Participation in Management
12.13 Definitions
12.14 Need of Workers’ Participation
12.15 Objectives of Workers’ Participation in Management:
12.16 Essential Conditions for Successful Working of WPM
12.17 Workers’ Participation in Management in India
12.18 Forms of Workers’ Participation in Management
12.19 Summary
12.20 Key Terms
12.21 Review Questions
12.22 Further Readings and References

12.0 Introduction
Collective bargaining has been defined by different experts in different ways. Nevertheless, it is treated as a method by which problem of wages and conditions of employment are resolved peacefully and voluntarily between labor and management. "Collective bargaining is not just a means of raising wages and improving conditions of employment. Nor is it merely democratic government in industry. Collective bargaining in India has been the subject matter of industrial adjudication since long and has been defined by our Law Courts. According to the Court, the Industrial Disputes Act, 1947 seeks to achieve social justice on the basis of collective bargaining. Output cannot be increased unless there is effective co-operation between labour and management at all levels. The way of ensuring this is to satisfy their social and psychological need besides economic ones. On the other hand, Workers’ participation in management (WPM) is one of the most significant modes of resolving industrial conflicts and encouraging among workers a sense of belongingness in establishment where they work.

Moreover, India which has launched a vast programme of industrialization, the need for workers' participation is all the more important. It is in reorganization of these need that under the Second, Third, Fifth and Seventh plans specific measures have been suggested for worker's participation.

12.1 Unit Objective

After reading this unit, you should be able to:

- Definition and features of Collective Bargaining
- Subjective matter of collective bargaining.
- Importance of Collective Bargaining
- Collective Bargaining Process
- Collective Bargaining as a Method of Settlement of Disputes & Tactics or Strategies in Collective Bargaining
- Meaning & Implications of Workers Participation in Management
- Need and Objectives of Workers’ Participation in Management
- Workers’ Participation in Management in India & Forms of WPM

12.2 Defining Collective Bargaining

Collective Bargaining is a process in which representatives of two groups (employers and employees) meet and try to negotiate an agreement which specifies the nature of future relationship (pertaining to employment) between the two.

According to Beach, Collective Bargaining is concerned with the relations between unions representing employees and employers (or their representatives). It involves the process of union organization of employees; negotiation, administration and interpretation of collective
agreements covering wages, hours of work and other conditions of employment; engaging in concerted economic action; and dispute settlement procedures.

According to Dale Yoder, —Collective Bargaining is the term used to describe a situation in which the essential conditions of employment are determined by bargaining process undertaken by representatives of a group of workers on the one hand and of one or more employers on the other.

In the words of Flippo, —Collective Bargaining is a process in which the representatives of a labour 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.

Check Your Progress

1. Define the term Collective Bargaining.

12.3 Features of Collective Bargaining

The essential features of collective bargaining are as follows:

(i) **It is joint or collective process**- The representatives of both the management and the employees participate in it.

(ii) **It is a continuous process**- It establishes regular and stable relationship between the parties involved. It involves not only the negotiation of the contract, but also the administration of contract, but also the administration of contract. When we say that collective bargain includes the administration or application of the contract also, it means that bargaining is a day-to-day process.

(iii) **It is a dynamic process**- The parties have to adopt a flexible attitude throughout the process of bargaining.

(iv) It is a form of industrial democracy.

(v) It is an adjustment formula based on give and take approach of both sides.

(vi) It is an attempt to achieve and maintain discipline in industry.

Check Your Progress

1. State the features of Collective Bargaining.

12.4 Subjective matter of collective bargaining
The subject matter of collective bargaining covers a variety of issues affecting employment relationships between the workers and the management. According to Ghosh and Nath the issues covered in the collective bargaining are recognition of union or unions, wages and allowances, hours of work, leave and festival holidays, bonus and profit sharing schemes, seniority, rationalization and the issues relating to the fixation of workloads, and standard labour force, programmes of planning and development influencing workforce, issues relating to retrenchment and lay off, victimization for trade union activities, provident fund, gratuity and other retirement benefit schemes, incentive systems, housing and transport facilities, issues relating to discipline and shop rules, grievance procedure, working conditions and issues related to safety and accident prevention, occupational diseases and protective clothing, employee benefits such as canteens, rest rooms, medical and health services and creches, administration of welfare funds, cooperative thrift and credit societies and educational, recreational and training schemes.

The Indian Institute of Personnel Management, Calcutta, gives the following as the subject matter of collective bargaining:

(i) Purpose of the agreement, its scope and the definition of important terms;
(ii) Rights and responsibilities of the management and of the trade union;
(iii) Wages, bonus, production norms, leave, retirement benefits and terms and conditions of service;
(iv) Grievance redressal procedure;
(v) Methods and machinery for the settlement of possible future disputes; and
(vi) Termination clause.

Check Your Progress
1. Enumerate the subject matter of collective bargaining.

12.5 Importance of Collective Bargaining

Collective Bargaining not only includes negotiation, administration and enforcement of the written contracts between the employees and the employers, but also includes the process of resolving labour-management conflicts. Thus, collective bargaining is a legally and socially sanctioned way of regulating in the public interest the forces of power and influence inherent in organized labour and management groups.

12.5.1 Importance to Employees

Collective Bargaining helps the employees:

(i) To develop a sense of self-respect and responsibility among the employees.
To increase the strength of the workers. Their bargaining capacity as a group increases.

To increase the morale and productivity of employees.

To restrict management’s freedom for arbitrary action against the employees. Unilateral actions by the management are discouraged.

To strengthen the trade union movement.

12.5.2 Importance to Employers

The workers feel motivated as they can talk to the employers on various matters and bargain for higher benefits. As a result, their productivity increases.

It is easier for the management to resolve issues at the bargaining table rather than taking up complaints of employees individually.

Collective bargaining promotes a sense of job security among the employees and thereby tends to reduce cost of labour turnover to management, employees as well as the society at large.

Collective bargaining opens up the channels of communications between the top and bottom levels of organization which may be difficult otherwise.

12.5.3 Importance to society

Collective Bargaining helps the society:

To attain industrial peace in the country.

To establish a harmonious industrial climate which supports the pace of a nation’s efforts towards economic and social development since the obstacles to such development can be largely eliminated or reduced. As a vehicle of industrial peace or harmony, collective bargaining has no equal.

To extend the democratic principle from the political to the industrial field. It builds up a system of industrial jurisprudence by introducing civil rights in industry and ensures that management is conducted by rules rather than by arbitrary decisions.

To check the exploitation of workers by the management.

To distribute equitably the benefits derived from industry among all the participants including the employees, the unions, the management, the customers, the suppliers and the public.

Check Your Progress

1. State the importance of collective bargaining to employees.
2. State the importance of collective bargaining to Employers.
3. State the importance of collective bargaining to society.
12.6 Nature and Content of Collective Bargaining

Collective bargaining is a method by which trade unions protect and improve the conditions of their members working lives. Collective bargaining brings the employer and the employees around one table to discuss and settle many contentious issues effectively. It enables both the parties to know each other and their views, and to define their rights and obligations regarding terms of employment, working conditions, etc., through negotiations, discussions and bargains. ILO’s remark is very relevant here? Collective bargaining enables to conduct negotiations about working conditions and terms of employment between an employer and a group of employees or one or more employees’ organization with a view to reaching an agreement wherein the terms serve as a code of defining the rights and obligations of each party in their employment relations with one another; fix a large number of detailed conditions of employment; and during its validity, none of the matters, it deals with, can in normal circumstances be given as a ground for a dispute concerning an industrial worker.

Check Your Progress


12.7 Forms of Collective Bargaining

At the outset it should be stated that there is a great deal of variation in the collective bargaining practices ranging from an informal oral agreement to very formal and detailed agreement.

Collective Bargaining takes the following forms:

i. It may be a single plant bargaining, that is, bargaining may be between a single trade union. This type of collective bargaining prevails in the United States and India.

ii. It may be a multiple plant bargaining, that is, bargaining may be between a single factory or establishment having several plants and the workers employed in all these plants.

iii. It may be a multiple employer bargaining, that is, bargaining between all the trade unions of workers in the same industry through their federal organizations, and the employer’s federation. This is possible both at the local and regional levels and is generally resorted to in the textile industry.

Check Your Progress

1. State the different forms of collective bargaining.

In India, collective bargaining has been classified under four categories. These are:
i. Agreements which are negotiated by officers during the course of conciliation proceedings and are called settlements under the Industrial Disputes Act.

ii. Agreements which are concluded by the parties themselves without reference to a Board of Conciliation and are signed by them. Copies of such agreements, however, are sent to appropriate governments and to conciliation officers.

iii. Agreements which are negotiated by the parties on a voluntary basis when disputes are sub judice and which are later submitted to industrial tribunals, labour courts or labour arbitrators for incorporation into the documents as parts of awards. These are known as consent awards.

iv. Agreements which are drawn up after direct negotiation between labour and management and are purely voluntary in character. These depend for their enforcement on moral force and on the goodwill and co-operation of the parties.

Check Your Progress

1. State the four categories of collective bargaining in India.

12.8 Collective Bargaining Process

There are two stages in collective bargaining, viz., (i) the negotiation stage and (ii) the stage of contract administration

i. Negotiation

a) Identification of Problem: The nature of the problem influences whole process. Whether the problem is very important that is to be discussed immediately or it can be postponed for some other convenient time, whether the problem is minor that it can be solved with the other party's acceptance on its presentation and does not need to involve long process of collective bargaining process etc. It also influences selection of representatives, their size, period of negotiations and period of agreement that is reached ultimately. As such it is important for both the parties to be clear about the problem before entering into the negotiations.

b) Preparing for Negotiations: When it becomes necessary to solve the problem through collective bargaining process, both the parties prepare themselves for negotiations. The preparation starts with selection of representatives. Such representatives should be selected who can carry out negotiations with patience, composure and who can present their view effectively. After selection they should be fed with complete problem and its pros and cons. His powers and authority during negotiations also should be clearly spelt out. Other preparations include fixing up time for negotiations, period of negotiations etc. But once the parties enter into negotiations the period of negotiations may vary depending upon circumstances.
c) **Negotiations of Agreement:** usually there will be a chief negotiator who is from management side. He directs and presides the process. The chief negotiator presents the problem, its intensity and nature and the views of both the parties. Then he allows the representatives of both the parties to present their views. During negotiations, the representatives should be attentive as to find out what the other party is arguing for themselves for negotiations. The preparation starts with selection of representatives. Such representatives should be selected who can carry out negotiations with patience, composure and who can present their view effectively. After selection they should be fed with complete problem and its pros and cons. His powers and authority during negotiations also should be clearly spelt out. Other preparations include fixing up time for negotiations, period of negotiations etc. But once the parties enter into negotiations the period of negotiations may vary depending upon circumstances.

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**Check Your Progress**

2. Explain the negotiation stage of a collective bargaining.

**12.9 Collective Bargaining as a Method of Settlement of Disputes**

Till now, collective bargaining has been taken as a means of arriving at an agreement. It establishes rules which the management is bound to implement. Specifically, collective bargaining is:

- A rule-making or legislative process, in the sense that it formulates the terms and conditions under which labour and management will cooperate and work together over a certain stated period,
- An executive process; both management (foreman and supervisory officials) and trade union officials share the responsibility of enforcing the rules.
- A judicial process, for in every collective agreement there is a grievance procedure to settle any dispute concerning the application of the agreement. Where the agreement does not specifically cover the disputes, it may be settled according to the unwritten norms of shop practices. The decisions in these cases act as precedents in a manner similar to the common laws and interpretation of the legislation by the court.

After a dispute has erupted, collective bargaining acts as a peace treaty between the two warring groups. The treaty is invariably a compromise, but helps resolve the conflict nevertheless.
12.10 Tactics or Strategies in Collective Bargaining

The tactics or strategies to be adopted in any collective bargaining situation vary depending upon the culture of the organization and different environmental factors, particularly the type of union operating in an industrial establishment. But the following are some of the common strategies to make collective bargaining exercise more meaningful:

1. The management has to anticipate the demands and also understand the main directions in which the demands are going to be placed. Generally speaking, negotiations are best done if both the parties do their home work well. The representatives must come to the bargaining table equipped with the necessary information and supportive data regarding the company's economic status and prospects, the prevailing rates of pay and conditions of employment in comparable industries in the local areas. The management team should take into consideration the financial liability involved, the past agreements, and the impact of present negotiations in future years.

2. It is essential that a real team spirit is maintained throughout the negotiations. For this purpose, it is necessary that the roles to be played by each member of the team are properly pre-assigned, and each member knows when to take over the discussions. The team must have the confidence of facing any eventuality which may come up during negotiations. The team must have the power of taking decisions. The team must consist of people who have confidence of the workforce and unions. It is good to have a rehearsal among the team members on such points which can be anticipated to be made forcefully by the opposite team.

3. Any collective bargaining strategy should firstly separate the personalities from the problems for arriving at a workable and desirable agreement and secondly, explore the possibilities for harmony and compatibility.

4. Collective bargaining is two way traffic. The management as well as the union must gain out of collective bargaining. Hence, the management team should also present their counter-proposals. For instance, the union pressure for a wage-hike may be matched by a counter demand for an increase in production, reduction in absenteeism, avoidance of wasteful/restrictive practices, industrial peace, and so on.

5. There is a greater necessity on the part of the management representatives to give a patient hearing to the demands of the union and not to react even if there is a threat of strike or work-stoppage. A rational well reasoned approach can achieve better results than an emotionally charged loud-mouthed approach.

6. It is also a bad strategy to depute persons of low rank without authority to commit the management on the negotiating table. Such a step may give an impression to the union that the management does not take the bargaining process with all the seriousness that it deserves.
7. It is a good practice always to classify the various demands raised by labour representatives distinguishing the real from the unreal. A thorough analysis and understanding of different items in the charter of demands will enable negotiators to arrive at a proper judgment.

8. It is a good tactic to total the cost of all the union proposals and to take up the non-cost items first or items on which it is easy to come to an agreement so that a suitable collective bargaining atmosphere is created for negotiating on more serious items which have financial implications.

9. Sometimes, the management instead of announcing its concessions at the bargaining table announces them before the conciliation officer as the starting point for further negotiations. This is not bargaining in good faith.

10. Any collective bargaining strategy must result in a good agreement or settlement, the characteristics of which are: (a) It must strike a proper balance between the various factors that go into its making in order to ensure its workability; (b) it must be viewed as a whole and the interrelation of its parts must be balanced one against the other; (c) it must be based upon experience, logic and principles rather than on coercive tactics, propaganda and force; (d) it must be fair and reasonable to the workers as regards their emoluments and service conditions; to the management in terms of improved production and productivity; and to consumer in respect of better quality goods and services; and (e) it must be complete and coherent in all respects without any ambiguity. In any event, it is enforcement that is the crucial test of a contract’s workability.

11. As a measure of follow up: (a) evaluate prevailing environmental changes and cultivate a healthy pragmatic approach; (b) train and develop rank and file of working group to inculcate in them individual effectiveness and professionalism in collective bargaining; and (c) develop specific action-plans for collective bargaining based on prevailing situation.

Check Your Progress

1. Enumerate in detail the tactics or strategies in Collective Bargaining.
2. Is Collective Bargaining superior to other methods of settling Industrial Disputes?
3. Suggest measures for making collective bargaining effective?

12.11 Workers Participation in Management

Meaning

The word participation’ means sharing the decision-making power with the lower ranks of the organization in an appropriate manner. Participation has a unique motivational power and a great psychological value. It promotes harmony and peace between workers and management. When workers participate in organizational decisions, they are able to see the big picture clearly, i.e., how their actions would contribute to overall growth of the company. They can offer feedback immediately based on their experiences and improve the quality of decisions significantly. Since they are involved in the decisions from the beginning, they tend to view the decisions’ as their own’and try to translate the rhetoric into concrete action plans with zeal and enthusiasm. Participation makes them more responsible. They are willing to take initiative and contribute
cost-saving suggestions and growth-oriented ideas. The feeling of being treated as equals, forces them to reposit their confidence in management and accept plans of rationalization, expansion, etc., without raising serious objections. Since they are treated with respect now they begin to view the job and the organization as their own and commit themselves to organizational activities wholeheartedly.

The scheme of Joint Management Council, popularly known as Workers’participation in management, was introduced on voluntary basis only after over a decade. However, the scheme of Joint Management Council for various reasons could not succeed. In order to meet this unhappy state of affairs and to secure greater measure of co-operation between labour and management to increase efficiency in public service, the Government of India on October 30, 1975 introduced a scheme of workers’participation in management at shop floor and plant levels. In addition to these, there are voluntary schemes of making the workers'shareholders and Directors in the Board of Management.

The inclusion of the concept of workers’ participation in management in the Directive Principles of State Policy through the Constitution (Forty-second) Amendment Act, 1976, gave a momentum to the institution of worker's participation in management. After the constitutional Amendment the Central Government expressed its intention to amend the 1975-Scheme and to provide for effective participation of workers in production processes and accordingly amended the scheme in January 1977.

There are two distinct groups of people in an undertaking, viz., managers and workers performing respectively two separate sets of functions which are known as Managerial and Operative.

Managerial functions are primarily concerned with planning, organizing, motivating and controlling in contrast with operative work. A self-employed man may carry out both these functions if the area of his operations is very small. But in case of big organizations, these functions are to be performed by different sets of people.

Workers participation in management seeks to bridge this gap authorizing workers to take part in managerial process. Actually, this is a very wide view of the term worker's participation in management and this is not practically possible.

Participation may take two forms. It may be: (1) ascending participation, and (2) descending participation. In case of ascending participation, the workers may be given an opportunity to influence managerial decisions at higher levels through their elected representatives to joint councils or the board of directors of the company. But in descending participation, they may be given more powers to plan and to make decisions about their own work (e.g. delegation and job enlargement). This form of participation is quite popular in many organizations.

Check Your Progress

1. Write a note on workers participation in management.
12.12 Implications of Workers Participation in Management

The implications of workers’ participation in management have been summarized by the International Labour Organization thus:

1. Workers have ideas which can be useful.
2. Upward communication facilitates sound decision-making. Workers may accept decisions better if they participate in them.
3. Workers may work more intelligently if they are informed about the reasons for and the intention of decisions that are taken in a participative atmosphere.
4. Workers may work harder if they share in decisions that affect them.
5. Workers participation may foster a more cooperative attitude amongst workers and management thus raising efficiency by improving team spirit and reducing the loss of efficiency arising from industrial disputes.
6. Workers participation may act as a spur to managerial efficiency.

Check Your Progress

1. State the implications of workers participation in management.

12.13 Definitions

The concept worker’s participation in management (WPM) is a broad and complex one. Depending on the socio-political environment and cultural conditions, the scope and contents of participation may change. In any case, a common thread running through all interpretations is the idea of associating employees in managerial decision-making.

WPM has been defined as, —the participation resulting from practices which increase the scope for employee’s share of influence in decision-making at different tiers of organizational hierarchy with concomitant assumption of responsibility.

According to Davis, —it is a mental and emotional involvement of a person in a group situation which encourages him to contribute to goals and share responsibilities in them.

Worker’s participation in management is a resounding phrase, bridging the past and the future. It echoes the millennial vision of nineteenth century thinkers while heralding the evolution of new forms of industrial organization under twentieth century pressures.

The word Workers’ participation is plentifully supplied with ideas, institutions and opinions.

Mamoria defines it as a system of communication and consultation either formal or informal by which employees of an organization are kept informed about the affairs of the undertaking and through which they express their opinion and contribute to management decisions.
The International Institute of Labour Studies remarks: —The participation results from practices which increase the scope for employees share of influence in decision-making at different tiers of the organizational hierarchy with concomitant assumptions of responsibility. This becomes meaningful only in such a situation. Here it is quite evident that the participation of each should strictly confine to the field for which he is competent and concerned with. Everybody poking his nose into everything is, therefore, not participation, but proliferation.

This must have been the reason why a group of practicing managers defined: Workers’ participation in management is involvement of workers only in such areas of activities of the enterprises where they can make some positive contribution for the betterment of the enterprise. Such participation should facilitate effective utilization of available resources and effective execution of long-term expansion plans, including diversification. It should facilitate the day-to-day functioning as well as inventions and innovations.

Check Your Progress

1. Define the term worker’s participation in management.

12.14 Need of Workers’ Participation

Worker’s participation in management has assumed great importance these days because of the following advantages:

1. Reduced industrial unrest: Industrial conflict is a struggle between two organized groups which are motivated by the belief that their respective interests are endangered by the self-interested behaviour of the other. Participation cuts at this very root of industrial conflict. It tries to remove or at least minimize the diverse and conflicting interests between the parties, by substituting in their place, cooperation, homogeneity of objects and common interests. Both sides are integrated and decisions arrived at becomes —ours rather than theirs.

2. Reduced misunderstanding: Participation helps dispelling employee’s misunderstanding about the outlook of management in industry.

3. Increased organization balance: If worker are invited to share in organizational problems, and to work towards common solutions, a greater degree of organizational balance occurs because of decreased misunderstanding of individual and group conflict. Participation leads to increased understanding throughout the organization. People learn that others have problems beside themselves.

4. Higher productivity: Increased productivity is possible only when there exists fullest cooperation between labour and management. It has been empirically tested that poor labour management relations’ do not encourage the workers to contribute anything more than the minimum desirable to retain their jobs. Thus, participation of workers in management is essential to increase industrial productivity.
5. **Increased Commitment**: An important prerequisite for forging greater commitment is the individual's involvement and opportunity to express himself. Participation allows individuals to express themselves at the workplace rather than being absorbed into a complex system of rules, procedures and systems. If an individual knows that he can express his opinion and ideas, a personal sense of gratification and involvement takes place within him. This, in turn, fortifies his identification with the organization resulting in greater commitment.

6. **Industrial democracy**: Participation helps to usher in an era of democracy in industry. It is based on the principle of recognition of the human factor. It tends to reduce class conflict between capital and labour. It also serves as a support to political democracy.

7. **Development of Individuals**: Participation enhances individual creativity and response to job challenges. Individuals are given an opportunity to direct their initiative and creativity towards the objectives of the group. This facilitates individual growth.

8. **Less resistance to change**: when changes are arbitrarily introduced from above without explanation, subordinates tend to feel insecure and take counter measures aimed at sabotage of innovations. But when they have participated in the decision making process, they have had an opportunity to be heard. They know what to expect and why. Their resistance to change is reduced.

The realization of workers' need for participation in the management is influenced by the following factors:
1. Technology adoption leading to complexity in production process calls for increased worker cooperation.
2. Employees are no longer treated as subservient but are treated as equals.
3. Growing influence of union prevents exploitation of employees by management.
4. There are regulations and legislations that facilitate increased workers participation in management.

**Check Your Progress**

1. State the need of workers’ participation.

### 12.15 Objectives of Workers’ Participation in Management:

The main objectives of workers' participation in management include:

1. To promote increased productivity for the advantage of the organization, workers and society at large;
2. To provide a better understanding to employees about their role and place in the process of attainment of organizational goals;
3. To satisfy the workers' social and esteem needs; and
4. To strengthen labour management co-operation and thus maintaining industrial peace and harmony.
v. To develop social education for effective solidarity among the working community and for tapping latent human resources.

vi. An ideological point of view to develop self-management in industry.

vii. An instrument for improving efficiency of the company and establishing harmonious industrial relations.

viii. To build the most dynamic human resource.

ix. To build the nation through entrepreneurship and economic development.

x. To improve the quality of working life by allowing the workers greater influence and involvement in work and the satisfaction obtained from work.

xi. Development of human personality

xii. Development of leader from within the industry.

xiii. Development of working class.

xiv. Creation of a just egalitarian society.

xv. Facilitate self-development of worker.

Check Your Progress

1. State the objectives of workers’ participation in management.

12.16 Essential Conditions for Successful Working of WPM
The success of workers portion in management depends upon the following conditions.

1. The attitude and outlook of the parties should be enlightened and impartial so that a free and frank exchange of thoughts and opinions could be possible. Where a right kind of attitude exists and proper atmosphere prevails the process of participation is greatly stimulated.

2. Both parties should have a genuine faith in the system and in each other and be willing to work together. The management must give the participating institution its rightful place in the managerial organization of the undertaking and implementing the policies of the undertaking. The labour, on the other hand, must also wholeheartedly co-operate with the management through its trade unions. The foremen and supervisory cadre must also lend their full support so that the accepted policies could be implemented without any resentment on either side.

3. The experiment of labour participation in management must be given a wide publicity in order that the idea of participation is ingrained in the minds of those who are to implement the scheme. Lectures, discussion, film shows, conferences, seminars and other methods of propaganda may be fruitfully employed to create enthusiasm about the scheme among the management as well as the workers.

4. Participation should be real. The issues related to increase in production and productivity; evaluation of costs, development of personnel and expansion of markets should also be brought under the jurisdiction of the participating bodies. These bodies should meet frequently and their decisions should be timely implemented and strictly adhered to.

5. Objectives to be achieved should not be unrealistically high, vague or ambiguous but practicable of achievement and clear to all.

6. Form, coverage, extent and level of participation should grow in response to specific environment, capacity and interest of the parties concerned.
7. Participation must work as complementary body to help collective bargaining, which creates conditions of work and also creates legal relations. Institutional participation should be discouraged but such participation should be encouraged through changes in leadership styles, communication process, and inter-personal and inter-group relations.

9. There should be a strong trade union, which has learnt the virtues of unit and self-reliance so that they may effectively take part in collective bargaining or participation.

10. Multiple unions in the enterprise should be restricted by legislative measures. Similarly, there should be no multiplicity and duplicacy of bipartite consultative machinery at the plant level.

11. A peaceful atmosphere should be there wherein there are no strikes and lock-outs, for their presence ruins the employees, harms the interest of the society, and puts the employees to financial losses.

12. Authority should be centralized through democratic management process. The participation should be at the two or at the most three levels.

13. Programmes for training and education should be developed comprehensively. Labour is to be educated to enable him to think clearly, rationally and logically; to enable him to feel deeply and emotionally; and to enable him to act in a responsible way. The management at different levels also needs to be trained and oriented to give it a fresh thinking on the issues concerned.

14. Progressive personnel policies should ensure growth of individual workers within industry and proper policies should exist for selection, promotion, compensation, rewards and discipline.

15. Management should be prepared to give all information connected with the

**12.17 Workers’ Participation in Management in India**

In our country, the concept of workers’ participation in management is comparatively of recent origin. Workers’ participation in management in India entered the Indian scene in the year, 1920, when Mahatma Gandhi had suggested that workers should participate and contribute to the organization and also share its prosperity. He advocated a relationship characterized by friendship and co-operation between the workers and the management.

In India workers’ participation in management is one of the Directive Principles of State Policy embodied in Article 43-A of our constitution. The Royal Commission on Labour (1929-1931) recommended the formation of works committees and joint machinery. The Tata iron and steel company (TISCO) has established joint committees in 1958. The committee under the chairmanship of Justice Rajendra Sachar suggested methods for improving workers’ participation in management. The recommendations of the committee included workers’ representation in board of directors and allotment of equity to workers. Similarly another committee under the chairmanship of Ravindra Varma the then union Minister for Labour was constituted to look into various aspects, statutory and non-statutory schemes and also recommended outlines or comprehensive schemes for workers’ participation in management. The key recommendations of the committee included:

1) Three – tier system of participation that is, shop-floor, plant and board levels.
2) Legislation for covering all undertakings with 500 or more workers. (public or private)
3) Provision for extending the scheme to enterprises with at least 100 workers.
4) Usage of secret ballot for electing representative.
5) Issue of not less than 10% equity to workers.

**Check Your Progress**
1. “Workers Participation in Management is essential to industrial democracy and Socialistic pattern of society “. In the light of the statement, discuss the role of Workers Participation in Management
   1. State the essential conditions for successful working of WPM.
   2. Write a note on workers’ participation in management in India.

**12.18. Forms of Workers’ participation in management**

The various forms of workers’ participation in management currently prevalent in the country are:

1. **Works Committee**

   The tri-partite sub-committee of the 17th session of the Indian Labour Conference (1959) laid down an illustrative list of items which the works committee will normally deal with, namely:
   i. Conditions of work, such as ventilation, lighting, temperature and sanitation, including latrines and urinals;
   ii. Amenities, such as drinking water, canteens, dining rooms, crèches, rest rooms, medical and health services;
   iii. Safety and accident prevention, occupational diseases and protective equipment;
   iv. Adjustment of festival and national holidays;
   v. Administration of welfare and fine funds;
   vi. Educational and recreational activities, such as libraries, reading rooms, cinema shows, sports, games, picnic parties, community welfare and celebrations;
   vii. Promotion of thrift and savings;
   viii. Implementation and review of decisions reached at meetings of works committees.

   According to the NCL, the effectiveness of the committees will depended on the following factors:
   i. A more responsive attitude on the part of the management;
   ii. Adequate support from the unions;
   iii. Proper appreciation of the scope and functions of the works committees;
   iv. Wholehearted implementation of their recommendations;
   v. Proper co-ordination of the functions of the multiple bipartite institution at the plant level; and
   vi. Conferring of right to the recognized union to nominate all worker members on this body.

2) **Joint Management Councils (JMCs 1958)**
The Second Five-Year Plan recommended the setting up of joint councils of management consisting of representatives of workers and management. The Government of India deputed a study group (1957) to study the schemes of workers' participation in management in countries like UK, France, Belgium and Yugoslavia. The report of the study group was considered by the Indian Labour Conference (ILC) in its 15th session in 1957 and it made certain recommendations:

a. Workers' participation in management schemes should be set up in selected undertakings on a voluntary basis.

b. A sub-committee consisting of representatives of employers, workers and government should be set up for considering the details of workers' participation in management schemes. This committee should select the undertakings where workers' participation in management schemes would be introduced on an experimental basis.

**Objectives**

The objectives of Joint Management Councils are as follows:

i. To increase the association of employers and employees, thereby promoting cordial industrial relations;

ii. To improve the operational efficiency of the workers;

iii. To provide welfare facilities to them;

iv. To educate workers so that they are well prepared to participate in these schemes; and

v. To satisfy the psychological needs of workers.

**Functions**

The following are the important functions of JMCs:

a. To be consulted on matters like standing orders, retrenchment, rationalization, closure, reduction of operations etc.

b. To receive information, to discuss and offer suggestions.

c. To shoulder administrative responsibilities like maintaining welfare measures, safety measures, training schemes, working hours, payments of rewards.

**Check Your Progress**

1. State the forms of workers’ participation in management.
2. State the objectives of Joint Management Councils.
3. State the important functions of JMCs.

**3) Joint Councils**

At every division/region/zonal level, or as may be considered necessary in a particular branch of an organization/service employing 100 more people, there shall be a joint council.

a. The main feature of the joint council shall be:
(i) Each organization/service shall decide the number of councils to be set up for different types of services rendered by it in consultation with the recognized unions or workers as the case may be, in the manner best suited to the local conditions.

(ii) Only such persons who are actually engaged in the organization/service shall be members of the joint council. Each organization/service may decide the number of members in the manner suggested in item(s) but the membership should not be unwieldy.

(iii) The tenure of the council shall be two years. If, however, a member is nominated in the mid-term of council to fill a casual vacancy, the member nominated shall continue in office for the remaining period of the council’s tenure.

(iv) Development of skills of workers and adequate facilities for trading.

(v) Improvement in the general conditions of work.

Check Your Progress
1. State the features of joint council.

4) Unit councils

Encouraged by the success of the Joint Councils scheme in manufacturing and mining units, a new scheme of workers’ participation in management in commercial and service organizations in the public sector, having large-scale public dealings, was announced on 5th January 1977. The scheme envisaged the setting-up of unit councils in units employing at least 100 persons.

a. Features of the Scheme

The main features of the scheme are:

(i) A unit level council, consisting of representatives of workers and management of the organization/service, employing 100 or more workers, may be formed in each unit to discuss day-to-day problems and find solutions; but wherever necessary a composite council may be formed to serve more than one unit, or a council may be formed department-wise to suit the particular needs of an organization/service.

(ii) Every unit council shall consist of an equal number of representatives of the management and workers. The actual number of members should be determined by the management in consultation with the recognized union, registered unions or workers in the manner best suited to the local conditions obtaining in a unit or an organization but their total number may not exceed 12. It would be necessary to nominate suitable and experienced workers from various departments, irrespective of their cadre.

Check Your Progress
1. State the features of unit council.
5) **Plant Council**
The plant council is formed in pursuance of the recommendations of the second meeting of the Group on Labour at New Delhi on 23rd September 1985. The scheme is applicable to all Central public sector undertakings, except those which are given specific exemption from the operation of the scheme by the government.

a. **Functions of Plant Council**
The plant council shall normally deal with the following matters:

(A) **Operational Areas**
   (i) Determination of productivity schemes taking into consideration the local conditions;
   (ii) Planning, implementation, and attainment and review of monthly targets and schedules;
   (iii) Material supply and preventing its shortfall;
   (iv) Housekeeping activities;
   (v) Improvement in productivity in general and in critical areas in particular;

(B) **Economic and Financial Areas**
   (i) Profit and loss statements, balance sheet;
   (ii) Review of operating expenses, financial results, and cost of sales;
   (iii) Enterprise performance in financial terms, labour and managerial cost, and market conditions, etc.

(C) **Personnel Matters**
   (i) Matters relating to absenteeism;
   (ii) Special problems of women workers; and
   (iii) Initiation and administration of workers' programmes.

(D) **Welfare Areas**
   (i) Implementation of welfare schemes, such as medical benefits, housing and transport facilities;
   (ii) Safety measures;
   (iii) Township administration; and

(E) **Environmental Areas**
   (i) Environmental protection; and
   (ii) Extension activities and community development projects.

Check Your Progress

1. State the functions of Plant Council.

(6) **Shop Councils**

a. **Main features**
The main features of the shop council scheme are:
In every industrial unit employing 500 or more workers, the employers shall constitute a shop council for each department or shop or one council for more than one department or shop, on the basis of the number of workers employed in different departments or shops.

Each council shall consist of an equal number of representatives of employers and workers. The employers’ representatives shall be nominated by the management and must consist of persons from the unit concerned. All the representatives of workers shall be from amongst the workers actually engaged in the department of the shop concerned.

**Functions of Shop Councils**

To achieve increased production, productivity and over-all efficiency of the shop department, the shop council should attend to the following matters:

(i) To assist management in achieving monthly/yearly production targets;
(ii) To improve production, productivity and efficiency. Including elimination of wastage and optimum utilization of machine capacity and manpower;
(iii) To specially identified areas of low productivity and take the necessary corrective steps at shop level to eliminate relevant contributory factors;
(iv) To study absenteeism in the shop/department and recommend steps to reduce it;
(v) To suggest safety measures;

**Check Your Progress**

1. State the functions of Shop Councils.

**12.19 Summary**

Collective Bargaining machinery essentially is a reflection of a particular social and political climate. The history of the trade union movement shows that union is affiliated to one or the other political parties. As a result most of the trade unions are controlled by outsiders. Critic says that the presence of outsiders is one of the important reasons for the failure of collective bargaining in India. Collective bargaining is the ultimate in negotiations and is possible only when workers’ and employers’ organizations are equally strong, mature and conscious of their rights and duties.

Similarly “Workers’ participation refers to the mental and emotional involvement of a person in a group situation which encourages him to contribute to group goals and share in responsibility of achieving them. In ultimate sense, the objective of WPM in India is to achieve organizational effectiveness and the satisfaction of the employees. The concept of worker’s participation in management crystallizes the concept of Industrial Democracy, and indicates an attempt on the part of an employer to build his employees into a team which work towards the realization of a common objective.

**12.20 Key Terms**
Absenteeism: It means either habitual evasion of work, or willful absence as in a strike action. It does not include involuntary or occasional absence due to valid causes, or reasons beyond one's control, such as accidents or sickness.

Optimum: The point at which the condition, degree, or amount of something is the most favorable.

Housekeeping: This refers to the management of duties and chores involved in the running of a household, such as cleaning, cooking, home maintenance, shopping, laundry and bill pay.

12.21 Review Questions

Q1. “Collective Bargaining assumes Collective wisdom of both labour and management “. Discuss
Q2. How Collective Bargaining help in maintaining Labour Relations in India?
Q3. “Workers Participation in Management is essential to industrial democracy and Socialistic pattern of society “. In the light of the statement, discuss the role of Workers Participation in Management.
Q4. Discuss WPM in the context of Indian organizations.

12.22 Further Readings and References