

A Handbook on Labour Laws of India

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PREFACE

“To secure to each labourer the whole product of his labour, or as nearly as possible, is a worthy object of any good Government” said Abraham Lincoln.

Industrialisation poses a challenge for an entrepreneur in the form of management of the resources. The management and effective and efficient deployment of the resources of the organisation is the factor which decides the profitability and viability of any organisation. Labour is one of the basic resources of any industry and has an important bearing on the performance and goals of the organisation. In India we have a plethora of Laws which deals with issues concerning Labour administration, labour welfare, regulation of industrial relations between the management and the workers. For the effective and efficient management of labour in an industry or an organisation it is necessary to have a complete knowledge of the Laws, bye laws, regulations and ordinances applicable to the industry in general and to the company or organisation specifically. The laws and bye laws applicable to labour issues and interests provides for various compliances in accordance with procedures laid therein. This book provides a brief insight into the Laws, bye laws, Regulations, notifications applicable to labour and labour issues.

The salient features of the Central Labour Acts in force in India are given here under: The Indian Factories Act of 1948 provides for the health, safety and welfare of the workers. The Shops and Commercial Establishment Act regulates the conditions of work and terms of employment of workers engaged in shops, commercial establishments, theatres, restaurants, etc. The Maternity Benefit Act provides for the grant of cash benefits to women workers for specified periods before and after confinements. The Employment of Children Act, 1938, prohibits the employment of young children below the age of 15 years in certain risky and unhealthy occupations. The payment of wages Act, 1936, regulates the timely payment of wages without any unauthorized deductions by the employers. The Minimum Wages Act, 1948, ensures the fixation and revision of minimum rates of wages in respect of certain scheduled industries involving hard labour. The Industrial Disputes Act, 1947, provides for the investigation, and settlement of industrial disputes by mediation, conciliation, adjudication and arbitration, there is scope for payment of compensation in cases of lay-off and retrenchment. The Industrial Employment (Standing Orders) Act, 1946, requires employers in Industrial establishments to define precisely the conditions of employment under them and make them known to their workmen. These rules, once certified, are binding on the parties for a minimum period of six months. The Workmen's Compensation Act, 1923, provides for compensation to injured workmen of certain categories and in the case of fatal accidents to their dependants if the accidents arose out of and in the course of their employment. It also provides for payment of compensation in the case of certain occupational diseases. The Indian Trade Unions Act, 1926, recognizes the right of workers to

organise into trade unions, and when registered, they have certain rights and obligations and function as autonomous bodies. The Employees' State Insurance Act, 1948, provides for sickness benefit, maternity benefit, disablement benefit and medical benefit. The Employees' Provident Fund Act, 1952, seeks to make a provision for the future of industrial worker after he retires or in case he is retrenched, or for his dependents in case of his early death.

The labour welfare work, thus, covers a wide range of activities and in its present form is widely recognised and is regarded as an integral part of the industrial system and management.

This book retains my original three aims: (i) to provide a clear and precise explanation of the meaning of a particular word or phrase; (ii) to help the employer as well as the employee find answers to many of the questions that might crop up during a dispute or problem; (iii) to identify where a problem might occur upon which, when required, further advice and counsel should be sought.

I shall appreciate further questions from our readers and all concerned on various issues so that they can be included in our future edition or replied through email rajkumarfca@gmail.com.

We will appreciate if our readers can give suggestions and criticism and call our attention to errors which might have inadvertently crept in. Alternatively, the readers can also post their queries at <http://www.carajkumarradukia.com>. I would be glad to receive your queries or suggestions. Those who are Interested in getting similar technical material on a regular basis can send an email to carajkumarradukia-subscribe@yahoogleroups.com and subscribe to our yahoo group.

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Part 1

Introduction

1.1 What is Labour Law?

Wikipedia, the internet encyclopedia defines labour law as “Labour Law is the body of laws, administrative rulings, and precedents which address the relationship between and among employers, employees, and labor organizations, often dealing with issues of public law”. The terms Labour Laws and Employment Laws, are often interchanged in the usage. This has led to a big confusion as to their meanings. Labour Laws are different from employment laws which deal

only with employment contracts and issues regarding employment and workplace discrimination and other private law issues.

Employment Laws cover broader area than labour laws in the sense that employment laws cover all the areas of employer/employee relationship except the negotiation process covered by labour law and collective bargaining.

Labour Laws harmonize many angles of the relationship between trade unions, employers and employees. In some countries (like Canada), employment laws related to unionised workplaces are different from those relating to particular individuals. In most countries however, no such distinction is made.

The final goal of labour law is to bring both the employer and the employee on the same level, thereby mitigating the differences between the two ever-warring groups.

Origins of Labour Laws

Labour laws emerged when the employers tried to restrict the powers of workers' organisations and keep labour costs low. The workers began demanding better conditions and the right to organise so as to improve their standard of living. Employer's costs increased due to workers demand to win higher wages or better working conditions. This led to a chaotic situation which required the intervention of Government. In order to put an end to the disputes between the ever-warring employer and employee, the Government enacted many labour laws.

In India the labour laws are so numerous, complex and ambiguous that they promote litigation rather than the resolution of problems relating to industrial relations. The labour movement has contributed a lot for the enactment of laws protecting labour rights in the 19th and 20th centuries. The history of labour legislation in India can be traced back to the history of British colonialism. The influences of British political economy were naturally dominant in sketching some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for chartering workers became necessary. This was obviously labour legislation in order to protect the interests of British employers.

The British enacted the Factories Act with a really self-centered motive. It is well known that Indian textile goods offered serious competition to British textiles in the export market. 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 moguls of Manchester and Lancashire. Thus we 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 for the welfare of the labour force the real motivation was undoubtedly the protection their vested interests.

India provides for core labour standards of ILO for welfare of workers and to protect their interests. India has a number of labour laws addressing various issues such as resolution of industrial disputes, working conditions, labour compensation, insurance, child labour, equal remuneration etc. Labour is a subject in the concurrent list of the Indian Constitution and is therefore in the jurisdiction of both central and state governments. Both central and state governments have enacted laws on labour issues. Central laws grant powers to officers under central government in some cases and to the officers of the state governments in some cases.

1.2 Classification of Various Labour Laws

There are over 45 legislations on labour from the Central Government and the number of legislations enacted by the State Governments is close to four times that of the Central Acts.

Labour Laws can be classified into the following eight categories:

- (i) Laws related to Industrial Relations
- (ii) Laws related to Wages
- (iii) Laws related to Specific Industries
- (iv) Laws related to Equality and Empowerment of Women
- (v) Laws related to Deprived and Disadvantaged Sections of the Society
- (vi) Laws related to Social Security
- (vii) Laws related to Employment & Training
- (viii) Others

Laws related to Industrial Relations

- 1 The Trade Unions Act, 1926
- 2 The Industrial Employment (Standing Orders) Act, 1946
The Industrial Employment (Standing Orders) Rules, 1946
- 3 The Industrial Disputes Act, 1947

Laws related to Wages

- 1 The Payment of Wages Act, 1936
The Payment of Wages Rules, 1937
- 2 The Minimum Wages Act, 1948

- The Minimum Wages (Central) Rules, 1950
- 3 The Working Journalist (Fixation of Rates of Wages) Act, 1958
Working Journalist (Conditions of service) and Miscellaneous Provisions Rules, 1957
- 4 The Payment of Bonus Act, 1965
The Payment of Bonus Rules, 1975

Laws related to Specific Industries

- 1 The Factories Act, 1948
- 2 The Dock Workers (Regulation of Employment) Act, 1948
- 3 The Plantation Labour Act, 1951
- 4 The Mines Act, 1952
- 5 The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955
The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Rules, 1957
- 6 The Merchant Shipping Act, 1958
- 7 The Motor Transport Workers Act, 1961
- 8 The Beedi & Cigar Workers (Conditions of Employment) Act, 1966
- 9 The Contract Labour (Regulation & Abolition) Act, 1970
- 10 The Sales Promotion Employees (Conditions of Service) Act, 1976
The Sales Promotion Employees (Conditions of Service) Rules, 1976
- 11 The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- 12 The Shops and Establishments Act
- 13 The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984
The Cine Workers' Welfare Fund Act, 1981.
- 14 The Dock Workers (Safety, Health & Welfare) Act, 1986
- 15 The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996
- 16 The Dock Workers (Regulation of Employment) (inapplicability to Major Ports) Act, 1997
- 17 The Mica Mines Labour Welfare Fund Act, 1946
- 18 The Limestone & Dolomite Mines Labour Welfare Fund Act, 1972
- 19 The Beedi Workers Welfare Fund Act, 1976
- 20 The Beedi Workers Welfare Cess Act, 1976

- 21 The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976
- 22 The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Cess Act, 1976
- 23 The Cine Workers Welfare Fund Act, 1981
- 24 The Cine Workers Welfare Cess Act, 1981
- 25 The Employment of Manual Scavengers and Construction of Dry latrines Prohibition Act, 1993
- 26 The Coal Mines (Conservation and Development) Act, 1974

Laws related to Equality and Empowerment of Women

- 1 The Maternity Benefit Act, 1961
- 2 The Equal Remuneration Act, 1976

Laws related to Deprived and Disadvantaged Sections of the Society

- 1 The Bonded Labour System (Abolition) Act, 1976
- 2 The Child Labour (Prohibition & Regulation) Act, 1986

Laws related to Social Security

- 1 The Workmen's Compensation Act, 1923
- 2 The Employees' State Insurance Act, 1948
- 3 The Employees' Provident Fund & Miscellaneous Provisions Act, 1952
- 4 The Payment of Gratuity Act, 1972

Laws related to Employment & Training

- 1 The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
The Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1959
- 2 The Apprentices Act, 1961

Others

- 1 The Fatal Accidents Act, 1855
- 2 The War Injuries Ordinance Act, 1943
- 3 The Weekly Holiday Act, 1942
- 4 The National and Festival Holidays Act
- 5 The War Injuries (Compensation Insurance) Act, 1943
- 6 The Personal Injuries (Emergency) Provisions Act, 1962
- 7 The Personal Injuries (Compensation Insurance) Act, 1963

- 8 The Labour Laws (Exemption from Furnishing Returns and Maintaining Register by Certain Establishments) Act, 1988
- 9 The Public Liability Insurance Act, 1991

1.3 Labour Jurisdiction-State vs Central

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.

Constitutional Status

Union List	Concurrent List
Entry No. 55 : Regulation of labour and safety in mines and oil fields	Entry No. 22: Trade Unions; industrial and labour disputes.
Entry No. 61: Industrial disputes concerning Union employees	Entry No.23: Social Security and insurance, employment and unemployment.
Entry No.65: Union agencies and institutions for "Vocational ...training..."	Entry No. 24: Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefit.

Matters relating to Social Security are Directive Principles of State Policy and the subjects in the Concurrent List. The following social security issues are mentioned in the Concurrent List (List III in the Seventh Schedule of the Constitution of India) –

Item No. 23: Social Security and insurance, employment and unemployment.

Item No. 24: Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits.

Part III Fundamental Rights

Article 16. Equality of opportunity in matters of public employment.-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 24. Prohibition of employment of children in factories, etc. —No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Part IV Directive Principles of State Policy

Article 41 Right to work, to education and to public assistance in certain cases

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42 Provision for just and humane conditions of work and maternity relief

The State shall make provision for securing just and humane conditions of work and for maternity relief.

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

Article 43A. Participation of workers in management of industries.—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

1.4 Labour Policy of India

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, viz., maintaining industrial peace and promoting the welfare of labour.

Labour Policy Highlights

- Creative measures to attract public and private investment.
- Creating new jobs
- New Social security schemes for workers in the unorganised 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`.

- Special conciliation mechanism for projects with investments of Rs.150 crores or more.
- Industrial Relations committees in more sectors.
- Labour Law reforms in tune with the times. Empowered body of experts to suggest required changes.
- Statutory amendments for expediting and streamlining the mechanism of Labour Judiciary.
- Amendments to Industrial Disputes Act in tune with the times.
- Efficient functioning of Labour Department.
- More labour sectors under Minimum Wages Act.
- Child labour act to be aggressively enforced.
- Modern medical facilities for workers.
- Rehabilitation packages for displaced workers.
- Restructuring in functioning of employment exchanges. Computerization and updating of data base.
- Revamping of curriculum and course content in industrial training.
- Joint cell of labour department and industries department to study changes in laws and rules.

The Factories Act, 1948

Objectives

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

Applicability of the Act

1. Applicable to the whole of India including Jammu & Kashmir.

2. Covers all manufacturing processes and establishments falling within the definition of 'factory'.
3. Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Scheme of the Act

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

Important provisions the Act

Facilities and Conveniences - The factory should be kept clean. [Section 11]. There should be arrangement to dispose of wastes and effluents. [Section 12]. Ventilation should be adequate. Reasonable temperature for comfort of employees should be maintained. [Section 13]. Dust and fumes should be controlled below permissible limits. [Section 14]. Artificial humidification should be at prescribed standard level. [Section 15]. Overcrowding should be avoided. [Section 16]. Adequate lighting, drinking water, latrines, urinals and spittoons should be provided. [Sections 17 to 19]. Adequate spittoons should be provided. [Section 20].

Welfare - Adequate facilities for washing, sitting, storing cloths when not worn during working hours. [Section 42]. If a worker has to work in standing position, sitting arrangement to take short rests should be provided. [Section 44]. Adequate First aid boxes shall be provided and maintained [Section 45].

Facilities in case of large factories - Following facilities are required to be provided by large factories - * Ambulance room if 500 or more workers are employed * Canteen if 250 or more workers are employed. It should be sufficiently lighted and ventilated and suitably located. [Section 46]. * Rest rooms / shelters with drinking water when 150 or more workmen are employed [Section 47] * Crèches if 30 or more women workers are employed. [Section 48] * Full time Welfare Officer if factory employs 500 or more workers [Section 49] * Safety Officer if 1,000 or more workmen are employed.

Safety - All machinery should be properly fenced to protect workers when machinery is in motion. [Section 21 to 27]. Hoists and lifts should be in good condition and tested periodically. [Section 28 and 29]. Pressure plants should be checked as per rules. [Section 31]. Floor, stairs and means of

access should be of sound construction and free from obstructions. [Section 32]. Safety appliances for eyes, dangerous dusts, gas, fumes should be provided. [Sections 35 and 36]. Worker is also under obligation to use the safety appliances. He should not misuse any appliance, convenience or other things provided. [Section 111]. In case of hazardous substances, additional safety measures have been prescribed. [Sections 41A to 41H]. - - Adequate fire fighting equipment should be available. [Section 38]. - - Safety Officer should be appointed if number of workers in factory are 1,000 or more. [Section 40B].

Working Hours - A worker cannot be employed for more than 48 hours in a week. [Section 51]. Weekly holiday is compulsory. If he is asked to work on weekly holiday, he should have full holiday on one of three days immediately or after the normal day of holiday. [Section 52(1)]. He cannot be employed for more than 9 hours in a day. [Section 54]. At least half an hour rest should be provided after 5 hours. [Section 55]. Total period of work inclusive of rest interval cannot be more than 10.5 hours. [Section 56]. A worker should be given a weekly holiday. Overlapping of shifts is not permitted. [Section 58]. Notice of period of work should be displayed. [Section 61].

Overtime Wages - If a worker works beyond 9 hours a day or 48 hours a week, overtime wages are double the rate of wages are payable. [Section 59(1)]. A workman cannot work in two factories. There is restriction on double employment. [Section 60]. However, overtime wages are not payable when the worker is on tour. Total working hours including overtime should not exceed 60 in a week and total overtime hours in a quarter should not exceed 50. Register of overtime should be maintained. - - An employee working outside the factory premises like field workers etc. on tour outside headquarters are not entitled to overtime. – R Ananthan v. Avery India 1972(42) FJR 304 (Mad HC) * Director of Stores v. P S Dube 1978 Lab IC 390 = 52 FJR 299 = 1978 I LLN 464 = 36 FLR 420.

Employment of Women - A woman worker cannot be employed beyond the hours 6 a.m. to 7.00 pm. State Government can grant exemption to any factory or group or class of factories, but no woman can be permitted to work during 10 PM to 5 AM. Shift change can be only after weekly or other holiday and not in between. [Section 66].

Night Shift for women:

Factories Act is proposed to be amended to allow night shift for women workers. The Government has decided to amend Section 66 of the Factories Act, 1948 to allow employment of women workers between 7.00 pm and 6.00 am. The demand of women's organisations and in tune with the present economic globalization, the Government has decided to bring in then required changes in the Act. This flexibility would be available to all manufacturing units including

the apparel sector. This decision has been taken after meetings with the representatives of the employers and the trade unions. The proposed Bill will empower the State Governments for allowing the necessary flexibility in employment of women during night shift in factories.

The proposed amendment would inter-alia provide that the employer has to ensure occupational safety and adequate protection to the women workers. However, the State Government or any person authorised by it would be allowing employment of women during night only after consulting the workers or their representative organisations and concerned employers or their representatives. The State Governments are also empowered to frame their own rules for allowing such permissions.

Record of Workmen - A register (muster roll) of all workers should be maintained. No worker should be permitted to work unless his name is in the register. Record of overtime is also required to be maintained. [Section 62].

Leave - A worker is entitled in every calendar year annual leave with wages at the rate of one day for every 20 days of work performed in the previous calendar year, provided that he had worked for 240 days or more in the previous calendar year. Child worker is entitled to one day per every 15 days. While calculating 240 days, earned leave, maternity leave upto 12 weeks and lay off days will be considered, but leave shall not be earned on those days. [Section 79]. – Leave can be accumulated upto 30 days in case of adult and 40 days in case of child. Leave admissible is exclusive of holidays occurring during or at either end of the leave period. Wage for period must be paid before leave begins, if leave is for 4 or more days. [Section 81]. Leave cannot be taken for more than three times in a year. Application for leave should not normally be refused. [These are minimum benefits. Employer can, of course, give additional or higher benefits].

Wages for OT and Leave Salary - 'Wages' for leave encashment and overtime will include dearness allowance and cash equivalent of any benefit. However, it will not include bonus or overtime.

Child Employment - Child below age of 14 cannot be employed. [Section 67]. Child above 14 but below 15 years of age can be employed only for 4.5 hours per day or during the night. [Section 71]. He should be certified fit by a certifying surgeon. [Section 68]. He cannot be employed during night between 10 pm to 6 am. [Section 71]. A person over 15 but below 18 years of age is termed as 'adolescent'. He can be employed as an adult if he has a certificate of fitness for a full day's work from certifying surgeon. An adolescent is not permitted to work between 7 pm and 6 am. [Section 70]. There are more restrictions on employment of female adolescent. - - Register of child workers should be maintained. [Section 73].

Display on Notice Board - A notice containing abstract of the Factories Act and the rules made thereunder, in English and local language should be displayed. Name and address of Factories Inspector and the certifying surgeon should also be displayed on notice board. [Section 108(1)].

Notice of Accidents, Diseases Etc. - Notice of any accident causing disablement of more than 48 hours, dangerous occurrences and any worker contracting occupational disease should be informed to Factories Inspector. [Section 88]. Notice of dangerous occurrences and specified diseases should be given. [Sections 88A and 89].

Obligation regarding Hazardous Processes / Substances - Information about hazardous substances / processes should be given. Workers and general public in vicinity should be informed about dangers and health hazards. Safety measures and emergency plan should be ready. Safety Committee should be appointed.

List of Industries Involving Hazardous Processes

THE FIRST SCHEDULE

[See Section 2(cb)]

1. Ferrous metallurgical Industries

- Integrated Iron and Steel

- Ferro-alloys

- Special Steels

2. Non-ferrous metallurgical Industries

- Primary Metallurgical Industries, namely, zinc, lead, copper manganese and aluminium

3. Foundries (ferrous and non-ferrous)

- Castings and forgings including cleaning or smoothing/roughening by sand and shot blasting.

4. Coal (including coke) industries. - Coal, Lignite, Coke, etc.

- Fuel Gases (including Coal gas, Producer gas, Water gas)

5. Power Generating Industries

6. Pulp and paper (including paper products) industries

7. Fertiliser Industries

- Nitrogenous

- Phosphatic

- Mixed

8. Cement Industries

- Portland Cement (including slag cement, puzzolona cement and their products)

9. Petroleum Industries

- Oil Refining

- Lubricating Oils and Greases

10. Petro-chemical Industries

11. Drugs and Pharmaceutical Industries

- Narcotics, Drugs and Pharmaceuticals

12. Fermentation Industries (Distilleries and Breweries)

13. Rubber (Synthetic) Industries

14. Paints and Pigment Industries

15. Leather Tanning Industries

16. Electro-plating Industries

17. Chemical Industries

- Coke Oven by-products and Coaltar Distillation Products

- Industrial Gases (nitrogen, oxygen, acetylene, argon, carbon-dioxide, hydrogen, sulphur-dioxide, nitrous oxide, halogenated hydro-carbon, ozone etc.)

- Industrial Carbon

- Alkalies and Acids

- Chromates and dichromates

- Leads and its compounds

- Electrochemicals (metallic sodium, potassium and magnesium, chlorates, perchlorates and peroxides)

- Electrothermal produces (artificial abrasive, calcium carbide)

- Nitrogenous compounds (cyanides, cyanamides and other nitrogenous compounds)

- Phosphorous and its compounds

- Halogens and Halogenated compounds (Chlorine, Fluorine, Bromine and Iodine)

- Explosives (including industrial explosives and detonators and fuses)

18. Insecticides, Fungicides, herbicides and other Pesticides Industries

19. Synthetic Resin and Plastics

20. Man-made Fibre (Cellulosic and non-cellulosic) Industry

21. Manufacture and repair of electrical accumulators

22. Glass and Ceramics

23. Grinding or glazing of metals

24. Manufacture, handling and processing of asbestos and its products

25. Extraction of oils and fats from vegetable and animal sources

26. Manufacture, handling and use of benzene and substances containing benzene

27. Manufacturing processes and operations involving carbon disulphide

28. Dyes and Dyestuff including their intermediates

29. Highly flammable liquids and gases.

PERMISSIBLE LEVELS OF CERTAIN CHEMICAL SUBSTANCES IN WORK ENVIRONMENT

THE SECOND SCHEDULE

[See Section 41F]

Sl. No.	Substance	Permissible limits of exposure			
		Time-Weighted average concentration (TWA)	(TWA)	Short-term exposure limits (15 min.)	(STEL)
		PPm	mg/m ³	PPm	mg/m ³
1	2	3	4	5	6
1	Acetaldehyde	100	180	150	270
2	Acetic Acid	10	25	15	37
3	Acetone	750	1780	1000	2375
4	Acrolein	01	0.25	0.3	0.8
5	Acrylonitrile-skin (S.C)	2	4.5	-	-
6	Aldrin-skin	-	0.25	-	-
7	Allyl Chloride	1	3	2	6
8	Ammonia	0.25	18	35	27
9	Aniline-skin	2	10	-	-
10	Anisidine (O.P.isomers)-skin	0.1	0.5	-	-
11	Arsenic & Soluble compounds (as As)	-	0.2	-	-
12	Benzene (S.C)	10	30	-	-

13	Beryllium & Compounds (as Be) (S.C)	-	0.002	-	-
14	Boron trifluoride C	1	3	-	-
15	Bromine	0.1	0.7	0.3	2
16	Butane	800	1900	-	-
17	2-Butanone (Methyle ethyle Ketone MEK)	200	590	300	885
18	N-Butyl acetate	150	710	200	950
19	N-Butyl alcohol-skin-C	50	150	-	-
20	Sce/tert, Butyl acetate	200	950	-	-
21	Butyl Mercaptan	0.5	1.5	-	-
22	Cadmium-dust and salts (as Cd)	-	0.05	-	-
23	Calcium oxide	-	2	-	-
24	Carbaryl (Sevin)	-	5	-	-
25	Carbofuran (Furadan)	-	0.1	-	-
26	Carbon disulphide-skin	10	30	-	-
27	Carbon monoxide	50	55	400	440
28	Carbon tetrachloride- skin (S.C.)	5	30	-	-
29	Chlordane-skin	-	0.5	-	2
30	Chlorine	1	3	3	9
31	Chlorobenzene (monochlorobenzene)	75	350	-	-
32	Chloroform (S.C.)	10	50	-	-
33	bis-(Chloromethyl) ether (H.C.)	0.001	0.005	-	-
34	Chromic acid and chromates (as Cr) (Water soluble)	-	0.05	-	-
35	Chromous Salts (as Cr)	-	0.5	-	-

36	Copper fume	-	0.2	-	-
37	Cotton dust, raw	-	0.2	-	-
38	Cresoal, all isomers-skin	5	22	-	-
39	Cyanides (as Cn)-skin	-	5	-	-
40	Cyanogen	10	20	-	-
41	DDT (Dichlorodiphenyl Trichloroethane)	-	1	-	-
42	Demeton-skin	0.01	0.1	-	-
43	Diazinon-skin	-	0.1	-	-
44	Dibutyl Phythalate	-	5	-	-
45	Dichlorous (DDVP)-skin	-	1	-	-
46	Dieldrin-skin	-	0.25	-	-
47	Dinitrobenzene (all isomers)-skin	0.15	1	-	-
48	Dinitrotoluene-skin	-	1.5	-	-
49	Diphenyl (Biphenyl)	0.2	1.5	-	-
50	Endosulfan (Thiodan)-skin	-	0.1	-	-
51	Endrin-skin	-	0.1	-	-
52	Ethyl acetate	400	1400	-	-
53	Ethyl alcohol	1000	1900	-	-
54	Ethylamin	10	18	-	-
55	Fluorides (as F)	-	2.5	-	-
56	Fluorine	1	2	2	4
57	Formaldehyde (S.C.)	1.0	1.5	2	3
58	Formic Acid	5	9	-	-
59	Gasoline	300	900	500	1500
60	Hydrazine-skin (S.C.)	0.1	0.1	-	-
61	Hydrogen Chloride-C	5	7		
62	Hydrogen Cyanide skin-	10	10	-	-

	C				
63	Hydrogen Fluoride (as F)-C	3	2.5	-	-
64	Hydrogen Peroxide	1	1.5	-	-
65	Hydrogen Sulphide	10	14	15	21
66	Iodine-C	0.1	1	-	-
67	Iron Oxide Fume (F0203) (as Fe)	-	5	-	-
68	Isoamyl acetate	100	525	-	-
69	Isoamyl alcohol	100	360	125	450
70	Isobutyl alcohol	50	150	-	-
71	Lead, inorg, dusts, dusts and fumes (as Pb)	-	0.15	-	-
72	Lindane-skin	-	0.5	-	-
73	Malathion-skin	-	10	-	-
74	Manganese dust and compounds (as (Mn)-C	-	5	-	-
75	Manganese Fume (as Mn)	-	1	-	3
76	Mercury (as Hg)-skin				
	(i) Alkyle compounds	-	0.01	-	0.03
	(ii) All forms except alkyle vapour	-	0.05	-	-
	(iii) Aryle and inorganic compounds	-	0.1	-	-
77	Methyl alcohol (Methanol)-skin	200	260	250	310
78	Methyl cellosolve (2-methoxyethanol)-skin	5	16	-	-
79	Methyl isobutyl Ketone	50	205	75	300
80	Methyl Isocyanate-skin	0.02	0.05	-	-

81	Naphthalene	10	50	15	75
82	Nickel carbonyl (as Ni)	0.05	0.35	-	-
83	Nitric acid	2	5	4	10
84	Nitric Oxide	25	30	-	-
85	Nitrobenzene-skin	1	5	-	-
86	Nitrogen dioxide	3	6	5	10
87	Oil mist mineral	-	5	-	10
88	Ozone	0.1	0.2	0.3	0.6
89	Parathion-skin	-	0.1	-	-
90	Phenol-skin	5	19		
91	Phorate (Thimet)-skin	-	0.05	0.2	-
92	Phosgene (Carbonyl Chloride)	0.1	0.4	-	-
93	Phosphine	0.3	0.4	1	1
94	Phosphoric acid	-	1	-	3
95	Phosphorus (yellow)	-	0.1	-	-
96	Phosphorus penta-chloride	0.1	1	-	-
97	Phosphorus trichloride	0.2	1.5	0.5	3
98	Picric acid-skin	-	0.1	-	0.3
99	Pyridine	5	15	-	-
100	Silans (silicon tetrahydride)	5	7	-	-
101	Sodium hydroxide-C	-	2	-	-
102	Styrene, monomer (phanylethlene)	50	215	100	425
103	Sulphur dioxide	2	5	5	10

104	Sulphur hexafluoride	1000	6000	-	-
105	Sulphuric acid	-	1	-	-
106	Tetraethyl lead (as Pb) - Skin	-	0.1	-	-
107	Toluene (Toluol)	100	375	150	560
108	O-Toluidine-skin (S.C.)	2	9	-	-
109	Tributylphosphohate	0.2	2.5	-	-
110	Trichloroethylene	50	270	200	1080
111	Uranium natural (as U)	-	0.2	-	0.6
112	Vinyl Chloride (H.C.)	5	10	-	-
113	Welding fumes	-	5	-	-
114	Xylene (O-m-P-isomers)	100	435	150	655
115	Zinc oxide				
	(i) Fume	-	5.0	-	10
	(ii) Dust (Total dust)	-	10.00	-	-
116	Zirconium compounds (as Zr)	-	5	-	10

THE THIRD SCHEDULE

[See Sections 89 and 90]

LIST OF NOTIFIABLE DISEASES

1. Lead poisoning, including poisoning by any preparation or compound of lead or their sequelae.
2. Lead tetra-ethyl poisoning
3. Phosphorus poisoning or its sequelae.
4. Mercury poisoning or its sequelae.

5. Manganese poisoning or its sequelae.
6. Arsenic poisoning or its sequelae.
7. Poisoning by nitrous fumes.
8. Carbon disulphide poisoning.
9. Benzene poisoning, including poisoning by any of its homologues, their nitro or amido derivatives or its sequelae.
10. Chrome ulceration or its sequelae.
11. Anthrax.
12. Silicosis.
13. Poisoning by halogens or halogen derivatives of the hydrocarbons of the aliphatic series.
14. Pathological manifestations due to
 - (a) radium or other radio-active substances.
 - (b) X-rays.
15. Primary epitheliomatous cancer of skin.
16. Toxic anaemia.
17. Toxic jaundice due to poisonous substances.
18. Oil acne or dermatitis due to mineral oils and compounds containing mineral oil base.
19. Byssionosis.
20. Asbestosis.
21. Occupational or contract dermatitis caused by direct contact with chemicals and paints. These are of two types, that is primary irritants and allergic sensitizers.
22. Noise induced hearing loss (exposure to high noise levels).

- 23. Beryllium poisoning.
- 24. Carbon monoxide
- 25. Coal miners' pneumoconiosis.
- 26. Phosgene poisoning.
- 27. Occupational cancer.
- 28. Isocyanates poisoning.
- 29. Toxic nephritis.

Child Labour (Prohibition & Regulation) Act, 1986

In India, there are a number of Acts which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be prohibited. There is also no law to regulate the working conditions of children in most of the employments where they are not banned from working and are working under extremely shady and questionable conditions.

Objectives of Child Labour (Prohibition & Regulation) Act, 1986

- (i) Ban the employment of children, i.e. those who have not completed their fourteenth year, in specified occupations and processes;
- (ii) Lay down a procedure to decide modifications to the Schedule of banned occupations or processes;
- (iii) Regulate the conditions of work of children in employments where they are not prohibited from working;
- (iv) Lay down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children;
- (v) To obtain uniformity in the definition of 'child' in the related laws.

Scheme of the Act The Act consists of 26 Sections and 1 Schedule with 2 Parts.

- 1. Part A consists of list of occupations where child labour is banned.
- 2. Part B consists of list of processes where child labour is banned.

Important Provisions of the Act

Who is a child? According to the definition given u/s 2(ii) of the Act, a child means a person who has not completed his fourteenth year of age.

Where is the child labour prohibited to work? No child is permitted to work in any the occupations set forth in Part A of the Schedule or any workshop wherein any of the processes set forth in Part B of the Schedule is carried on. (Section 3)

Exemption: The above prohibition does not apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

Where child labour is permitted? Except the prohibitory occupations set forth in Part A or processes set forth in Part B of the Schedule, child labour is permitted to be employed but the conditions of their work is required to be regulated in accordance with Part III of the Act.

Responsibilities of employers towards child labour: Please refer to the note regarding the responsibilities of the employer for the proper implementation of the Act and the Rules.

Penalties: For the contravention of Section 3 a person is punishable with not less than three months imprisonment which may extend to one year or with fine not less than Rs.10,000/- rupees which may be extended up to Rs. 20,000/- or with both. For other offence, the punishment may be simple imprisonment up to one month or with fine up to Rs. 10,000/- of both. A conviction u/s 67 of the Factories Act, 1948 or u/s 21 of the Motor Transport Workers Act, 1961 will attract the penalties under the Child Labour (Prohibition & Regulation) Act, 1986.

Salient Features of Legislative Provisions Prohibiting and Regulating Employment of Children

1. As per the Child Labour (Prohibition & Regulation) Act, 1986 "child" means a person who has not completed is 14th year of age.
2. The Act prohibits employment of children in 13 occupations and 57 processes contained in Part A & B of the Schedule to the Act (Section 3).
3. Under the Act, a Technical Advisory Committee is constituted to advice for inclusion of further occupations & processes in the Schedule.

4. The Act regulates the condition of employment in all occupations and processes not prohibited under the Act (Part III).
5. Any person who employs any child in contravention of the provisions of Section 3 of the Act is liable for punishment with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than Rs 10,000 but which may extend to Rs 20,000 or both (Section 14).
6. The Central and the State Governments enforce the provisions of the Act in their respective spheres.

Employment of children as domestic servants and in dhabas banned from October 2006:

The government has decided to prohibit employment of children as domestic servants or servants or in dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centres. The ban has been imposed under the Child Labour (Prohibition & Regulation) Act, 1986 and will be effective from 10th October 2006. The Ministry of Labour has recently issued a notification to this effect giving three-month mandatory notice. The Ministry has warned that anyone employing children in these categories would be liable to prosecution and other panel action under the Act.

It may be recalled that the government servants have already been prohibited from employing children as domestic servants. By issuing this notification, the Government has imposed these restrictions on everyone.

The decision has been taken on the recommendation of the Technical Advisory Committee on Child Labour headed by the Director General, ICMR. The Committee considers the occupations mentioned in the above notification as hazardous for children and has recommended their inclusion in the occupations which are prohibited for persons below 14 years under the Child Labour (Prohibition & Regulation) Act, 1986. The Committee while recommending a ban on employing children in these occupations had said that these children are subjected to physical violence, psychological traumas and at times even sexual abuse. It said that invariably such incidents go unnoticed and unreported as they take place in the close confines of the households or dhabas or restaurants. It said that these children are made to work for long hours and are made to undertake various hazardous activities severely affecting their health and psyche. The Committee has said that the children employed in road-side eateries and highway dhabas were the most vulnerable lot and were easy prey to sex and drug abuse as they came in contact with all kinds of people. The measure is expected to go a long way in ameliorating the condition of

hapless working children. The Labour Ministry is also contemplating to strengthen and expand its rehabilitative Scheme of National Child Labour Project, which already covers 250 child labour endemic districts in the country.

THE SCHEDULE

PART A

OCCUPATIONS

Any occupation connected with - (1) Transport of passengers, goods or mails by railway;

(2) Cinder picking, clearing of an ash pit or building operation in the railway premises;

(3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;

(4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;

(5) A port authority within the limits of any port.

(6) Work relating to selling of crackers and fireworks in shops with temporary licences.

(7) Abattoirs/slaughter Houses.

PART B

PROCESSES

(1) Bidi-making.

(2) Carpet-weaving.

(3) Cement manufacture, including bagging of cement.

(4) Cloth printing, dyeing and weaving.

(5) Manufacture of matches, explosives and fire-works.

(6) Mica-cutting and splitting.

- (7) Shellac manufacture.
- (8) Soap manufacture.
- (9) Tanning.
- (10) Wool-cleaning.
- (11) Building and construction industry.
- (12) Manufacture of slate pencils (including packing).
- (13) Manufacture of products from agate.
- (14) Manufacturing processes using toxic metals and substances, such as, lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.
- (15) "Hazardous processes" as defined in Sec. 2 (cb) and dangerous operations as defined in rules made under Sec. 87 of the Factories Act, 1948 (63 of 1948).
- (16) Printing as defined in Sec. 2(k) (iv) of the Factories Act. 1948 (63 of 1948).
- (17) Cashew and cashew nut decaling and processing.
- (18) Soldering processes in electronic industries.

Bonded Labour System (Abolition) Act, 1976

Objective: The object of the Act is to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker Sections of the people and for matters connected therewith or incidental thereto.

Scheme of the Act

The Act consists of 27 Sections with some of the important Sections listed below:

2	Definitions
3	Act to Have Overriding Effect
4	Abolition of Bonded Labour System
5	Agreement, Custom, Etc., to be Void

6	Liability to Repay Bonded debt to Stand Extinguished
7	Property of Bonded Labourer to be freed from Mortgage, Etc.
8	Freed Bonded Labourer Not to be Evicted from Homestead, etc.
9	Creditor not to Accept Payment Against Extinguished Debt
10	Authorities Who may be Specified for Implementing the Provisions of this Act
11	Duty of District Magistrate and other officers to ensure credit
12	Duty of District Magistrate and Officers Authorised by Him
13	Vigilance Committee
14	Functions of Vigilance Committee
15	Burden of Proof
16	Punishment for Enforcement of Bonded Labour
17	Punishment for Advancement of Bonded Debt
18	Punishment for Extracting Bonded Labour under the Bonded Labour System
19	Punishment for Omission or Failure to restore possession of Property to Bonded Labourers
20	Abetment to be an Offence
21	Offences to be Tried by Executive Magistrates
22	Cognizance of Offences
23	Offences by Companies
24	Protection of Action Taken in Good Faith
25	Jurisdiction of Civil Courts Barred

System of Bonded Labour and its forms: It is outcome of customary obligations, forced labour, beggar or indebtedness under which a debtor agrees to render service. In different parts of the country, it was known by the different names such as Adiyamar, baramasia, basahya, bethu, bhagela, cherumar, garru-galu hari, harwai, holya, jana jeetha, kamiya, khundit-mundit, kuthia, lakhari, munjhi, mat, munish system, nit-majdoor, paleru, paduyal, pannayilal, sagri, sanji, sanjawat, sewak, sewakia, seri, vetti.

Who is bonded Labour? According to the definition given in Section 2(g) of the Act, bonded labour means service arising out of loan/debt/advance. It represents the relationship between a creditor and a debtor wherein the debtor undertakes to mortgage his services or the services of any of his family members to the creditor for a specified or unspecified period with or without wages accompanied by denial of choice of alternative avenues of employment, or to deny him freedom of movements, then the person would normally be covered under the definition of a bonded labour.

Whom to approach in case of bondage? The aggrieved person or any person on his behalf can approach to the District Magistrate who is chairman of the Vigilance Committee constitute under the Act and has been entrusted with certain duties and responsibilities for implementing the provisions of the Act. Matter can also be brought to the notice of the Sub Divisional Magistrate of the area or any other person who is a member of the Vigilance Committee of District or Sub-division.

Relief available to the victim: The bonded labour is to be immediately released from the bondage. His liability to repay bonded debt is deemed to have been extinguished. Freed bonded labour shall not be evicted from his homesteads or other residential premises which he was occupying as part of consideration for the bonded labour. A rehabilitation grant of Rs. 120,000/- to each of the bonded labour is to be granted and assistance for his rehabilitation provided.

Penalties: The offence under the Act is cognizable and bailable any person who is contravenes provisions of the act is punishable with imprisonment for a term which may extend to three years and also with a fine which may extend to two thousand rupees. W.e.f. 1.5.2000 (Rs. 4000/- from 1978, Rs. 6250/- w.e.f. 1.2.86 & Rs. 10,000/- w.e.f. 1.4.95)

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

The main purpose of the Act is to provide for the compulsory notification of vacancies to employment exchanges. The employer is required on a compulsory basis, to notify to the Employment Exchanges all vacancies other than vacancies in unskilled categories, temporary vacancies and vacancies proposed to be filled through promotion and tender to the Employment Exchanges, return relating to the staff strengths at regular intervals.

The Act extends to the whole of India.

Scheme of the Act

There are only 10 Sections in total and some of the important Sections are:

Section 2	→	Definitions
Section 3	→	Act not to apply in relation to certain Vacancies
Section 4	→	Notification of Vacancies to Employment Exchanges
Section 5	→	Employers to furnish information and returns in prescribed form
Section 6	→	Right of access to records or documents
Section 7	→	Penalties
Section 8	→	Cognizance of Offences
Section 9	→	Protection of Action taken in good faith

Application of the Act:

The Act covers the employers in establishments both in public and private sectors. The Act is applicable to establishments which are engaged in non-agricultural activities and employing 25 or more workers. The enforcement of the Act is the responsibility of States and Union Territories. Most of the States/Union Territories have set up special enforcement machinery for this purpose.

Act not to apply in relation to certain vacancies:

The Act shall apply to the following category of vacancies:

- 1) In any employment in agriculture (including horticulture) in establishment in private sector other than employment as agricultural or farm machinery operatives;
- 2) In any employment in domestic service;
- 3) In any employment the total duration of which is less than 3 months;
- 4) In any employment which requires unskilled office work;
- 5) In any employment related to the staff of Parliament.

In addition, the Act shall not apply to the following vacancies unless the Central Government otherwise directs through notification in its Official Gazette:

- 1) Vacancies which are proposed to be filled through promotion
- 2) Vacancies which are proposed to be filled through absorption of surplus staff of any branch or department of the same establishment
- 3) Vacancies which are proposed to be filled through the result of any examination conducted or interview held by, or on recommendation of, any independent agency such as Union or State Public Service Commission and the like.
- 4) Vacancies in an employment which carries a remuneration of less than sixty rupees in a month. (Section 3).

Notification of vacancies to Employment Exchanges:

Section 4 of the Act provides for notification of vacancies to employment exchange. The employer in every establishment in public sector is required to notify any vacancy before filling it up, to the prescribed employment exchanges.

The Section further requires an employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector to notify to the prescribed employment exchanges from such date as may be specified in the notification issued by the appropriate Government in the Official Gazette.

Section 4(3) provides that the manner of notification of vacancies and the particulars of employments having such vacancies should be such as may be prescribed.

Section 4(4) says that the employer's obligation is only to notify the vacancy to the employment exchange. The Act does not impose any obligation on an employer to recruit any person through employment exchange to fill the vacancy merely because the vacancy has been notified as required by this Act.

Employment Exchanges to which vacancies are to be notified:

Rule 3 of The Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960, says that the vacancies are to be notified either to the Central Employment Exchange or Local Employment Exchange, as the case may be.

The Central Employment Exchange means the Employment Exchange established by the Government of India, Ministry of Labour and Employment and to which the following vacancies shall be notified:

- Vacancies in posts of a technical and scientific nature carrying a basic pay of Rs. 1,400 or more per month occurring in establishments in respect of which the Central Government is the appropriate Government under the Act; and
- Vacancies which an employer may desire to be circulated to the employment exchanges outside the State or Union Territory to which the establishment is situated.

The Local Employment Exchange means the employment exchange (the Central Employment Exchange) notified in the Official Gazette by the State Government or the Administration or Union Territory as having jurisdiction over the area in which the establishment concerned is situated or over specified classes or categories of establishments of vacancies.

Vacancies of all types other than those which are required to be notified to Central Employment Exchange, shall be notified to these local employment exchanges.

Furnishing of Information or Returns:

Section 5 requires an employer in every establishment in public sector to furnish, such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in the establishment to such employment exchanges as may be prescribed. In the case of private sector or every establishment pertaining to any class or category of establishments in private sector, the appropriate Government, by notification in the Official Gazette, may require that from such date as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment exchanges as may be prescribed and the employer shall thereupon, comply with such requisition.

The above return shall be furnished to the Director or other authorized officer of the Directorate administering employment exchanges in a State or Union Territory.

Right of Access to Records or Documents:

Such officer of the Government as may be prescribed in this behalf, or any person authorized by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns under Section 5 of this Act. Such officer is also empowered to enter at any reasonable time, any premises where he believes that such record or document to be and inspect and take copies of relevant records or documents or ask any question necessary for obtaining information required under that Section (Section 6).

Penalties (Section 7)

(1) If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy in contravention of sub-Section (1) or sub-Section (2) of Section 4, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.

(2) If any person - (a) required to furnish any information or return - (i) refuses or neglects to furnish such information or return, or

(ii) furnishes or causes to be furnished any information or return which he knows to be false, or

(iii) refuses to answer, or gives a false answer to, any question necessary for obtaining any information required to be furnished under Section 5; or

(b) impedes the right of access to relevant records or documents or the right of entry conferred by Section 6, he shall be punishable for the first offence with fine which may extend to two hundred and fifty rupees and for every subsequent offence with fine which may extend to five hundred rupees.

Cognizance of Offences - No prosecution for an offence under this Act shall be instituted except by, or with the sanction of, such officer of Government as may be prescribed in this behalf or any person authorised by that officer in writing (Section 8).

Protection of action taken in good faith - No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act (Section 9).

Apprentices Act, 1961

The main purpose of the Act is to provide practical training to technically qualified persons in various trades. The objective is promotion of new skilled manpower. The scheme is also extended to engineers and diploma holders.

The Act applies to areas and industries as notified by Central government. [Section 1(4)].

Scheme of the Act

There are 38 Sections in total and 1 Schedule. This Schedule is about modifications in the Workmen's Compensation Act, 1923 w.r.t its application to apprentices under the Apprentices Act, 1961.

Obligation of Employer –

- Every employer is under obligation to provide the apprentice with the training in his trade in accordance with the provisions of this Act and the rules made there under.
- If the employer is not himself qualified in the trade, he has to ensure that a person who possesses the prescribed qualification is placed in charge of the training of the apprentice.
- Every employer has to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices; and
- Every employer is under obligation to take apprentices in prescribed ratio of the skilled workers in his employment in different trades. [Section 11].
- In every trade, there will be reserved places for scheduled castes and scheduled tribes. [Section 3A]. Ratio of trade apprentices to workers shall be determined by Central Government.
- Employer can engage more number of apprentices than prescribed minimum. [Section 8(1)].
- The employer has to make arrangements for practical training of apprentice [Section 9(1)].
- Employer will pay stipends to apprentices at prescribed rates. If the employees are less than 250, 50% of cost is shared by Government. If employer is employing more than 250 workers, he has to bear full cost of training.

Obligations of Apprentices:

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely:

- To learn his trade conscientiously and diligently and endeavour to qualify himself as a skilled craftsman before the expiry of the period of training;
- To attend practical and instructional classes regularly;
- To carry out all lawful orders of his employer and superiors in the establishments; and
- To carry out his obligations under the contract of apprenticeship.

In case of graduate or technician apprentice or technician (vocational) apprentice, apart from the aforesaid obligations, the Act imposes further obligation to learn his subject in Engineering or Technology or Vocational Course. (Section 12)

Who can be an Apprentice - Apprentice should be of minimum age of 14 years and he should satisfy the standard of education and physical fitness as prescribed. [Section 3].

Reservation of training places for scheduled castes:

Section 3A provides that in every designated trade, training places shall be reserved by the employer for the Scheduled Castes and Scheduled Tribes (as defined in clauses (24) and (25) of Article 366 of the Constitution) and where there is more than one designated trade in an establishment, such training places shall be reserved on the basis on the total number of apprentices in all the designated trades in such establishment. The reservation shall be such as may be prescribed having regard to the population of the Scheduled Castes and Scheduled Tribes in the State concerned.

Duration of Training - Duration of training period and ratio of apprentices to skilled workers for different trades has been prescribed in Apprenticeship Rules, 1991. Duration of Apprenticeship may be from 6 months to 4 years depending on the trade, as prescribed in Rules. Period of training is determined by National Council for training in Vocational Trades (established by Government of India)-(Section 6).

Contract with Apprentice – Apprentice appointed has to execute a contract of apprenticeship with employer. The contract has to be registered with Apprenticeship Adviser. If apprentice is minor, agreement should be signed by his guardian. [Section 4(1)] Apprentice is entitled to casual leave of 12 days, medical leave of 15 days and extraordinary leave of 10 days in a year.

Date of commencement of apprenticeship training:

The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into.

Registration:

- The employer shall send the contract to the Apprenticeship adviser for registration within three months of the date on which it was signed (Rule 6).
- The contract shall be registered by the Apprenticeship Adviser on being satisfied that the person described as an apprentice in the said contract is qualified under this Act.
- Registration of contract of apprenticeship under Section 4(4) is not a necessary ingredient of definition of apprentice. (Bhaskaran v. KSEB (1986) 1 LLN 869).

Terms and conditions of contract:

The contract may contain such terms and conditions as may be agreed to by the parties to the contract. In case, the Central Government after consulting the Central Apprenticeship Council makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training then the terms and conditions of every contract relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

Novation of contract of apprenticeship:

Where an employer is for any reason unable to fulfill his obligations under the contract and with approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as an apprentice under the other employer for the unexpired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer. Such contract on and from the date of such registration shall be terminated with the first employer and no obligation under that contract shall be enforceable (Section 5).

Payment to apprentices:

This is a contractual as well as statutory obligation imposed under Section 13 of the Act that an employer pays to every apprentice during the period of training such stipend at a rate not less than the prescribed minimum rate and this rate will be specified in the contract. An employer shall pay such stipend at such intervals and subject to such conditions as may be prescribed. However, an apprentice shall not be paid on the basis of piece-work nor he shall take part in any output bonus or other incentive scheme.

Termination of contract:

The contract of apprenticeship training shall terminate on the expiry of the period of apprenticeship training. Either party can make application for termination of contract to the Apprenticeship Adviser and thereafter send a copy of the same to the other party, who on being satisfied that the parties have failed to carry out the terms and conditions of the contract and it is desirable in the interests of the parties or any of them to terminate the contract, shall register the same. However, the employer shall pay the prescribed amount of compensation to the apprentice where the contract is terminated for failure on the part of the employer to honour the contract. Where the contract is terminated for failure on the part of the apprentice, he or his guardian shall refund the cost of the training to the employer. (Section 7)

Legal Position of Apprentices - An apprentice is not a workman during apprentice training. [Section 18] Provisions of labour law like Bonus, PF, ESI.

Act, gratuity, Industrial Disputes Act etc. are not applicable to him. However, provisions of Factories Act regarding health, safety and welfare will apply to him. Apprentice is also entitled to get compensation from employer for employment injury. [Section 16].

An employer is under no obligation to employ the apprentice after completion of apprenticeship. [Section 22(1)]. However, in *UP State Road Transport Corpn v. UP Parivahan Nigam Shishukh Berozgar Sangh* AIR 1995 SC 1114 = (1995) 2 SCC 1, it was held that other things being equal, a trained apprentice should be given preference over direct recruits. It was also held that he need not be sponsored by the employment exchange. Age bar may also be relaxed, to the extent of training period. The concerned institute should maintain a list of persons already trained and in between trained apprentices, preference should be given to those who are senior. – same view in *UP Rajya Vidyut Parishad v. State of UP* 2000 LLR 869 (SC).

Stipend payable- The minimum rate of stipend payable per month is as follows - (a) Engineering graduates - Rs 1,970 p.m. for post-institutional training (b) Sandwich course students for degree examination - Rs 1,400 p.m. (c) diploma holders - Rs 1,400 p.m. for post-institutional training (d) Sandwich course students for degree examination - Rs 1,140 p.m. (e) Vocational certificate holder - Rs 1,090 p.m. [w.e.f. May 2001]

In case of 4 year training, the stipend is as follows – first year – Rs 820 pm. Second year – Rs 940 pm. Third year – Rs 1,090 pm. Fourth year – Rs 1,230 pm. [From May 2001].

Test and Proficiency certificate - On completion of training, every trade apprentice has to appear for a test conducted by National Council. If he passes, he gets a certificate of proficiency.

Apprenticeship Adviser - Government is empowered to appoint Apprenticeship Adviser, Dy Apprenticeship Adviser etc. to supervise the scheme. Various powers have been conferred on them under the Act.

Disputes under contract and settlement thereof:

Section 20 of the Act provides that if out of the terms and conditions of the contract any dispute arises, it will be referred to Apprenticeship Adviser for decision. An appeal can be preferred by the aggrieved party within 30 days of the communication of the Adviser's decision to the Apprenticeship Council and such appeal shall be heard and determined by the Committee of that Council appointed for the purpose, and such decision of the Committee shall be final.

Holding of Test and Grant of Certificate and Conclusion of Training (Section 21) - (1) Every trade apprentice who has completed the period of training shall appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training.

(2) Every trade apprentice who passes the test referred to in sub-Section (1) shall be granted a certificate of proficiency in the trade by the National Council.

(3) The progress in apprenticeship training of every graduate or technician apprentice, technician (vocational) apprentice shall be assessed by the employer from time to time.

(4) Every graduate or technician apprentice or technician (vocational) apprentice, who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

Offer and Acceptance of Employment (Section 22) - (1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in sub-Section (1), where there is a condition in a contract of apprenticeship shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract:

Provided that where such period or remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to be the period or remuneration agreed to between the apprentice and the employer.

Offences And Penalties (Section 30) - (1) If any employer - (a) engages as an apprentice a person who is not qualified for being so engaged, or

(b) fails to carry out the terms and conditions of a contract of apprenticeship, or

(c) contravenes the provisions of this Act relating to the number of apprentices which he is required to engage under those provisions, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) If any employer or any other person - (a) required to furnish any information or return - (i) refuses or neglects to furnish such information or return, or

(ii) furnishes or causes to be furnished any information or return which is false and which he either knows or believes to be false or does not believe to be true, or

(iii) refuses to answer, or gives a false answer to any question necessary for obtaining any information required to be furnished by him, or

(b) refuses or willfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the Central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or

(c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or

(d) employs an apprentice on any work which is not connected with his training, or

(e) makes payment to an apprentice on the basis of piecework, or

(f) requires an apprentice to take part in any output bonus or incentive scheme, he shall be ***punishable with imprisonment for a term which may extend to six months or with fine or with both.***

Penalty where no specific penalty is specified (Section 31) - If any employer or any other person contravenes any provision of this Act for which no punishment is provided in Section 30, he shall be punishable with fine which shall not be less than one thousand rupees but may extend to three thousand rupees.

Offences by Companies (Section 32) - (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-Section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-Section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this Section, - (a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Cognizance of Offences (Section 33) - No court shall take cognizance of any offence under this Act or the rules made there under except on a complaint thereof in writing made by the Apprenticeship Adviser or the officer of the rank of Deputy Apprenticeship Adviser and above within six months from the date on which the offence is alleged to have been committed.

Employees Provident Fund and Miscellaneous Provisions Act, 1952

Objectives

- To make provisions for the future of the industrial worker after he retires or for his dependents in the case of his early death.
- Compulsory Provident Fund
- Family Pension
- Deposit linked insurance

Scope and coverage

- Application to factories and establishments employing 20 or more persons.
- Can be made applicable by central government to establishments employing less than 20 persons or if the majority of employees agree.
- Excludes establishments employing 50 or more persons or 20 or more persons but less than 50 persons, until the expiry of three years in the case of the former, and five years in the case of the latter, from the date of setting up of establishment.
- Applicable to all persons who are employed directly or indirectly through contractors in any kind of work.

Eligibility

- Employees drawing pay not exceeding Rs. 6,500/- per month.

Schemes framed under the Act

- The Employees' Provident Funds Schemes, 1952;
- The Employees' Pension Scheme, 1995 and
- The Employees' Deposit Linked Insurance Scheme, 1976

Benefits

- Apart from terminal disbursement of non-refundable withdrawals for Life Insurance Policies
- House building
- Medical treatment
- Marriage
- Higher education
- Family pension
- Retirement-cum-withdrawal benefits
- Deposit linked insurance Amount equal to the average balance in Provident Fund of deceased subject to a maximum of Rs. 65,000/ -

As per Preamble to the Act, the EPF Act is enacted to provide for the institution of provident funds, pension fund and deposit linked insurance fund for employees in factories and other establishments. The Employees' Provident Funds and Miscellaneous Provisions Act is a social security legislation to provide for provident fund, family pension and insurance to employees. Employee has to pay contribution towards the fund. Employer also pays equal contribution. The employee gets a lump sum amount when he retires, which will be useful to him after retirement. The Act covers three schemes i.e. PF (Provident Fund scheme), FPF (Family Pension Fund scheme) and EDLI (Employees Deposit Linked Insurance scheme).

The EPF Act contains basic provisions in respect of applicability, eligibility, damages, appeals, recovery etc. The three schemes formed by Central Government under the Act make provisions in respect of those schemes.

Applicability of the Act - The Act applies to (a) Every establishment which is a factory engaged in industry specified in Schedule I to the Act and in which 20 or more persons are employed and (b) any other establishment or class of establishment employing 20 or more persons which may be specified by Central government by notification in official gazette. - - Central Government can also apply provisions of the Act to any establishment even if it employs less than 20 persons. [Section 1(3)].

In *RPFC v. T S Hariharan* 1971 Lab IC 951 (SC), it was held that temporary workers should not be counted to decide whether the Act would apply.

Even if the provisions of PF Act are not applicable in a particular establishment, if employer and majority of employees agree, the Central Provident Fund Commissioner can apply the provisions

to that establishment by issuing a notification in Official Gazette. [Section 1(4)]. Once the provisions of Act become applicable, it continues to be applicable even if number of employees fall below 20. [Section 1(5)].

Coverage of Act - The Act has been extended to * Factories * Mines other than coal mines * Hotels and restaurants * Plantation of tea, coffee, rubber [Tea factories in Assam have been excluded vide para 1(3)(a) of EPF Scheme] * Trading and commercial establishments engaged in purchase, sale or storage of goods * Establishments of exporters, importers, advertisers, stock exchanges * Canteens * Establishments of Attorneys, CA, ICWAs, Engineers and Contractors, architects and medical practitioners * Hospitals * Travel agencies * Banks doing business only in one State * General Insurance * Expert services * Clubs and societies rendering services to their members * Agricultural farms * Financial Establishments other than banks * Building and construction Industry * Poultry farming * University, college or schools. - - The Act has been extended w.e.f. 1.4.2001 vide notification dated 22.3.2001, to * courier services * Aircraft or airlines other than aircraft or airline owned or controlled by Government * Establishment engaged in rendering cleaning and sweeping services.

Once an establishment is covered under PF, all its departments and branches wherever they are situated are also covered.

Other Non-Factory Establishments Covered - Besides factories, other establishments employing 20 or more persons can be covered under the Act u/s 1(3)(b). Various notifications have been issued extending the provisions of PF Act to non-factory establishments. Some major among them are - plantation, mines, coffee, hotels and restaurants, cinema and theatres, trading and commercial establishments, laundry, canteens, establishments of attorneys/CA/ICWA/engineers/ architects/medical practitioners, hospitals, financial establishments (other than IFCI, UTI, IDBI, SFC), building and construction industry, poultry, university, college, schools, scientific institutions etc.

Transitory Provisions when Act is extended - It is possible that when PF Act is extended to certain establishment, some PF scheme may be already in existence. Such scheme will continue and the balance amount in such scheme to credit of the employee will be transferred to the Provident Fund under statutory scheme of PF Act. [Section 15].

Establishment to include all departments and branches - Where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. [Section 2A]. - - Thus, if factory is covered, the head office and branches will also be covered under the Act.

Act not applicable to certain establishments - As per Section 16(1), the PF Act does not apply to (a) any establishment registered under Cooperative Societies Act or State law relating to cooperative societies, employing less than 50 persons and working without paid of power (b) to any establishment belonging to or under Control of Central Government or a State Government and whose employees are entitled to benefit of contributory provident fund or old age pension. (c) to any establishment set up under any Central or State Act and whose employees are entitled to benefit of contributory provident fund or old age pension..

Where PF Act is not applicable - The PF Act is not applicable to certain establishments—* Factories or establishments employing less than 20 employees. However, once Act becomes applicable, it continues to apply even if subsequently, the number is lower than 20 * Banks doing business in more than one State * Coal mines * Units established under Cooperative Societies Act employing less than 50 workers and working without aid of power * Other establishments belonging to or under control of Central Government or State Governments and whose employees are entitled to benefits of contributory provident fund or pension. * Tea factories in Assam *

Exemption granted by Central Government by a special notification.

Administration of the Fund - **Both employer and employee have to pay contribution at prescribed rates. These amounts are credited to a fund. The fund vests in and is administered by Central Board. [Section 5(1A)].**

Employees covered under the scheme - As per Section 2(f), “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer. It includes any person - (i) employed by or through a contractor in or in connection with the work of the establishment (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment.

Thus, (a) Persons employed through contractor in connection with work of establishment are covered (b) Apprentices employed under Apprentices Act or under standing orders of establishment are excluded, i.e. they are not employees. [The model standing orders merely state that an ‘apprentice’ is a learner who is paid an allowance during the period of his training].

Non-Eligible employees under PF - * Employee whose ‘pay’ is more than Rs. 6,500 per month are not eligible. (It may be noted that limit of pay was Rs 5,000 upto 31.5.2001 and Rs. 3,500 upto 30th Sept., 94) * Apprentices as per certified standing orders or under Apprentices Act *

Casual employees. However, employees employed through contractors have also to be covered under PF.

Employee to become member of Fund immediately on joining – Every employee employed in or in connection with work of a factory or establishment to which the Act applies is entitled and required to become member of Provident Fund, unless he is an excluded employee. [para 26(1) of EPF Scheme]. An employee who is drawing 'pay' above prescribed limit (presently Rs 6,500) can become member with permission of Assistant PF Commissioner, if he and his employer agree. [para 26(6) of EPF Scheme].

Contribution by employer and employee - As per Section 2(c) "contribution" means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies.

As per Section 6, contribution shall be paid by employer @ 10% of basic wages plus dearness allowance plus retaining allowance. This amount is defined as 'pay' as per explanation to para 2(f)(ii) of EPF Scheme. Equal contribution is payable by employee also. This contribution can be increased to 12% by Central Government and in fact, has been increased to 12% w.e.f September 22, 1997.

A person who is already a member continues to be a 'member' even if his 'pay' exceeds Rs 6,500. However, the contribution is limited to Rs 6,500 only. [para 26A(2) of EPF Scheme].

RPFC is liable under Consumer Protection Act - The Regional Provident Fund Commissioner is providing service under the Act and hence he is liable under Consumer Protection Act. - *RPFC v. Shiv Kumar Joshi* (1996) 4 CTJ 805 = 1996 LLR 641 (NCDRC 5 member bench) - confirmed in *RPFC v. Shiv Kumar Joshi* 1999 AIR SCW 4456 = 1999(7) SCALE 453 = 2000 LLR 217 = AIR 2000 SC 331 = 99 Comp Cas 347 = (2000) CLA-BL Supp 26 = 24 SCL 46 (SC).

Employees Provident Fund Scheme - This is the main scheme under the Act. Both employer and employee have to pay contribution to Provident Fund. The employer has to deduct contribution of employee from the salary of employee and has to pay both employees' contribution as well as employer's contribution by a challan in prescribed form. The amount has to be paid in approved bank.

Employee Can Pay Higher Contribution - Employee has to contribute 12/10% of his 'pay' as contribution. The employee can voluntarily pay higher contribution above the statutory rate. However, employer does not have to match the voluntary contribution, over and above the statutory rate. [para 26(2) of EPF Scheme].

Contribution payable under PF Scheme - The Principal Employer is liable to pay contribution of his own employees as well as employees employed through contractor. Principal Employer can recover from contractor the amount paid by him on behalf of contractor. The contribution is 12% of 'pay' i.e. basic wages, plus dearness allowance, cash value of food concession and retaining allowance. Contribution of both employer and employee is same i.e. 12% each. [para 29 of EPF Scheme].

Employer has to pay his contribution to EPF. He cannot deduct his contribution from wages of the employee. [Para 31 of EPF Scheme]. However, he has to deduct employee's share from his salary and pay the same in EPF scheme. This deduction can be only from the wages pertaining to period for which contribution is paid. However, if there is accidental omission, the amount can be recovered later. Amount deducted from salary of employees is held in trust by the employer or contractor. [Para 32 of EPF Scheme].

Out of employer's contribution of 12/10%, the Employer's contribution of 8.33% will be diverted to Employees' Pension Scheme. The balance will be retained in the EPF scheme. Thus, on retirement, the employee will get his full share plus the balance of Employer's share retained to his credit in EPF account. [This diversion is only w.e.f. 16th November, 95. Earlier Employer's contribution to their credit will continue to remain to their credit].

Lower contribution in certain cases - The employer's and employee's contribution is 12% each. This is applicable to many of industries and establishments. However, this contribution is not applicable to - * any establishment employing less than 20 persons * any establishment registered with Board for Industrial and Financial Reconstruction (BIFR) as a sick company - the lower rate of contribution continues till its net worth is positive * any other establishment which has accumulated loss equal to or more than its assets and has also suffered cash loss in last two years. * Jute industry * Beedi industry * Brick industry * Coir industry other than the spinning sector * Guar gum factories. In these cases, the contribution is 10%.

Interest on account – PF Commissioner shall maintain account of each member of EPF scheme. [Para 59 of Scheme]. Interest is credited to the account of employee. The Interest is calculated on monthly running balance basis. Amount standing to credit at end of the month is considered for calculation of interest for the following month. The interest rate is declared every year by Central Government in consultation with Central Board of Trustees of Provident Fund. [Para 60 of EPF Scheme].

EPF for Employees

For New Entrants:

Enrolment:

- An employee is eligible for membership from the day he joins the covered establishment.
- If the employee's emoluments exceed Rs. 6,500/- per month, he has the option to join the Scheme(s) with the consent of employer.
- Declare previous employment details, if any, in Form No. 11 to the employer.
- On becoming a member of the Schemes file details in Form No. 2 (family particulars/ nominations) through the employer.
- Rate of contribution payable by a member shall be @ 12% of his emoluments.
- A member can contribute statutorily over and above the prescribed rate.

For Existing Members:**Enrolment:**

- Any change in the family status, such as, -
- Marriage of the member.
- Additions / deletion in the family.
- Legal adoption of the children.
- Change of nominee, is to be filed in Form No. 2 through the employer.
- In the event the member is holding a Scheme Certificate (under EPS, 95), he should surrender the same to the concerned EPFO office, through his employer.
- A member is entitled to various benefits & facilities such as withdrawals, advances, pensions, death insurance etc.

Employees' Pension Scheme - This scheme has been introduced w.e.f. 16th November, 95. The Scheme is applicable to all subscribers of Employers' Provident Fund. It is also compulsory to persons who were subscribers as on 16.11.95.

Contribution - The employer's contribution of 8.33% will be diverted to the fund of Pension Scheme. Employee does not have to make any contribution. Employer's contribution is 12%/10%. In such cases, 8.33% is diverted to Pension scheme and balance 1.67%/3.67% as the case may be, will be in credit of employee's name in Provident Fund account. The 8.33% is on maximum salary of Rs. 6,500. If some employers are paying contribution on salary in excess of Rs. 6,500, the excess contribution will be credited to Provident Fund account and not to Pension scheme.

No separate administration charges or inspection charges are payable, as these are already paid along with Provident Fund contribution.

Benefits Under The Scheme - Members will get pension on superannuation or retirement from service and upon disablement during employment. Family pension will be available to widow/widower for life or till he/she remarries. In addition, children will be entitled to pension, upto 25 years of their age. In case of orphans, pension at enhanced rate is available upon death of widow/widower or ceasing payment of widow pension. Benefit of pension to children or orphan is only restricted for two children/orphans.

If the person is unmarried or has no family, pension is available to nominee for a specified period.

Commutation of Pension - The member can commute 33.33% of the pension, so as to receive hundred times the monthly pension so commuted as commuted value of pension. Balance will be paid on monthly basis.

Employees Deposit Linked Insurance Scheme - The purpose of the scheme is to provide life insurance benefits to employees who are already covered under PF/FPF. The employer has pay contribution equal to 0.50% of the total wages of employees In addition, administrative charges of 0.1% of total wages. [Notification No. AO 503(E) dated 28-7-1976 issued u/s 6C(2) of PF Act].

The employee does not contribute any amount to the scheme. The salary limit for coverage of employees is same as that of Provident Fund.

Exemption from the scheme can be obtained from RPFC if LIC Group Gratuity scheme is adopted by employer. If exemption is granted, only inspection charges @ 0.005% are payable to PF authorities.

Benefit to nominee of employee - If an employee dies during employment, his nominee or family member gets an amount equal to average balance in the Provident Fund Account of the deceased employee during last 12 months. If such balance is more than Rs. 35,000, the insurance amount payable is Rs. 35,000 plus 25% of the amount in excess of Rs. 35,000, subject to overall limit of Rs. 60,000. If the employees are covered under another life insurance scheme whose benefits are better than this scheme, an exemption from this scheme can be obtained. [Increased to 35,000 and 60,000 w.e.f. 13.6.2000]

The Central Government with the motive of providing additional Social Security in the form of Life Insurance to the family of the deceased member of the Provident Fund, introduced the Employees Deposit Linked Insurance Scheme with effect from 1-8-1976 as provided under Section 6(C) of the Employees' Provident Fund & MP Act, 1952. The benefit under the Scheme is so devised that it acts as an incentive to the members to save more in their Provident Fund

Account. As the name of the Scheme says, the benefit is linked to the amount of accumulation in the Provident Fund Account of the member.

Applicability:

The Scheme applies to all the establishments to which the Employees' Provident Fund Scheme applies.

Membership:

All the members of the Employees' Provident Fund Scheme are covered as members of the Employees' Deposit Linked Insurance Scheme also.

Contribution:

Under this Scheme, the members do not contribute any amount as contribution. However, the employer pays an amount equal to 0.5% of the total wages paid to the members as contribution.

Administrative Charges:

As regards Administrative charges, the employer is required to pay an amount equal to 0.01% of the wages subject to a minimum of Rs. 2/- per month.

Exemption: (Section 17(2A) of the Act and Para 28 of Employees' Deposit Linked Insurance Scheme, 1976)

The provisions are available as per Section 17(2A) of the Act and para 28(1) and 28(4) of the Employees' Deposit Linked Insurance Scheme , 1976 for grant of exemption to an establishment or to an employee or to a class of employees as the case may be, from the operation of all or any of the provisions of the Scheme, where the Life Assurance benefit of the Scheme in the establishment is more beneficial than the benefits provided under the statutory Scheme.

Inspection Charges:

An employer of an establishment exempted from the provisions of the Employees' Deposit Linked Insurance Scheme is required to pay inspection charges at the rate of 0.005% subject to a minimum of Re.1/- per month.

Assurance Benefit:

The benefit provided under the Employees' Deposit Linked Insurance Scheme is called Assurance Benefit. On the death of the member while in service, the nominee or any other person entitled to receive the Provident Fund benefits will, in addition to the Provident Fund, receive the Assurance Benefit under Employees' Deposit Linked Insurance Scheme.

Scale of Assurance Benefit:

From 1-4-93 onwards the amount of Assurance Benefit payable is an amount equal to the average balance in the amount of deceased in the Fund during the preceding 12 months or during the period of his membership whichever is less, except where the average balance exceeds Rs. 25,000/- amount payable shall be Rs. 25,000/- plus 25% of the amount in excess of Rs.25,000/- subject to a ceiling of Rs. 65,000/-. The Form prescribed for claiming the Assurance Benefits under the Employees' Deposit Linked Insurance Scheme, 1976, is Form 5(IF).

What are the periodical returns to be sent by an employer to the Provident Fund Office?

The employer of an un-exempted establishment has to forward the following returns. These returns will include details required under the three schemes namely, Employees Provident Fund Scheme, 1952, Employee Deposit Linked Insurance Scheme, 1976 and Employee Pension Scheme, 1995.

a) Form-9(Revised):

The details of employees enrolled as members of Employees' Provident Fund'52, Employees' Deposit Linked Insurance'76 & Employees' Pension Scheme'95 on coverage of the establishment- This is to be submitted immediately after coverage, within 15 days of coverage.

b) Form-12A:

The details of the contributions recovered from the members & paid along with details of employers' contribution & administrative charges- This is to be submitted monthly by 25th of following month.

c) Form-5:

The details of the employees enrolled newly to the Provident Fund- To be submitted along with Form-12A every month within 15 days of the following month.

d) Form-10:

The details of the employees leaving service during the month- To be submitted along with form-12A.

e) Challans:

The triplicate copy of challans in token of having remitted the Provident Fund dues in the bank- to be submitted along with form-12A every month.

f) Form-2(Revised):

Nomination form- To be submitted along with form-5/9.

g) Form-3A:

The details of wages & contributions in respect of each member, to be prepared financial year wise- To be submitted to the Provident Fund office by 30th of April every year.

h) Form-6A:

Yearly consolidated statement of contributions- To be forwarded yearly along with form-3A. It should be ensured that all the form-3A are entered in form-6A, irrespective of whether the form-3A was forwarded for the broken period and the total dues as per the form-12A for the whole year agrees with the total of form-6A within 30th April.

i) Form-5A:

Return of ownership of the establishment- To be forwarded immediately after coverage & whenever there is a change in the ownership, it has to be intimated with in 15 days of change.

j) Specimen signature:

Specimen signature of the officer/officers who are authorized to sign the returns/documents relating to Provident Fund forwarded immediately after coverage & whenever there is a change in authorized officer.

The Employees State Insurance Act (ESI Act), 1948

The ESI Act has been passed to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for related matters. As the name suggests, it is basically an 'insurance' scheme i.e. employee gets benefits if he is sick or disabled.

ESIC - Employees State Insurance Corporation (ESIC) has been formed to supervise the scheme under Section 3 of the Act. The Corporation supervises and controls the ESI scheme.

No Dismissal or Punishment During Period of Sickness - Section 73 of the Act provides that no employer shall dismiss, discharge or reduce or otherwise punish an employee during the period employee is in receipt of sickness benefit or maternity benefit. He also cannot dismiss, discharge or otherwise punish employee when he is in receipt of disablement benefit or is under medical treatment or is absent from work due to sickness.

This gives protection to employee when he is in receipt of sickness benefit or maternity benefit. Employer cannot take disciplinary action against employee in such cases. This provision is grossly misused by employees.

However, in *Buckingham & Carnatic Co v. Venkatayya* - AIR 1964 SC 1272 = 1963(7) FLR 343 = (1964) 4 SCR 265 = (1963) 2 LLJ 638 = 25 FJR 25 (SC), it was rightly held that this provision (of Section 73) is applicable only in case of punitive action for all kinds of misconduct during which employee has received sickness benefits. This protection is not applicable in case of abandonment of employment or when termination is automatic as per contract. – followed in *Rajveer Singh v. Judge* 1996 LLR 61 (Raj HC), where it was hold that provisions of Section 73 are not applicable when termination of an employee is automatic.

Applicability of ESI Scheme - The scheme is applicable to all factories. [Section 1(4)]. The Appropriate Government can also make it applicable to any other industrial, commercial, agricultural or other establishments, by issuing notification and giving 6 month notice. [Section 1(5)].

Thus, ESI Act can be made applicable to 'shops' also. However, since Government has to provide for hospitals and medical facilities, the Act can be made applicable to different parts of State at different dates. Thus, if a factory is at a place where ESIC is unable to provide medical facilities, ESI Act may not be made applicable to that area. Government can exempt a factory or establishment or persons or class of persons from provisions of ESI Act, if the employees are getting better medical facilities/ [e.g. if Government is convinced that the factory itself is providing very good medical facilities e.g. like TISCO].

Regional Offices / Branch Offices Get Covered - Regional offices of a factory, which have their connection to the factory and where the Principal Employer has control over the regional offices, the regional offices will be covered under *ESIC - Hyderabad Asbestos Cement Products v. ESIC* - AIR 1978 SC 356 = (1978) 2 SCR 345 = (1978) 1 SCC 194. If head office is covered under ESIC, branch offices are also covered when branch and principal office are inter-dependent and there is unity of relationship. - *Transport Corporation of India v. ESIC* 1999(7) SCALE 63 = 2000 LLR 113 = 83 FLR 970 = 1999 AIR SCW 4340 = AIR 2000 SC 238 (SC 3 member bench).

Outside agencies can be covered - In *PM Patel v. UOI* (1986) 1 SCC 32 = AR 1987 SC 447 = 1985 II CLR 322 (SC), workers were given work of making 'bidis' as home. Right of rejection of bidis was with employer. It was held that test of control and supervision lies in the right of rejection. It was held that employees working outside can be covered under ESIC, if there is master servant relationship.

Definition of 'factory' as per ESI Act - The 'Factory' means any premises where manufacturing process is carried out. If manufacture is without aid of power, the Act is applicable if persons employed are at least 20. If manufacture is with aid of power, the Act applies if persons employed are at least 10. [Section 2(12)]. - - However, 'mines' have been excluded. - - 'Manufacturing process' has same meaning as defined under Factories Act. [Section 2(14AA)].

One a factory or establishment is covered, it continues to be covered even if number of employees reduce. [Section 1(6)]

Construction Workers Not Covered – Construction workers employed in construction activities are not covered under ESIC. – ESIC circular No. P-12(11)-11/27/99 Ins.IV dated 14-6-1999. - - However, if administrative office employs 20 or more eligible employees, that establishment and employees working in administrative office will be covered.

Employer under ESI Act – 'Principal Employer' means * owner or occupier of factory * Head of department in case of Government department and * Person responsible for supervision and control, in case of any other establishment. [Section 2(17)]. - - Employees working through contractor are also covered. 'Contractor' is termed as 'Immediate Employer'. 'Immediate employer' means a person who has undertaken the execution, on the premises of factory or establishment to which this Act applies. He may do on his own or under the supervision of Principal Employer. The work should be part of work of factory or establishment of principal employer or is preliminary or incidental to the work of factory or establishment. [Section 2(13)]. Primary liability of ESI contribution is of Principal Employer. [Section 40(1)]. He can recover the contribution paid by him from the 'immediate employer' i.e. contractor. [Section 41].

Employee under ESI Act - 'Employee' means any person employed for wages in or in connection with work of a factory or establishment to which the ESI Act applies. Earlier employees drawing wages upto Rs. 6,500 per month were covered under the ESI Act scheme. [Section 2(9)]. However, w.e.f 1st April 2004, this wage ceiling has been increased to Rs. 7,500 per month.

Employees include * persons employed through contractor * Apprentices *other than* those covered under 'Apprentices Act' * Persons employed in administration office, department or

branch for purchase or sale of products. * Casual workers engaged in work incidental to or connected with work of factory or establishment * Employees working at head office when factory is located at different place * Canteen staff, watch and ward staff are employees * Staff in hospital attached to factory are employees. - - Members of Indian Naval, Military or Air Forces are excluded.

Following are not Employees - * Persons drawing wages over Rs. 7,500 per month * member of Army, Navy or Air Force. * Partners of firm are not employees even if they are drawing wages - *RD, ESIC v. Ramanuja Match Industry* AIR 1985 SC 278 = 1985(1) SCC 218 = 1998(6) SCALE 38 * Persons employed in Government establishments. * construction workers engaged in raising additional building subsequent to initial set up of factory.

Contribution to ESIC Fund - Both employee and employer have to make contribution to ESIC. The employer has to deduct contribution from wages of employee and pay to ESIC both the employer's contribution as well as employees' contribution. [Section 39(1)].

The contribution is payable for 'wage period' i.e. the period in respect of which wages are payable to employee. [Section 39(2)]. Normally, 'wage period' is a month. The employee's contribution is 1.75% of wages. It should be rounded off to next 5 paise. Employees contribution is not payable when daily wages are below Rs 15/-.

Employer's contribution is 4.75% of total wage bill of all employees in respect of every wage period. Thus, it is not necessary to calculate employer's contribution separately for each employee. 4.75% of gross wages should be calculated and rounded off to next 5 paise. Employees drawing wages lower than Rs 25 per day do not have to pay employee's share. The contribution has to be paid within 21 days from close of the month. It is payable by a challan in authorised bank. - - If the contribution is not paid in time, interest @ 12% is payable. [Section 39(5)(a)].

In addition, ESIC authorities can impose 'damages' varying between 5% to 25% of arrears of contribution u/s 85B.

Employer cannot deduct employer's contribution from the salary of employee. [Section 40(3)].

Liability of Principal Employer – In case of employees of contractor, liability is of Principal Employer. In *Britannia Industries v. ESIC* (2001) 98 FJR 520 (Mad HC), it was held that Principal Employer will be liable to penalty and damages also if contribution is not paid on due date. – same view in *Padmini Products v. ESIC* 2000(2) Kar LJ 369 (Karn HC).

Wage for purpose of ESI Act - 'Wages' means all remuneration paid or payable in cash to employee according to terms of contract of employment and includes any payment made to an employee in respect of period of authorised leave, lock-out, lay-off, strike which is not illegal and other additional remuneration paid at interval not exceeding two months. It does not include * contribution paid by employer to any pension fund or provident fund * Travelling allowance * Reimbursement of expenses made by nature of employment of the employee * gratuity. [Section 2(22)].

Thus, wages include basic pay, dearness allowance, city compensatory allowance, payment of day of rest, overtime wages, house rent allowance, incentive allowance, attendance bonus, meal allowance and incentive bonus. However, wages do not include annual bonus, unilateral rewards scheme (*inam*), *ex gratia* payments made every quarter or every year travelling allowance, retrenchment compensation, encashment of leave and gratuity.

Contribution period and Benefit period - Contribution period is (a) 1st September to 31st March (b) 1st April to 30th September. The corresponding benefit period is (a) following 1st July to 31st December (b) following 1st January to 30th June. Thus, 'benefit period' starts three months after the 'contribution period' is over. The relevance of this definition is that sickness benefit and maternity benefit is available only during 'benefit period'. Thus, an employee gets these benefits only after 9 months after joining employment and paying contribution. However, other benefits are available during contribution period also.

Benefits to employees covered under ESI Act - An employee is entitled to get benefits which are medical benefits as well as cash benefits. He also can get disablement benefit.

The Employees State Insurance Corporation, ESIC, has on the 15th of June'06, taken a historic decision to takeover the ESI scheme in the States subject to the willingness of the State Governments. The decision was taken at the 136th meeting of the ESI Corporation held under the chairmanship of the former Labour and Employment Minister, Shri Chandrasekhar Rao.

Payment of Gratuity Act, 1972

Gratuity is a lump sum payment to employee when he retires or leaves service. It is basically a retirement benefit to an employee so that he can live life comfortably after retirement. However, under Gratuity Act, gratuity is payable even to an employee who resigns after completing at least 5 years of service.

In DTC Retired Employees v. Delhi Transport Corporation 2001(4) SCALE 30 = 2001 AIR SCW 2005, it was observed that gratuity is essentially a retiring benefit which as per Statute has been made applicable on voluntary resignation as well. Gratuity is reward for good, efficient and faithful service rendered for a considerable period.

ACT PROVIDES FOR MINIMUM GRATUITY ONLY – The Gratuity Act provides only for minimum gratuity payable. If employee has right to receive higher gratuity under a contract or under an award, the employee is entitled to get higher gratuity. [Section 4(5)].

Employers liable under the scheme - The Act applies to every factory, mine, plantation, port, and railway company. It also applies to every shop and establishment where 10 or more persons are employed or were employed on any day in preceding 12 months. [Section 1(3)]. Since the Act is also applicable to all shops and establishments, it will apply to motor transport undertakings, clubs, chambers of commerce and associations, local bodies, solicitor's offices etc. , if they are employing 10 or more persons.

Employees eligible for gratuity – 'Employee' means any person (other than 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 terms of such employment are express or implied, and whether such person is employed in a managerial or administrative capacity. However, it does not include any Central/State Government employee. [Section 2(e)]. Thus, the Act is applicable to all employees - workers as well as persons employed in administrative and managerial capacity.

Gratuity is payable to a person on (a) resignation (b) termination on account of death or disablement due to accident or disease (c) retirement (d) death. Normally, gratuity is payable only after an employee completes five years of continuous service. In case of death and disablement, the condition of minimum 5 years' service is not applicable. [Section 4(1)].

The Act is applicable to all employees, irrespective of the salary.

Amount of gratuity payable - Gratuity is payable @ 15 days wages for every year of completed service. In the last year of service, if the employee has completed more than 6 months, it will be treated as full year for purpose of gratuity. - - In case of seasonal establishment, gratuity is payable @ 7 days wages for each season. [Section 4(2)].

Wages shall consist of basic plus D.A, as per last drawn salary. However, allowances like bonus, commission, HRA, overtime etc. are not to be considered for calculations. [Section 2(s)].

In case of employees paid on monthly wages basis, per day wages should be calculated by dividing monthly salary by 26 days to arrive at daily wages e.g. if last drawn salary of a person (basic plus DA) is Rs. 2,600 per month, his salary per day will be Rs. 100 (2,600 divided by 26). Thus, the employee is entitled to get Rs. 1,500 [15 days multiplied by Rs. 100 daily salary] for every year of completed service. If he has completed 30 years of service, he is entitled to get gratuity of Rs. 45,000 (Rs. 1,500 multiplied by 30). Maximum gratuity payable under the Act is Rs. 3.50 lakhs (the ceiling was Rs. 1,00,000 which was increased to 2.50 lakhs on 24.9.97 by an ordinance which was later increased to Rs 3.50 lakhs while converting the ordinance into Act].

MAXIMUM GRATUITY PAYABLE – Maximum gratuity payable is Rs 4 lakhs. [Section 4(3)]. [Of course, employer can pay more. Employee has also right to get more if obtainable under an award or contract with employer, as made clear in Section 4(5)].

INCOME-TAX EXEMPTION - Gratuity received upto Rs. 3.50 lakhs is exempt from Income Tax. Gratuity paid above that limit is taxable. [Section 10(10) of Income Tax Act]. - - However, employee can claim relief u/s 89 in respect of the excess amount.

No Compulsory insurance of gratuity liability – Section 4A provides that every employer must obtain insurance of his gratuity liability with LIC or any other insurer. However, Government companies need not obtain such insurance. If an employee is already member of gratuity fund established by an employer, he has option to continue that arrangement. If an employer employing more than 500 persons establishes an approved gratuity fund, he need not obtain insurance for gratuity liability. - - However, this Section has not yet been brought into force. Hence, presently, such compulsory insurance is not necessary.

Gratuity cannot be attached - Gratuity payable cannot be attached in execution of any decree or order of any civil, revenue or criminal court, as per Section 13 of the Act.

Payment of Bonus Act, 1965

The term “bonus” has not been defined in the Payment of Bonus Act, 1965. Webster’s International Dictionary, defines bonus as “something given in addition to what is ordinarily received by or strictly due to the recipient”. The Oxford Concise Dictionary defines it as “something to the good into the bargain (and as an example) gratuity to workmen beyond their wages”.

L.A.T Formula regarding payment of bonus:

A dispute relating to payment of bonus by the Cotton Mills of Bombay was decided by the Industrial Court, Bombay. An appeal against the award of the Industrial Court was considered by the Full Bench of the then Labour Appellate Tribunal (Mill Owners' Association, Bombay v. Rashtriya Mill Mazdur Sangh, Bombay, 1959 II LLJ 1247).

In its decision, the LAT laid down the principles involved in the grant of bonus to workers. These principles are known as the LAT Formula. According to the formula, the following prior charges were to be deducted from gross profits:

1. Provision for depreciation;
2. Reserve for rehabilitation;
3. Return of 6 per cent on the paid up capital; and
4. Return on the working capital at a lower rate than the return on paid-up capital.

The balance, if any, was called "available surplus" and the workmen were to be awarded a reasonable share out of it by way of bonus for the year.

Bonus is really a reward for good work or share of profit of the unit where the employee is working. Often there were disputes between employer and employees about bonus to be paid. It was thought that a legislation will solve the problem and hence Bonus Act was passed. Unfortunately, in the process, bonus has become almost as deferred wages due to provision of payment of minimum 8.33% and maximum 20% bonus. Bonus Act has not in any way reduced the disputes.

The Act is applicable to (a) any factory employing 10 or more persons where any processing is carried out with aid of power (b) Other establishments (established for purpose of profit) employing 20 or more persons. Minimum bonus payable is 8.33% and maximum is 20%. Bonus is payable annually within 8 months from close of accounting year. Bonus is payable to all employees whose salary or wages do not exceed Rs 3,500 per month provided they have worked for at least 30 days in the accounting year. However, for calculation of bonus, maximum salary of Rs 2,500 is considered.

Once the Act is applicable, it continues to apply even if number of employees fall below 20. The Act is applicable to Government companies and corporations owned by Government which produces goods or renders services in competition with private sector. However, the Act is not applicable to Government employees, the employees of Municipal Corporation or Municipality, railway employees, university and employees of educational institutions, public sector insurance employees, employees of RBI and public sector financial institutions, charitable hospitals, social

welfare organisations and defense employees. The Act does not apply to any institution established not for purposes of profit.

Establishments to which the Act is applicable - The Act applies to— (a) every factory; and (b) every other establishment in which twenty or more persons are employed on any day during an accounting year. [section 1(3)].

Act not to apply to certain classes of employees:

Section 32 of the Act provides that the Act shall not apply to the following classes of employees:

1. Employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
2. Seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
3. Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
4. Employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;
5. Employees employed by:
 - a) The Indian Red Cross Society or any other institution of a like nature including its branches;
 - b) Universities and other educational institutions;
 - c) Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;
6. Employees employed through contractors on building operations;
7. Employees employed by the Reserve Bank of India;
8. Employees employed by:
 - a) The Industrial Finance Corporation of India;
 - b) Any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1961;
 - c) The Deposit Insurance Corporation;
 - d) The National Bank for Agriculture and Rural Development;
 - e) The Unit Trust of India;
 - f) The Industrial Development Bank of India;
- fa) The Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;

fb) The National Housing Bank;

Any other financial institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any other concession given to it by the Government; and (iv) any other relevant factor.

Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

Important Definitions:

Accounting Year

“Accounting Year” means-

1. In relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balances;
2. In relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up;
3. In any other case-
 - (a) the year commencing on the 1st day of April; or
 - (b) if the accounts of an establishment maintained by the employer thereof are closed and balances on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced.

Provided that an option once executed by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit. [Section 2(1)]

Allocable Surplus:

It means (a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, 67% of the available surplus in an accounting year.

(b) In any other case, 60% of such available surplus [Section 2(4)].

Available Surplus:

It means the available surplus under Section 5. {Section 2(6)}.

Award:

“Award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under Section 10A of that Act or under that law [Section 2(7)].

Employee

“Employee” means any person (other than an apprentice) employed on a salary or wages not exceeding Rs.3,500 per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work or hire or reward, whether the terms of employment be express or implied. [Section 2(13)]

Part time permanent employees working on fixed hours are employees.

Employer

“Employer” includes:

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

manager, managing director or managing agent, such manager, managing director or managing agent. [Section 2(14)]

Establishment in Private Sector:

It means any establishment other than an establishment in public sector.[Section 2(15)]

Salary or Wages:

The “Salary or Wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes 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) but does not include:

1. any other allowance which the employee is for the time being entitled to;
2. the value of any house accommodation or of supply of light, water, medical attendance or any other amenity or of any service or of any concessional supply of foodgrains or other articles;
3. any traveling concession;
4. any bonus (including incentive, production and attendance bonus);
5. any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
6. any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
7. any commission payable to the employee [Section 2(21)]

‘Factory’ has same meaning as per Factories Act. [section 2(17) of Bonus Act].

The words used are ‘number of persons employed’. Hence, all persons employed are to be considered, including those who are not eligible for bonus. Thus, all employees including those, whose salary or wages exceed Rs 3,500 per annum will have to be considered for purpose of deciding eligibility.

MEANING OF ‘ESTABLISHMENT’ - The word ‘establishment’ is not defined in the Act. Normally, ‘establishment’ is a permanently fixed place for business. The term ‘establishment’ is much wider than ‘factory’. It covers any office or fixed place where business is carried out.

ESTABLISHMENT IN PUBLIC SECTOR COVERED ONLY IN CERTAIN CASES - The Act applies to establishment in public sector only if the establishment in public sector sells the goods or renders services in competition with an establishment in private sector, and the income from such sale or services or both is not less than twenty per cent, of the gross income of the establishment in public sector for that year. [section 20(1)]. In other cases, the provisions of this Act do not apply to the employees employed by any establishment in public sector. [section 20(2)]. As per section 32(v)(c), the Act does not apply to any institution established not for purposes of profit.

Establishment in public sector means an establishment owned, controlled or managed by— (a) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) (b) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together) by the Government; or the Reserve Bank of India; or a corporation owned by the Government or the Reserve Bank of India. [section 2(16)]. Establishment which is not in public sector is 'establishment in private sector' [section 2(15)].

“Corporation” means any body corporate established by or under any Central Provincial or State Act but does not include a company or a co-operative society. [section 2(11)].

ESTABLISHMENTS TO INCLUDE DEPARTMENTS, UNDERTAKINGS AND BRANCHES - Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act. [section 3]

Who are eligible for bonus - Employees drawing salary or wages upto Rs 3,500 per month are entitled to bonus, if he has worked for at least 30 working days in an accounting year. Even a worker working in seasonal factory is eligible if he has worked for at least 30 working days. Apprentices are not eligible for bonus.

Salary above Rs. 2,500 is not considered for calculation of Bonus. [section 12]. Employee drawing salary/wage exceeding Rs 3,500 is not entitled to any bonus under the Act.

Thus, minimum bonus @ 8.33% will be Rs 2,500 and maximum @ 20% will be Rs 6,000 for the year, when salary of employee exceeds Rs 2,500 but is less than Rs 3,500.

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.

ELIGIBILITY FOR BONUS IF WORKED FOR MINIMUM 30 DAYS - Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. [section 8]

Computation of amount available for distribution as bonus - The establishment has to prepare a balance sheet and profit and loss account of the year and calculate the 'gross profit', 'available surplus' and 'allocable surplus' as per method and formula given in Bonus Act.

The first step is to calculate 'Gross Profit'. As per section 4, the gross profit in respect of any accounting year is required to be calculated as per First Schedule to Act in case of banking company and as per second schedule in case of other establishments. After calculation of 'Gross Profit' as per section 4, next step is to calculate 'Available Surplus'. As per section 5, 'available surplus' is calculated by deducting sums as specified in section 6 from 'gross profit' arrived at as per section 4 and adding difference equal to income tax on the bonus paid in the preceding year.

Thus, Available Surplus is equal to Gross Profit [as per section 4] less prior charges allowable as deduction u/s 6 plus amount equal to income tax on bonus portion calculated as per proviso (b) to section 5.

Allocable surplus is equal to 60% of 'available surplus' calculated as per provisions of section 5. [In case of company which does not deduct tax at source as per provisions of section 194 of Income Tax Act, 'allocable surplus' will be 67% of 'available surplus']. This 'allocable surplus' has to be distributed as bonus among employees in proportion to the salary or wages actually earned by each employee during the year. However, this is subject to minimum 8.33% and maximum 20% as explained below.

CALCULATION OF BONUS SIMPLIFIED:

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.

a) Available Surplus = A+B, where A = Gross Profit – Depreciation admissible u/s 32 of the Income tax Act - Development allowance - Direct taxes payable for the accounting year (calculated as per Sec.7) – Sums specified in the Third Schedule.

b) B = Direct Taxes (calculated as per Sec. 7) in respect of gross profits for the immediately preceding accounting year – 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

- a) Allocable Surplus = 60% of Available Surplus, 67% in case of foreign companies.
- b) 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.

The allocable surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.

4. In case of an employee receiving salary or wages above Rs. 2,500 the bonus payable is to be calculated as if the salary or wages were Rs. 2,500 p.m. only.

Set off and set on provisions - It may happen that in some years, the allocable surplus is more than the amount paid to employees as bonus calculating it @ 20%. Such excess 'allocable surplus' is carried forward to next year for calculation purposes. This is called 'carry forward for being set on in succeeding years'. The ceiling on set on that is required to be carried forward is 20% of total salary and wages of employees employed in the establishment. In other words, even

if actual excess is more than 20% of salary/wages, only 20% is required to be carried forward. The amount set on is carried forward only upto and inclusive of the fourth accounting year. If the amount carried forward is not utilised in that period, it lapses [section 15(1)].

Similarly, in a particular year, there may be lower 'allocable surplus' or no 'allocable surplus' even for payment of 8.33% bonus. Such shortfall is also carried to next year. This is called 'carry forward for being set off in succeeding years'. Thus, in every year, 'allocable surplus' is calculated. To this amount, set on from previous years is added. Similarly, set off, if any, from previous years is deducted. This gives amount which is available for distribution as bonus. The amount set off is carried forward only upto and inclusive of the fourth accounting year. If the amount carried forward is not set off in that period, it lapses. [section 15(2)]

Minimum bonus - Every employer shall be bound to pay to every employee in respect of any accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. Where an employee has not completed fifteen years of age at the beginning of the accounting year, the minimum bonus payable is 8.33% or Rs 60 whichever is higher. [section 10].

While computing number of working days, an employee shall be deemed to have worked in an establishment even on the days on which (a) He was laid off (b) He was on leave with salary/wages(c) He was absent due to temporary disablement caused by accident arising out of and in course of employment and (d) Employee was on maternity leave with salary/wages. [section 14].

Payment of maximum bonus - Where in respect of any accounting year, the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage. [section 11(1)]. - - In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section. [section 11(2)].

Thus, maximum bonus payable to employee is 20% in any accounting year.

Salary or wages for calculating bonus - Where the salary or wage of an employee exceeds Rs 2,500 per month, the bonus payable to such employee under sections 10 or 11 shall be calculated as if his salary or wages were Rs 2,500 per month. [section 13]. In other words,

employees drawing salary or wages between Rs 2,500 to Rs 3,500 per month, are entitled to bonus on the basis of Rs 2,500 per month salary only.

Special Provisions with respect to certain newly set up establishments:

In the case of newly set up establishments following provisions have been made under Section 16 for the payment of bonus:

1. Where an establishment is newly set up whether before or after commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act in accordance with the provisions of sub-sections (1-A), (1-B) and (1-C).

(1-A) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Act in relation to that year, but without applying the provisions of Section 15.

(1-B) For the sixth and seventh accounting year in which the employer sells the goods produced or manufactured by him or renders services as the case may be, from such establishment, the provisions of Section 15 shall apply subject to the following modifications, namely:

i. For the sixth accounting year:

Set on set off, as the case may be, shall be made in the manner illustrated in the Fourth Schedule taking into account the excess or deficiency, if any as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting year.

ii. For the seventh accounting year:

Set on or set off, as the case may be, shall be made in the manner illustrated in the Fourth Schedule taking into account the excess or deficiency, if any, as the case may be of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

(1-C) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be from such establishment, the provisions of Section 15 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation I-For the purpose of sub-section (1) an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management or ownership.

Explanation II- For the purpose of sub-section(IA), an employer shall not be deemed to have derived profit in accounting year unless-

a) He has made provision for that year's depreciation to which he is entitled under the Income-tax Act or, as the case may be, under the Agriculture Income tax law, and

b) The arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III-For the purposes of sub-section (1A), (1B) and (1C), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate Government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.

(2) The provisions of sub-sections (1A), (1B) and (1C) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments:

Provided that if an employer in relation to an existing establishment consisting of different departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before the 29th May, 1965, been paying bonus to the employees of all such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertakings or branches, then, such employer shall be liable to pay bonus in accordance with the provisions of this Act to the employee of all such departments or undertakings or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid.

Within the meaning of Section 16(1-A) the word "profit" must obviously be construed according to its ordinary sense. A sense which is understood in trade and industry because the rationale behind Section 16(1-A) is that it is only when the employer starts making profits in the commercial sense that he should become liable to pay bonus under the Act.

Profit in the commercial sense can be ascertained only after deducting depreciation and since there are several methods of computing depreciation, the one adopted by the employer, in the absence of any statutory provision to the contrary, would govern the calculation. Explanation II to Section 16(1-A) says that the employer shall not be deemed to have derived profits unless he has made provision for that years' depreciation to which he is entitled to under the Income-tax Act. This explanation embodies a clear legislative mandate that in determining for the purpose of sub-section(1A) of Section 16 whether the employer has made profit from the establishment in accounting year, depreciation should be provided in accordance with the provisions of the Income-tax Act.

Clearly, therefore, if depreciation is as prescribed in the Income Tax Act, There is no profit for the year in question and there is no liability on the part of the employer to pay bonus under the Act (The Management of Central Coal Washery v. Workmen, 1978-II Labour Law Journal 350).

Adjustment of customary or interim bonus:

Where in any accounting year-(a) an employer has paid any Puja bonus or other customary bonus to an employee; or (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance (Section 17).

Deductions of certain amounts from bonus:

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act, in respect of that accounting year only and the employee shall be entitled to receive the balance, if any. (Section 18)

Time limit for payment of bonus:

(a) Where there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.

(b) In any other case, the bonus should be paid within a period of eight months from the close of the accounting year. However, the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit, so, however, that the total period so extended shall not in any case exceed two years (Section 19).

Reference of disputes under the Act:

Where any dispute arises between an employer and his employee with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in force in a State and provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly. (Section 22)

Accuracy of Accounts:

Where any industrial dispute arises with respect to bonus payable under the Act, the audited balance sheet and profit and loss account of a corporation or a company or a banking company shall be presumed to be correct. Similarly, in the case of employers not being corporation, company or banking company, audited accounts will be presumed to be correct for the purpose of payment of bonus.

Bonus linked with production or productivity:

Section 31A enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act. However, bonus payments under Section 31A are also subject to the minimum of 8.33 % and maximum of 20%. In other words, a minimum of 8.33% is payable in any case and the maximum cannot exceed 20 % (Section 31A).

Agreements inconsistent with the Act:

Subject to the provisions of Section 31A, the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in force in a State.

Power of Exemption:

If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act. (Section 36)

Government should consider public interest, financial position and whether workers contributed to the loss, before grant of exemption (J.K Chemicals v. Maharashtra, 1996 III CLA Bom 12).

Application of certain laws not barred:

Save as otherwise expressly provided, the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in force in a State (Section 39).

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.

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.

Payment of Wages Act, 1936

Objectives

- To ensure regular and prompt payment of wages and to prevent the exploitation of a wage earner by prohibiting arbitrary fines and deductions from his wages.

Applicability of the Act

- Application for payment of wages to persons employed in any factory.
- Not applicable to wages which average Rs 6,500 per month or more.
- Wages include all remuneration, bonus, or sums payable for termination of service, but do not include house rent reimbursement, light vehicle charges, medical expenses, TA, etc.

Important provisions of the Act

- Responsibility of the employer for payment of wages and fixing the wage period.
- Procedures and time period in wage payment.
- Payment of wages to discharged workers.
- Permissible deductions from wages.
- Nominations to be made by employees.
- Penalties for contravention of the Act.

- Equal remuneration for men and women.
- Obligations and rights of employers.
- Obligations and rights of employees.

The Act is to regulate payment of wages to certain class of employed persons. The main purpose of this Act is to ensure regular and timely payment of wages to the employed persons, to prevent unauthorized deductions being made from wages and arbitrary fines being imposed on the employed persons. The Act extends to the whole of India.

Application of the Act:

The Act applies to payment of wages to persons employed in factory or railways. It also applies to any 'industrial or other establishment' specified in Section 2(ii). [Section 1(4)]. 'Factory' means factory as defined in Section 2(m) of Factories Act. - - Industrial or other establishment specified in Section 2(ii) are - * Tramway or motor transport services * Air transport services * Dock wharf or jetty * Inland vessels * Mines, quarry or oil-field * Plantation * Workshop in which articles are produced, adopted or manufactured. - - The Act can be extended to other establishment by State/Central Government.

Presently, the Act applies to employees drawing wages upto Rs 6,500. [Section 1(6)]. Every employer is responsible for payment to persons employed by him on wages. [Section 3].

MEANING OF WAGES - Wages means all remuneration expressed in terms of money and include remuneration payable under any award or settlement, overtime wages, wages for holiday and any sum payable on termination of employment. However, it does not include bonus which does not form part of remuneration payable, value of house accommodation, contribution to PF, traveling allowance or gratuity. [Section 2(vi)]

HOW WAGES SHOULD BE PAID - Wages can be paid on daily, weekly, fortnightly or monthly basis, but wage period cannot be more than a month. [Section 4]. Wages should be paid on a working day. Wages are payable on or before 7th day after the 'wage period'. In case of factories employing more than 1,000 workers, wages can be paid on or before 10th day after 'wage period' is over. [Section 5(1)]. [Normally, 'wage period' is a 'month'. Thus, normally, wages should be paid by 7th of following month and by 10th if the number of employees are 1,000 or more]. - - Wages should be paid in coins and currency notes. However, with authorisation from employee, it can be paid by cheque or by crediting in his bank account. [Section 6].

DEDUCTIONS PERMISSIBLE - Deduction on account of absence of duty, fines, house accommodation if provided, recovery of advance, loans given, income tax, provident fund, ESI contribution, LIC premium, amenities provided, deduction by order of Court etc. is permitted.

Maximum deduction can be 50%. However, maximum deduction upto 75% is permissible if deduction is partly made for payment to cooperative society. [Section 7].

FINES – Specific notice specifying acts and omissions for which fine can be imposed should be exhibited on notice board etc. Such notice can be issued only after obtaining specific approval from State Government. Fine can be imposed only after giving employee a personal hearing. Fine can be maximum 3% of wages in a month. Fine cannot be recovered in instalments. [Section 8].

Part 3

Labour Law Concessions

3.1 Labour Laws and SSI

The Government of India has made several attempts to revamp, relax and simplify labour laws relating to Small Scale Industries. One of them is the simplification procedure envisaged by the Labour Act enacted in 1988 to assist the small establishments. The Act, namely "Labour Laws (exemption from furnishing returns and maintaining registers by certain establishment) Act, 1988" covers labour related acts and thus provides:

- Establishment employing 10-19 persons is required to maintain only 3 register and to submit an annual core return only.
- Establishment employing less than 10 persons to maintain only 1 register and submit only an annual core return.
- Only one Inspector will be responsible for various labour laws, except in case of Factory Act and Boiler Act.

The Labour Policies for Small Scale Industries is governed by comprehensive laws. The following laws and policies are applicable for Small Scale Industries in India:

1. Apprentices Act, 1961
2. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
3. Bonded Labour System (Abolition) Act, 1976
4. Child Labour (Prohibition & Regulation) Act, 1986
5. The Children (Pledging of Labour) Act, 1933
6. The Contract Labour (Regulation & Abolition) Act, 1970
7. The Employees Provident Funds and Misc. Provisions Act, 1952
8. Employees State Insurance Act, 1948
9. Employers Liability Act, 1938
10. Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
11. Equal Remuneration Act, 1976

12. The Factories Act, 1948
13. The Industrial Disputes Act
14. The Industrial Employment (Standing Orders) Act, 1946
15. The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
16. Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988
17. Maternity Benefit Act, 1961
18. The Minimum Wages Act, 1948
19. The Payment of Bonus Act, 1965
20. The Payment of Gratuity Act, 1972
21. The Payment of Wages Act, 1936
22. The Sales Promotion Employees (Conditions of Service) Act, 1976
23. The Shops and Establishments Act, 1953
24. The Trade Union Act, 1926
25. Workmen's Compensation Act, 1923
26. The Weekly Holidays Act, 1942
27. The Plantation Labour Act, 1951

The Small Industries Development Organization under the Ministry of Small Scale Industries plays the role of a nodal agency for the development of small industries in India. This agency has identified the labour reforms carried out by various State Governments which are as under:

Andhra Pradesh

ORDER/NOTIFICATION/DATE	SUBJECT
Labour Laws G.O. Ms.No.33 Dt.5-7-99 Amendment notified vide Andhra Pradesh Gazette No.30	Amendment to labor Enactments Amendment to the provisions of State Act shall apply to every industrial establishment where in 50 or more workmen are employed on any day of the preceding Twelve months.
G.O Ms.No.34 Dt.5-7-1999	Factories Act, 1948 Exempting establishments engaged in

	manufacturing processes from the rules 4, 5, & 6 under the Factories Act 1948
G.O Ms.No.37 Dt.3-8-1999	Exemption from rule 22,23 and 29 under Factories Act 1948 And under ANDHRA PRADESH SHOPS AND ESTABLISHMENTS ACT - for those engaged in manufacturing processes (relate to national holidays and other festivals)
G.O Ms .No.38 Dt.3-8-1999	Amendment to the ANDHRAPRADESH PAYMENT OF GRATUITY RULES 1972 and omitting rule 32 from 'U' Substitution of the words "employee nominee" in place of employees.
G.O Ms .No.34 Dt.5-7-1999 Amendment to the ANDHRA PRADESH FACTORIES AND ESTABLISHMENTS (NATIONAL FESTIVALS & OTHER HOLIDAYS) RULES, 1974	6-A:Manufacturing process: Nothing in rules 4,5,and 6 shall apply to a factory under the Factories Act 1948 (Central Act 63 of 1948) or an establishment in manufacturing process as designated in section 2(k) of the Factories Act,1948.

Assam

ORDER/NOTIFICATION/DATE	SUBJECT
<p>Notification No: LGL 86/83/62 dated 7th April, 1984</p> <p>The Assam State Industrial Relief Undertaking (Special Provisions) Act, 1984 (Assam Act No. VII of 1984)</p> <p>Received the Assent of the President on 7th April 1984</p>	<p>Under this Act, industrial units which have become sick may be declared as a relief undertaking for a total period of 10 years.</p> <p>Objective:</p> <ul style="list-style-type: none"> • To enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertakings the running of which is considered essential as a measure of prevention or of providing relief against unemployment • The State Government may, if it is satisfied that it is necessary or expedient so to

do, direct, by notification, that the operation of all or any of the contracts, assurances of property agreements, settlements, awards, standing orders or other instruments in force immediately before the date on which the State industrial undertaking is declared to be a relief undertaking, shall remain suspended or shall be enforceable with such modifications and in such manner as may be specified in such notification.

- The State Government may, subject to the condition of previous publication, make rules to carry out the provisions of this Act. Such Rules may provide for all or any of the following matters:

- rates of wages payable to the workmen and their workloads and the salary payable to the staff, the payment of bonus, gratuity, compensation and other benefits;
- the manner in which the relief undertaking should be run;
- the strength of staff and labour to be employed for running the relief undertaking economically
- the manner in which the net profits or net losses or surplus funds should be appropriated or disposed of;
- the percentage of profits to be utilised for the benefit of persons employed in the undertaking and the manner of its utilisation;
- the manner in which and the extent to which the representatives of the workmen may be associated with or may participate in the management of

	<p>the relief undertaking.</p> <ul style="list-style-type: none"> • The Assam State Industrial Relief Undertaking (Special Provisions) Ordinance, 1983 (Assam Ordinance No. VI of 1983) is hereby repealed.
<p>The Assam Preferential Stores Purchase Act, 1989 (to replace the Assam Preferential Stores Purchase Rules, 1972)</p>	<p>This enactment is aimed to encourage growth of industries in the State and to implement the Industrial Policy announced and published by the Govt. of Assam vide Notification No. CL 586/85 dated 24th December, 1986</p> <p>Objectives</p> <ul style="list-style-type: none"> • to encourage small scale and cottage industries by preferential purchase of their products • to rationalize the procedure for purchase of stores required by the State Government, companies and undertakings. <p>The Act lays down the following :</p> <ul style="list-style-type: none"> • Definitions • Constitution of the State Board • Terms of the Board • Power and Functions • Eligibility: To be registered under this Act and be eligible for the incentive under this Act, a unit in the small scale sector has to have 100 per cent employment of local people • The location of administrative /registered controlling officers shall be within the State of Assam • The unit should be in regular production having requisite machinery

	<p>Preferences:</p> <ul style="list-style-type: none"> • Small Industries, Khadi and Cottage industries registered under this Act shall be exempted from payment of earnest money and security deposit for items in respect of which the units are registered. • Items of stores mentioned in Schedule II be known as "Reserved Items", shall be purchased by all requiring authorities from registered industries • The State Govt. shall from time to time publish a list of stores which shall be purchased by requiring authorities only from industrial units having valid Store Purchase Registration and in accordance with the policy laid down by the State Board. • In respect of items of stores other than those mentioned in Schedule II or covered by the Act, price preference shall be given to registered industries (or their authorised agents and dealers) upto 10 per cent in case of Small Industries and 5 per cent in case of other industries of Assam.
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Maharashtra

ORDER/NOTIFICATION	SUBJECT
<p>Labour Law Reforms Notification from Directorate of Industries, Government of Maharashtra June 2000</p>	<p>The Factories Act, 1948:</p> <ul style="list-style-type: none"> • Amendments in the Definition of "Factory" • Small Establishments with power and employing upto 25 workers without power and upto 50 workers be exempted

Trade Unions Act, 1926:

- Trade Union should not be affiliated to Political Parties
- There should be one Union per Company
- 7 or more workers combine to form a Union. It is recommended that the minimum number of workers should be increased to 25 or 30 per cent of the work force, whichever is higher.
- It is also recommended that Under Section 22, the Executive Body of such Union should comprise outsiders not exceeding 1/3rd or 2 persons whichever is less.
- Rationalization of the provisions with regard to lay-offs and retrenchments, if necessary with enhanced retrenchment compensation should be considered
- The minimum number of workers Under Section 25(K) should be increased from 100 to 300.
- Section 25 (N) should contain the following proviso -

"Notwithstanding anything contained in the foregoing provisions of this Section, the provisions of this Section will not apply to any workman who has been in continuous service for not less than one year under an employer and at the time of retrenchment paid compensation which shall be equivalent of 45 days average pay for every completed year of continuous service or any part thereof in excess of six months".

Minimum Wages Act, 1948:

- Minimum Wages should be fixed for unskilled temporary workers. For other

categories, they will get higher wages as per their skills and market demand.

- The number of schedules under the Act should be reduced, and only the lowest scale of minimum wages (i.e., for unskilled workers) should be stipulated in these schedules.

Inspections:

- Visits by Inspectors of various agencies under the Labour Department would be rationalised as follows:
 - There would be no restriction on the conduct of statutory inspections (which may to the extent possible, be conducted jointly by the different inspectional agencies), and in the case of accidents.
 - In the case of inspections based on complaints or information received, prior approval from the concerned GMDIC would be necessary. In case of disagreement, or when GMDIC is not available approval may be taken from the Collector.
 - In the case of inspections for collection of statistics, Labour Department may examine the possibility of collection of statistics on a trial basis through selected local associations or outside agencies.
 - In the case of technical inspection, the possibility of authorizing technical agencies such as VJTI, VRCE etc. may be examine and an approved list drawn up.
 - For all Boiler Inspections, reputed technical Organizations should be empowered to conduct such inspections.

	<p>Contract Labour (Regulation and Abolition) Act, 1970</p> <ul style="list-style-type: none"> The Act should be amended to increase the number of workers in the definition of applicability to 50, subject to further relaxation to the extent of a minimum 100 workers in respect of units in backward areas. <p>Maharashtra Trade Union (MRTU) & Prevention of Unfair Labour Practices (PULP, 1971) Acts :</p> <ul style="list-style-type: none"> It is suggested that these Acts be tally abolished as the required purpose is being efficiently served with the use of the industrial disputes Act, 1947.
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Uttar Pradesh

ORDER/NOTIFICATION	SUBJECT
<p>Notification No.432/6-PR, Kanpur, Dt. 10-8-2000</p>	<p>Labour Laws:</p> <p>The Factories Act, 1948</p> <ul style="list-style-type: none"> Section 92 <ul style="list-style-type: none"> There should be a classification of offences/violations depending upon their seriousness. The punishment provided should be commensurate to the seriousness of the violation. <p>U.P. Factories Rules, 1950</p> <ul style="list-style-type: none"> Rule 7 Registration and Grant of License <ul style="list-style-type: none"> It is suggested that there is an urgent need to move toward long period licensing so that Entrepreneurs do not

have to face problems of annual renewals.

U.P. Industrial Disputes Act, 1947

- Section 2(F) Retrenchment
 - The utility of the UP Industrial Disputes Act, 1947 is no more; therefore it should be repealed. If such repealment is not considered proper, Section 2(bb) and 2(c) be added to Section 2 (s) of the UP ID Act, 1947.
 - Section 2(bb) relates to termination of the service of the workmen as a result of non-renewal of the contract of employment.
 - Section 2(c) relates to termination of the service of the workmen on the ground of continued ill-health.
 - Section 6 (B) Settlement outside conciliation proceedings
 - It is suggested that Section 18(3) of the Industrial Disputes Act, 1947 be substituted in place of Section 6 B.
 - Section 18(3) relates to a settlement arrived at in the course of conciliation proceedings under this Act.

Minimum Wages Act, 1958

- Section 3 fixing of Minimum Rates of Wages
 - It is suggested that 23 categories of employment in Part I of the Schedule and Employment in Agriculture of Part II are excessive categories. It should be limited to two categories: skilled and unskilled

	<p>workers.</p> <p>Trade Unions Act, 1926</p> <ul style="list-style-type: none"> • Section 22 relating to proportion of officers to be connected with the Industry. <ul style="list-style-type: none"> • It is suggested that not less than 3/4th of the total number of office bearers be substituted to one half of the total number of Section 22. <p>Contract Labour (Regulation and Abolition Act, 1970)</p> <ul style="list-style-type: none"> • Section 10 prohibition of employment of Contract Labour <ul style="list-style-type: none"> • It is suggested that Exemption under the Contract Labour Act to export oriented shall be granted by the appropriate Government in Time Bound Schedule. So that Export Oriented Units can fulfil the export in the scheduled time.
<p>G O Dt. 3-3-1994 (Labour Department)</p>	<p>Approval of Plants of the Non-hazardous factories (Delegation of Power to Industries Department Officers).</p> <ul style="list-style-type: none"> • It was issued by Labour Department for one year on experimental basis. It is suggested that the validity of this GO be extended permanently.

West Bengal

ORDER/NOTIFICATION	SUBJECT
<p>Labour Laws</p> <p>G.O. Ms.No.33 Dt.5-7-99</p> <p>Amendment notified vide Andhra Pradesh Gazette No.30</p>	<p>Amendment to labor Enactments</p> <p>Amendment to the provisions of State Act shall apply to every industrial establishment where in 50 or more workmen are employed on any day of the preceding Twelve months.</p>

G.O Ms.No.34 Dt.5-7-1999	Factories Act, 1948 Exempting establishments engaged in manufacturing processes from the rules 4, 5, & 6 under the Factories Act 1948
G.O Ms.No.37 Dt.3-8-1999	Exemption from rule 22,23 and 29 under Factories Act 1948 And under ANDHRA PRADESH SHOPS AND ESTABLISHMENTS ACT - for those engaged in manufacturing processes (relate to national holidays and other festivals)
G.O Ms .No.38 Dt.3-8-1999	Amendment to the ANDHRA PRADESH PAYMENT OF GRATUITY RULES 1972 and omitting rule 32 from 'U' Substitution of the words "employee nominee" in place of employees.
G.O Ms .No.34 Dt.5-7-1999 Amendment to the ANDHRA PRADESH FACTORIES AND ESTABLISHMENTS (NATIONAL FESTIVALS & OTHER HOLIDAYS) RULES, 1974	6-A:Manufacturing process: Nothing in rules 4,5,and 6 shall apply to a factory under the Factories Act 1948 (Central Act 63 of 1948) or an establishment in manufacturing process as designated in section 2(k) of the Factories Act,1948.

3.2 Labour Laws and SEZ

The Government of India has offered a number of incentives both monetary as well as non-monetary to the units operating in SEZ. In order to create a conducive business environment in which the entrepreneurs and enterprises have complete freedom to conduct their business operations and to remain globally competitive, State Governments have been empowered to amend the Labour Laws according to their requirements.

Normal Labour Laws are applicable to SEZs, which are enforced by the respective state Governments. The State Governments have been requested to simplify the procedures/returns and for introduction of a single window clearance mechanism by delegating appropriate powers to Development Commissioners of SEZs. The following are some of the changes brought in by State Governments with respect to Labour Law Regulations:

1. The powers of the Labour Commissioner are delegated to the designated Development Commissioner or other authority in respect of the area within the SEZs.

2. Modalities have been devised for the grant of various permissions required from the Labour Commissioner within the SEZs themselves through the stationing of exclusive personnel for the purpose or through other means so that clearances relating to various labour laws can be provided at a single point in the SEZs.
3. Except in emergent circumstances, the prior permission of the Development Commissioner or other designated authority of the SEZs would be required for the conduct of inspections of these agencies of industrial units and other establishments within the SEZs.
4. The Powers of the Chief Inspector of Factories & Boilers are delegated to the designated Development Commissioner or other authority in respect of the area within the SEZs.
5. Modalities have been devised for grant of various permissions required from the Chief Inspector of Factories & Boilers within the SEZs themselves through the stationing of exclusive personnel for the purpose or through other means so that clearances relating to various labour laws can be provided at a single point in the SEZs.
6. Except in emergent circumstances, the prior permission of the Development Commissioner or other designated authority of the SEZs would be required for the conduct of inspections by these agencies of industrial units and other establishments within the SEZs.
7. All industrial units and other establishments in the SEZs area declared as "Public Utility Service" under the provisions of the Industrial Disputes Act.
8. Subject to the State Legislature approval and Government of India's assent, amendments shall be proposed to the Industrial Disputes Act. The proposed amendments include, inter-alia, limiting the applicability of Chapter VB to industries employing 300 or more workmen, etc. Similarly, the Contract Labour (Regulation & Abolition) act is proposed to be amended to exclude certain peripheral service activities. In case it is not found feasible to amend these statutes as proposed, similar amendments will be proposed only for units and establishments within the SEZs.
9. Several provisions of Industrial Disputes Act and Factories Act have been identified which have created unnecessary hindrances in the smooth functioning of the SEZs. The State Governments have resolved to do away with those provisions or simplify them.
10. Apart from this, the State Governments are also empowered to get the inspection done by some external agency regarding the health and safety aspects of the labourers working in the units of the SEZ.
11. Many State Governments have notified have a single reporting format for SEZ units which would cover all the applicable labour laws.

The following list provides a list of the some of the amendments proposed with respect labour law regulations:

Part 4

Which court to approach in case of a labour dispute?

4.1 Judicial System in India

The judicial system in India is quite well-established and independent. The Supreme Court of India in New Delhi is the highest Court of Appeal. Each State has a High Court along with subsidiary District Courts, which enforce the rule of law and ensure fundamental rights of citizens, guaranteed by the Constitution of India.

India has a three-tier court system with a typical Indian litigation starting from a District Court and reaching its logical conclusion in the Supreme Court of India. The High Courts along with the various State level forums, situated mostly in the State capitals, constitute the middle rung of this three-tier system. District level courts are the courts of first instance in dispute resolution except in cases where they are prevented from being so by virtue of lack of pecuniary jurisdiction. Cases involving violation of fundamental rights are filed in respective High Court or Supreme Court.

A number of special courts and tribunals have been constituted in India to deal with specific disputes: -

1. Tax Tribunals
2. Consumer Dispute Redressal Forums
3. Insurance Regulatory Authority of India
4. Industrial Tribunals
5. Debts Recovery Tribunals
6. Company Law Board
7. Motor Accidents Claims Tribunals
8. Labour Courts

4.2 Where to file?

Most of the labour disputes are referred to the Labour Courts/Industrial Tribunals through the Department of Labour under the respective State Government. The process for labour dispute starts with filing of a petition before Labour Conciliation Officer and in case no compromise is possible, the said officer sends a failure report to the Government. After consideration of the said report, the Government may send a reference to the Labour Court/Industrial Tribunal. In certain matters, the labour dispute can be directly filed in the court concerned.

Labour Courts These courts are found in every district and they form the courts of original jurisdiction under which various labour laws and rules are enforced.

Appellate Labour Courts These courts hear only the Appeals and revisions originating from the judgements and orders of the subordinate original labour courts and officers, under the provisions of various labour and related laws.

- a) When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to
 - (i) Hold proceedings expeditiously, and
 - (ii) To submit its award to the appropriate Government soon after the conclusion of the proceedings.
- b) However, no deadline has been laid down with respect to the time within which the completion of proceedings has to be done. Nonetheless, it is expected that these Courts hold their proceedings without getting into the technicalities of a Civil Court.
- c) It has been held that the provisions of Article 137 of the Limitation Act do not apply to reference of disputes to the Labour Courts. These Courts can change the relief granted by refusing payment of back wages or directing payment of past wages too.

Court Fee

No Court fee is payable on the petitions filed before Labour Courts and Industrial Tribunals.

4.3 What matters fall within the jurisdiction of Industrial Tribunals?

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. Retrenchment of workmen and closure of establishment

4.4 What matters fall within the Jurisdiction of Labour Courts?

1. The propriety or legality of an order passed by an employer under the standing orders
2. The application and interpretation of standing order
3. Discharge or dismissal of workmen including re-instatement 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
6. All matters other than those being referred to Industrial Tribunals.

4.5 Stages of adjudication in labour or industrial disputes

The first is receiving a reference from the appropriate Government or filing of the labour dispute in the Labour Court. The next step is sending notice to the Management and after filing of the response by them, the matter is fixed for adjudication. The fourth step is recording the evidence of the parties and hearing the arguments. It is appropriate to mention here that advocates cannot appear in Labour Courts/Industrial Tribunals, unless permitted.

The final conclusion of the dispute

After hearing the parties, the Labour Court/Industrial Tribunal decides the dispute and the said final decision is called an Award. A copy of the award is to be published by the Labour Department as per rules. Copies of the same are also sent to the parties concerned.

Execution of Awards

In case the management does not comply with the terms of the award, the workman may pray for its execution by moving an application before the concerned Conciliation Officer.

4.6 Mediation in Labour Disputes

Mediation is an exercise of resolving a dispute by settlement with the help of a Mediator who is a neutral third party. The mediator may be:

- a) A judicial officer (retired or sitting judge)
- b) An Advocate
- c) An otherwise trained professional

When a sitting judicial officer acts as a mediator in a case, his services are available free of cost and without any other charges on any of the parties.

Role of the Mediator

A mediator helps the parties in arriving at an amicable solution through negotiation. He facilitates the parties in reaching a mutually acceptable agreement. The parties need not agree to the terms of settlement, if they are not satisfied. Judges and arbitrators make decisions that are imposed on parties but a mediator helps the parties to evaluate the probable outcome of a dispute and then leads them to an acceptable settlement.

Process of Mediation

A mediator meets both the parties in a joint mediation session. The initial meeting provides for:

- a) An introduction to the participants and the mediation process.

- b) An opportunity to discuss issues affecting settlement that are important for the mediator to know.
- c) An opportunity to determine what information would be helpful for the mediator to have at or in advance of the mediation.

The joint session provides an opportunity for each participant, either directly or through counsel, to express their view of the case to the other participants and how they would like to approach settlement. The opening statements are intended to begin the settlement process, not to be adversarial or a restatement of positions.

MEDIATION PROCEDURE

Formal procedures as in a Court or arbitration are completely absent in mediation proceedings. Both parties and their advocates participate freely without any set procedures or any rules of evidence. The absence of formality provides for an open discussion of the issues and allows a free interchange of ideas making it easier for the parties to determine their interest and fashion a solution accordingly. A mediator may, if necessary, meet the disputing parties individually and in private. Such meetings are completely confidential and are intended to understand the needs of each participant and what prevents him or her from reaching a settlement. In these private meetings, the mediator often assists parties to prioritize their interest and options for settlement and to assess the relative strengths and weaknesses of their positions. Once a settlement is reached, the mediator records it with the signatures of the parties.

Some important points in the Mediation Process

- a) All mediation proceedings are **confidential**. Documents generated for the mediation are also confidential and may not be introduced during a subsequent trial should the case not settle.
- b) Counsel and parties with **settlement authority** must attend mediation sessions. Certain exceptions may be granted for institutional parties or if a party is a unit of government.
- c) Unless the presiding judge indicates otherwise, referral of a case to mediation **does not stay** other proceedings in the case or alter applicable litigation deadlines. A judicial officer may, while referring a case to mediation, fix a time limit for completing the mediation process.

Advantages of Mediation Method for Dispute Resolution

(i) Procedures more satisfying results

- a) Helps settle all or part of the dispute much sooner than regular trial.
- b) Permits a mutually acceptable solution that a court would not have the power to order.
- c) Saves time and money
- d) Preserve ongoing business or personal relationships

e) Increases satisfaction and thus results in a greater likelihood of a lasting resolution.

(ii) Allows more flexibility, control and participation

- a) Tailors the procedures used to seek a resolution
- b) Broadens the interests taken into consideration
- c) Fashions a business-driven or other creative solution that may not be available from the court.
- d) Protects confidentiality
- e) Eliminates the risks of litigation

(iii) Enables a better understanding of the case

- a) Provides an opportunity for clients to communicate their views directly and informally
- b) Helps parties get to the core of the case and identify the disputed issues.
- c) Helps parties agree to exchange key information directly.

(iv) Improves case management

Narrows the issues in dispute and identifies areas of agreement and disagreement.

(v) Reduces hostility

- a) Improves the quality and tone of communication between parties.
- b) Decreases hostility between clients and lawyers.
- c) Reduces the risk that parties will give up on settlement efforts.

How to Initiate Mediation?

Where both the parties agree in a pending case to try to get their dispute settled through Mediation, the Court will record the same and send the file to Mediation Centre.

Part 5

5.1 Address of Labour Commissioners

(i) Andaman and Nicobar Islands

Telephone: (03192) 233138 / 232547

Email: lcdet@and.nic.in

Website: <http://labour.and.nic.in/>

(ii) Delhi

Office of the Labour Commissioner
Government of N.C.T. Of Delhi
5, Sham Nath Marg,
Delhi - 110054.
Tel Nos. 91-11-23967495
Fax: 91-11-23962823
E-mail Address: jlcdmlab@hub.nic.in
Website: <http://labour.delhigovt.nic.in/>

(iii) Gujarat

Office of Labour Commissioner,
Block No. 14, 2nd Floor, Udoyg Bhavan,
Sector - 11. Gandhinagar - 382 013. Gujarat.
Telephone: +91-232-57500 (O)
Fax: +91-232-57502
Mobile: +91-98250 49181
Website: www.labourandemployment.gov.in

(iv) Himachal Pradesh

Labour Commissioner cum Director of Employment
New Himrus Bhawan, Circular Road,
Shimla-171001.
Telephone: (0177) 2625085
Email: lande@sancharnet.in; lep-hp@nic.in
Website: <http://himachal.nic.in/Employment/>

(v) Karnataka

Commissioner of Labour
Mr. K.S. Manjunath
Karmika Bhavan, ITI Compound,
Bannerghatta Road, Bangalore-560 029.
Telephone: (080) 2653 1252
Website: www.labour.kar.nic.in

(vi) Kerala

Office of the Labour Commissioner,
Housing Boards Building, Thiruvananthapuram,

Kerala.

Telephone: (0471) 2330414

Website: www.labourkerala.gov.in

(vii) Maharashtra

Office of the Labour Commissioner,
Commerce Centre, Tardeo Road,
Mumbai.

Website: <http://industry.maharashtra.gov.in>

(viii) Nagaland

Office of the Joint Labour Commissioner
Government of Nagaland,
District Labour Office,
Wokha, Nagaland.

Telephone: +91 (371) 2271168

Email: labouremployment@yahoo.com

Website: www.labourngl.nic.in

(ix) Rajasthan

Commissioner of (Labour & Employment) Department
Office of Labour Commissioner,
Govt. of Rajasthan
Jaleb Chowk,
Jaipur-302002,
Rajasthan

Phone No: 0141-2607473, 2618517, 2619256

Website: www.rajlabour.nic.in

(ix) Punjab

Department of Labour Commissioner, Punjab,
SCO No. 47-48, Sector - 17 E,
Chandigarh - 160017

Phone: + 91-172-2702486

Fax: + 91-172-2704091

Email: delc@punjabmail.gov.in

Website: www.pblabour.gov.in

(x) Lakshadweep

District Employment Officer
District Employment Exchange
Union Territory of Lakshadweep
Kavaratti - Pin:682 555
Phone: 04896262082
Fax: 04896263035
Email : lk-dee@hub.nic.in
Website : www.lakemployment.gov.in

(xi) Tamil Nadu

Labour Commissionerate
DMS Complex,
Teynampet, Chennai 600 006.
Telephone:2432 1438/ 2432 1408/2432 1509
Website: <http://www.tn.gov.in/department/labour.htm>

5.2 ABOUT THE AUTHOR



A highly acclaimed academician and an active member in various professional bodies, Rajkumar S. Adukia has been working tirelessly for the cause of the profession. He is a member of the Professional accountants in Business Committee (PAIB) of International Federation of Accountants (IFAC) and the Central Council of the ICAI.

He is a member of numerous committees of the Institute and is actively involved in their working. He has conducted about 5000 seminars & workshops. His practice areas include corporate and international laws and project work.

Besides this book, he has authored a number of books on vast range of topics including Internal Audit, Bank audit, CARO and real estate, has contributed articles to newspapers, and magazines and presented papers at national and international seminars. Drawing on his experience from practice of 26 years and his interaction with accounting bodies worldwide, the author has come

out with this book titled- **“A handbook on Labour Laws in India”**. This book is a simple approach to labour laws, with labour laws explained in the layperson's language. It provides coverage of employment relationship and procedure, employment obligations, and employment regulation. The book is valuable as a guide in its current form for those working in human resources, employers, employees as well as corporate attorneys. This book is intended to instruct employers on how to manage its work force effectively and efficiently.

Thus the book attempts to provide vital background information on labour laws in India. The author has also written a detailed book on this subject titled **“LABOUR LAWS OF INDUSTRY one should know (for employers& employees)**.

This book covers exhaustively covers wide range of topics like

- Labour jurisdiction under the Constitution of India
- Various Central Legislations
- Labour Laws for SSIs and SEZs
- Procedure for filing a case in a labour court/industrial tribunal, etc.