LABOUR LEGISLATION & IR

(DEMBC3)

(MBA)

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UNIT - V

Lesson - 1

FACTORY LEGISLATION DEFINITIONS - PAYMENT OF WAGES ACT, 1936

Learning Objectives:

After studying this lesson, you should be able to :

K know the objectives, scope, coverage and provisions relating to health and safetyof the Factories Act, 1948;

K understand the provisions of the Payment of Wages Act, 1936, their Administration and enforcement;

K know the working of the Factories Act, 1948 and Payment of Wages Act, 1936 in India

Content Structure :

5.1.2

1.1 Introduction :

Modern factory system was founded in India with the establishment of cotton mills in 1851, and a Jute Mill in Bengal in 1855. At that time women and children were extensively employed. The employers used to have their way and there were excessive and long hours of work with little recreation.

Thus factory legislation became essential when owners began to exploit men, women and children by taking work for them in complete disregard of their health. With the growth of industries, the mind of certain conscientious public workers was awakened to the existing evils. The first Indian Factories Act was passed in 1881, which gave a limited measure of protection to children, first by prohibiting their employment in factories if they were under seven years of age, as also their employment in two separate factories on the same day; second, by restricting their employment to nine hours per day; and, third, by requiring that they should be granted, four holidays in a month and rest intervals.

The Factory Commission was appointed in 1890 by the Government of India. On the basis of the recommendations of the Commission an Act was passed in 1891, whereby the definition of Factory was amended to included premises in which fifty persons or more were employed. A more comprehensive law was introduced in 1911 on the basis of the recommendations of the Factory Labour Commission, which was further amended in 1923, 1926 and 1931. The Act was thoroughly revised and redrafted in 1934 on the lines of recommendations made by the Royal Commission on Labour, which was appointed in 1929. Factories Act, 1934 which, apart from amending and consolidating all the previous enactments, introduced a number of important changes. Based on the recommendations of the 'Rege Committee', the Government of India enacted the Factories Act, 1948, a comprehensive piece of legislation, which came into effect from 1st April, 1949. The Act was amended periodically upto 1976. In 1987, Factories (Amendment) Act, 1987 was passed, a memorial to the victims of Bhopal.

Thus in India, the prominent pieces of factory legislations especially to deal with Laws on working conditions are - The Factories Act, 1948; The Mines Act, 192; Shops and Establishments, Law; Plantation Labour Act, 1951; Contract Labour (Regulation and Abolition) Act, 1986 and Child Labour (Prohibition and Regulation) Act, 1986.

1.2 The Factories Act, 1948

A comprehensive piece of legislation, the Factories Act, 1948 passed by the Government of India, came into effect from 1st April, 1949.

Object :

The object of the Act is to protect human beings from being subject to unduly long hours of bodily strain or manual labour and to ensure to the workers employed in the factories, health, safety and welfare measures, and provide for proper working hours, leave and other benefits. The Act extends to whole of India and

applies to all factories belonging to Central or any State Government unless otherwise excluded.

1.2.1 Definitions

i) Factory :

As per Section 2 (m) of the Factories Act, 1948 Factory means :

a) Any premises in which 10 or more workers are employed and a manufacturing process is carried on with the aid of power;

b) Any premises in which 20 or more workers are employed and a manufacturing is carried on without the aid of power.

ii) Manufacturing Process :

As defined in Section 2 (k) "manufacturing Process" is any process

a) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

b) pumping oil, water, sewage, or any other substance; or

c) generating, transforming or transmitting power; or

d) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

e) constructing, reconstructing, refitting, finishing or breaking up ships or vessels;

f) preserving or storing any article in cold storage.

iii) Worker

Section 2(1) of the Factories Act, 1948 defines a "worker" to mean: A person employed (directly or by or through any agency including a contractor), with or without the knowledge of principal employer, whether for remuneration or not in any manufacturing process, or any kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process, but does not include any member of the armed forces of the Union.

iv) Occupier

Under Section 2(a) of the Act "Occupier" means the person who has ultimate control over the affairs of

the factory; and

a) In the case of a person or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

b) In the case of company, any one of the directors shall be deemed to be the occupier;

c) In the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

1.2.2 Approval, Licencing and Registration of Factories :

The factory is to be got approved and registered after obtaining a licence by the occupier in accordance with the rules framed by the State Government in this behalf. The Chief Inspector of Factories, if he is satisfied that the plans are in accordance with the requirements of the Act, will approve them (Section 6 and Rule 3). The occupier or manager of a factory has to apply to the Chief Inspector of Factories for the registration of the factory and for obtaining the necessary licence.

The licence or renewal of licence shall not be granted unless the occupier gives at least 15 days notice in writing to the Chief Inspector of factories before he proposes to occupy or use any premises as factory. The notice shall state the full particulars of the factory.

Inspecting Staff :

The State Government is empowerment to appoint Inspectors having prescribed qualifications. No person shall be appointed or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith. Every district Magistrate shall be an Inspector for his district.

Certifying Surgeons :

Under section 10 the State Government is empowered to appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act. They will be appointed within such local limits or such factory or class of factories as the State Government may think fit. The certifying surgeon shall carry out such duties as may be prescribed in connection with - a) the examination and certification or young persons under this Act; b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed; c) exercising the medical supervision for any factory in respect of - illness, and injury.

1.2.3 Main provisions of the Act

The main provisions of the Factories Act, 1948 relates to Health, Safety, Welfare, Hazardous processes,

Working Hours, and leaves, which are briefly explained below.

i) Health :

Under Sections 11 to 20 contained in Chapter-III of the Factories Act, 1948, every factory must provide appropriate health measures in accordance with the provisions of the Act. These provisions are in keeping with the object of the Act. These provisions are in keeping with the object of the Act, as also with Article 42 of the Indian Constitution which requires that the State should make provision for securing just and human conditions of work. These provisions are - 1) Cleanliness, 2) Disposal of wastes and effluents, 3) ventilation and temperature, 4) Dust and fume, 5) Artificial humidification, 6) Overcrowding, 7) lighting, 8) Drinking water, 9) Latrines and urinals and 10) Spittoons.

ii) Safety:

Every factory shall, in accordance with the provisions of the Act, take appropriate safety measures. Section 21 to 41 of the Act contain the provisions relating to the safety of the workers. Theses provisions are absolute in character and it is the duty of every factory to couple with them. They are - Fencing of Machinery, Employment of young person on Dangerous Machinery, prohibition of Employment of Women and children near Cotton Openers, Pressure plant, Precautions against Dangerous Fumes and Gases, Explosive or Inflammable Materials, Safety of Building and Machinery, Maintenance of Buildings, Safety Officers, etc.

The Factories (Amendment) Act, 1987 added certain new provisions on health and safety.

iii) Welfare :

Provisions relating to the welfare of the factory workers have been made in Sections 42-50 in Chapter - V of the Factories Act, which are : Washing facilities, Facilities for storing and drying clothing, Facilities for sitting, facilities for First Aid Appliances and Ambulance room; Canteen, Rest room and Lunch room facilities, Creches facility, Appointment of Welfare Officers.

iv) Working Hours :

The main restrictive provisions of the Act about the working hours of adults are -

a) A worker cannot be employed for more than 48 hours in a week (Section 51).

b) He must be given a holiday for a whole day in every week (Section 52)

c) If a worker is deprived of the any of the weekly holidays, he shall be given compensatory holidays (Section 53)

d) A worker cannot be employed for more than nine hours in a day (Section 54)

e) A worker must be given an interval of rest of at least half an hour after five hours of work (Section 55)

f) The total periods of work, inclusive of rest interval, must not be spread over more than ten and half

hours in a day (Section 56)

g) If a worker works for more than nine hours in a day or for more than forty-eight hours in a week, he shall be paid for overtime work at the rate of twice the ordinary rate of wages (Section 59)

The State Government has been empowered to make rules for granting exemption from the restrictions imposed with regard to working hours of adults as enumerated above on such conditions as it may deem necessary.

v) Annual Leave with Wages :

Section 79 of the Act deals with the provisions of Annual Leave with wages. The basis of calculation of the annual leave to which a worker would be entitled in a year is the previous calendar which he had worked in a factory.

The main provisions of the Act about the grant of annual leave with wages are regarding - qualifying period, Rate of Leave, unavailed leave, wages luring leave period, advance payment of leave wages and mode of leave wages and mode of recovery of unpaid wages.

As stated above, The Factories Act, 1948, is the most comprehensive piece of labour legislation. Though it is a piece of central legislation, the responsibility for administration of the Act rests with the State Governments who administer it through their own factory inspectorate.

1.3 Payment of Wages Act, 1936 :

1.3.1 Introduction

Wages are among the major factors in the economic and social life of any community. It is most important to an industrial worker because his standard of living and that of his family depends upon his earnings. It is also important to an employer as it constitutes one of the principal items that enter into his cost of production. The government is also concerned with wage standards because a large number of industrial disputes revolving around the issue of wages.

The philosophy of labour laws including the Minimum Wages Act is that industry is for man and not man for industry. Wages are not an economic abstraction but an important price in society. All over the world wages and their problems have been assuming great importance with the advancing economic and social development which has for its result the larger proportion of population gaining their living as employees, or wage earners.

Passing of the Act :

In the initial stages of industrialisation of India, irregularities committed by the employers, mainly delays in payment of wages, arbitrary deductions and other unfair practices were brought to the notice of the Royal Commission of Labour. While approving the prevalence of several irregularities, the Commission stressed the need for laying down a machinery for evolving a proper and equitable wage structure.

In pursuance of the recommendations of the Commission, the Payment of Wages Act, was passed in 1936, and it came into force on 28th March, 1937. It has since been amended several times.

1.3.2 Object, Applicability, Definitions :

Object of the Act : The main object of the Act is to ensure to worker payment of their earned wages on due date without unauthorised deduction. The Act seeks to regulate the manner of payment of wages of certain class of workers employed in industry at regular intervals. Thus the Act is a protective piece of legislation.

Applicability: The Act applies to the whole of India to persons employed in any factory, railway, coal mines, plantations, construction, roads, bridges, supply of water, generation and distribution of electricity and in such other establishments to which the State Government may, by notification, extend the provisions of the Act after giving three months' notice to that effect.

Employees whose wages average less than Rs.1,600/- a month are covered under the Act.

Definitions :

i) Wages : "Wages means all remuneration (whether by way of salary, allowances, otherwise) expressed in terms of money or capable of being expressed which would, if the terms of employment, expressed or implied are fulfilled, be payable to person employed in respect of his employment or of work done in such employment. It includes:

a) any remuneration payable under award of settlement between parties or order of a court;

b) any remuneration under the terms of employment (whether called a bonus or by any other name);

c) any remuneration to which the person employed is entitled in respect of overtime work or holiday or any leave period;

d) any sum which by reason of termination of employment of the person employed is liable under any other law, contract or instrument which provides for the payment of such sum whether with or without deductions, but does not provide for the time within which the payment has be made.

e) any sum to which the person employed is entitled under any other scheme framed under any law for the time being in force.

However, "Wages" does not include :

a) any bonus which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

b) the value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special of the State Government

c) any contribution paid by the employer to any person or provident fund and the interest which may have accrued thereon;

d) any travelling allowance or the value of any travelling concession;

e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

f) any gratuity payable on the termination of employment;

ii) Employed person :

Includes the legal representative of a deceased employed person.

iii) Employer :

Employer includes the legal representative of deceased employer.

iv) Industrial Establishment :

It means any :

a) Tram-way service or motor transport engaged in carrying passengers & goods or both by road for hire or reward.

b) Air transport service other than such service belonging to, or exclusively employed in the military, naval or Airforce of the Union, or the Civil Aviation Department of the Government of India.

c) Dock, wharf, or Jetty;

d) Inland vessel mechanically propelled;

e) Mine, quarry, or oil field;

f) Plantation;

g) Workshop, or other establishments in which articles are produced, adopted, or manufactured, with a view to their use, transport or sale;

h) establishment in which any work relating to the construction, development or maintenance of building, roads, bridges or canals or relating to transmission, or distribution of electricity, or any other form of power is being carried on;

i) any other establishment or class of establishment which the Central Government or a State Government may, having regard to the nature there-to the need for protection of persons employed there-in, and other relevant circumstances, specified by notification in the Official Gazette.

1.3.3 Wage Payment :

Under Section 3, the responsibility for the payment of wages under the Act is that of employer or his representative. No wage period shall exceed one month in any case. Wages may be payable daily, weekly, fortnightly and monthly. But the payment thereof must not extend over a period longer than one month.

Wages shall be paid before the expiry of the 7th day and in the other cases before the expiry of the 10th day, after the last day of the wage period.

In case the employer terminates the services of an employee, the employee is entitled to receive the wage earned by him before the expiry of the 2nd working day from the day on which employment has been terminated.

Medium of payment of wages :

All wage shall be paid in current coin or currency notes or both. The employer may after obtaining the written permission of the employed person pay him wages either by cheque or by crediting the wages in the bank account (Section 6).

1.3.4 Deduction from wages :

The wages of an employed person shall be paid to him without deductions of any kind except those authorised under the Payment of Wages Act. The term 'deduction from wages' has not been defined in the Act. However, the Act specifies the heads from Sections 7 to 13 under which deductions from wages may be made.

The following kinds of deductions are permitted under the Act.

1) Fines (Section 8)

2) Absence from Duty (Section 9)

3) Damage of Loss (Section 10)

4) Accommodation and Service (Section 11)

5) Recovery of Advance (Section 12)

6) Recovery Loans (Section 12-A)

7) Payment to Co-operative Societies and Insurance Schemes (Section 13)

Any deductions other than those authorised under Section 7 of the Act would constitute illegal deductions. The total amount of deduction which may be made in any wage period from the wages of an employed person shall not exceed 75 percent of such wages in case where such deductions were wholly or partly made for payment to co-operative societies, and in any other case, 50 percent of such wages (Section 7(3)).

1.3.5 Authorities

Under Section 14 of the Act makes provision for the appointment of Inspectors. The Inspector of Factories under the Factories Act, 1948 shall be an inspector for the purposes of the Payment of Wages Act in respect of all factories within the local limits assigned to him.

Moreover, the State Government may by notification in the Official Gazette appoint such other persons as it thinks fit to be Inspectors for the purposes of the Act. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

There are three distinct categories of persons prescribed as authorities under Section 15(1) of the Act. They are :

i) A presiding officer of a labour court, tribunal;

ii) Any commissioner for workmen's compensation;

iii) Other officer with experience as a judge of a civil court or a stipendiary magistrate.

1.3.6 Claims and Appeals :

An application for claims arising under this Act may be filed by - a) the employed person himself, b) any legal practitioner, c) any official of a registered trade union authorised in writing to act on his behalf, d) any Inspector under the Act, e) any other person acting with the permission of the Authority appointed under the Act. Every application must be made within twelve months from the date on which the deduction from wages was made, or from the date on which the payment of the wages was due to be made.

An appeal may be preferred against the following :

1) An order dismissing either wholly or in part an application made on the ground that deductions are made contrary to the Act or payment of wages has been delayed.

2) A direction to refund the amount deducted from wages to the employed person.

3) A direction by the Authority to pay penalty to the employer from making malicious application.

1.3.7 Offences and Penalties :

The Act prescribes penalties for offences committed under the Act and the procedure to be followed in the trial of offences. Under Section 21 the jurisdiction of a civil court is barred in entertaining any suit for the recovery of wages or any deduction from wages. As per Section 23 of the Act any contract or agreement whereby an employed person relinquishes any right conferred shall be null and void.

1.4 Summary :

The Payment of Wages Act, 1936 is a Central legislation being administered by both Central and State Government in their respective spheres as defined under the Act. In its original form, it suffered from a number lacunae and thus failed to provide effective protection against unfair practices in regard to payment of wages. With the gaining of experience in its working it was amended several times.

The working of the Act, no doubt, benefitted the working class, as complaints regarding nonpayment of wages and erosion of wages by unauthorised and heavy deductions and fines are not so many as before. Increasing education, awakening among workers, growth of trade unions, and increasing desire on the part of employers have also contributed to this improvement.

But still, as observed by the National Commission on Labour, which reviewed the working of the Act, all the malpractices regarding payment of wages on the part of some employers have not been checked by this Act. The enforcement machinery has also been finding difficult to being round defaulting employer because of cumbersome procedure for prosecution. Inspectors finding it difficult in enforcing compliance with the provision of the Act in Government owned industries. The I.L.O. has also laid down international standards for the protection of wages by adopting one convention and one recommendation.

1.5 Key terms :

Factory : means any premises in which 10 or more workers are employed and a manufacturing process is carried on with the aid of power and 20 or more workers without the aid of power.

Occupier : means the person who has ultimate control over the affairs of the factory.

Appeal : refers to a proceeding taken before a superior court or authority for reversing or modifying decision of an inferior court or authority on ground of error.

Wages : means all remuneration expressed in terms of money or capable of being expressed, be payable to person employed.

1.6 Model questions

1. What is the object of the Factories Act, 1948?

2. What are the measures to be taken by a factory in respect of safety, health and welfare of workers ?

3. Discuss the provisions relating to working hours and grant of leave with pay.

4. Explain briefly the objective, scope and coverage of the Payment of Wages Act, 1936.

5. What are authorised deductions ? Mention some important deductions permissible and not permitted under this Act.

1.7 Reference Books

A.M. Sarma	-	Industrial Jurisprudence and Labour Legislation
S.C. Srivastava	-	Commentaries on Factories Act, 1948
IGNOU	-	MS 28 Labour Laws
Arun Monappa	-	Industrial Relations
I.A. Saiyed	-	Labour Law

2.1 Introduction :

The government has always played a significant role in the determination of wages in the organized sector. There are a number of laws to ensure payment on time of a certain minimum wage. Wages being a major cause of disputes, the higher law courts of the country have also been involved, such as the State High Courts and the Supreme Court of India. The government has also established labour courts and industrial tribunals to settle wage disputes by adjudication.

The concept of minimum wages is based on the principles of equity and social justice. The philosophy of labour laws including the Minimum Wages Act is that industry is for man and not man for industry. Hence, the employers are under an obligation to provide their employees safe, healthy and comfortable living, employment and working conditions. When they failed to honour this obligation the government has to safeguard the interest of workmen by enacting suitable legislation.

Though India is predominantly agricultural, in recent years it has made rapid strides in the field of industrial and commercial development, which has resulted in an increase in salaried and wage employment. Consequently labour problems, particularly relating to wages emerged. The Government of India enacted the Minimum Wages Act in 1948 so that worker may be ensured wages atleast sufficient to maintain his health and efficiency.

In order to provide for the payment of equal remuneration to men and women workers and to give effect to Article 39 of the Indian constitution, the Government of India, on the 26th of September, 1975 promulgated the equal remuneration ordinance. The ordinance was replaced by the Equal Remuneration Act, 1976.

2.2 MINIMUM WAGES ACT, 1948:

All over the world wages and their problems have been assuming great importance with the advancing economic and social development. The problem of minimum wages is not so simple as it appears to be. Minimum wage is essentially a relative term and may mean differently in different countries according to their state of economic and social development.

Minimum Wages in India:

In India, the genesis of the Minimum Wages Act is traceable to the Minimum Wage Fixing Machinery Convention, 1928 of ILO. The Royal Commission on Labour (RCL), appointed in 1929, stressed the need for fixing minimum wages for workers employed in certain industries. This cautious approach was based on their finding that there may be many trades in which a minimum may be desirable but not practicable. The question of statutory fixation of minimum rates of wages was discussed at successive sessions of the Indian Labour Conference in 1943, 1944 and 1945. The Minimum Wages Bill was introduced in the Central Legislature in 1946 and was passed in 1948.

iv) Wages:

The term 'Wages' means all remuneration expressed in terms of money, which would, if the terms of contract of employment, expressed or implied were fulfilled, be payable to a person employed in respect of his employment of work done in such employment. It includes house rent allowance, but does not include the value of (a) any house accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate government, (c) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance, (d) any travelling allowance or the value of any travelling concession, (e) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment, or (f) any gratuity payable on discharge.

v) Cost of Living Index Number:

The term 'cost of living index number' means the index number ascertained and declared by the competent authority by notification in the official gazette to be the cost of living index number applicable to the employers in scheduled employments.

2.5 Fixation and Revision of Minimum Wages :

The appropriate government may fix the minimum rates of wages payable to the employees of scheduled employment either for the whole state, or a part of the state, or for any specified class or classes of such employment. The employer is bound to pay every employee engaged in that employment at rates not less than the rates notified. Minimum rates of wages may be fixed both for time-rated and piece-rated workers and also for over-time work.

The appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which less than 1000 employees are employed in the whole state.

The minimum rates of wages may be fixed by the hour, by the day, by the week, by the month, or by any larger wage period as may be prescribed. Where such rates are fixed by the month or the day, the method of calculating wages for a month, or for a day, as the case may be, indicated.

The appropriate government may review wages at such intervals as they think fit, such intervals not exceeding five years. Until the rates are so revised the minimum rate in force immediately before the expiry of the said period of five years shall continue in force.

In fixing and revising the minimum wages, the appropriate government shall either:

i) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be; or

ii) by notification in the official gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

ii) any officer of the Central Government exercising function as Labour Commissioner for any region

iii) any officer of the State Government not below the rank of Labour Commissioner

iv) any other officer with the experience as a judge of a Civil court or as a stipendary magistrate

An employee or any legal practitioner or any other official of a registered trade union, authorised in writing, or any inspector can apply to the authority for settlement of disputes with respect to non payment or payment of less than the minimum wages. Every such application shall be presented within six months from the date of which the minimum wages and other amounts become payable. It may be admitted after six months when the applicant satisfy the authority that he had sufficient cause for not making the application within such period.

2.8 Offences and penalties :

The Minimum Wages Act, 1948 lays down penalties for violation of the provisions of the Act. Under section 22 of the Act the employer would be punished with imprisonment upto six months or with fine of Rs.500 or with both if he pays to any employee less than the minimum rates of wages fixed for that employee's class of work or regarding hours of work.

2.9 General Remarks :

Industrial unrest immediately prior to and after Independence led to the evolution of a policy of minimum wages. The minimum Wages Act, 1948 emphasised that if exploitation of labour through low payment of wages was to be prevented, wages had to be regulated and could not be entirely determined by market forces. The terms emerged in discussing wage problems since 1948 are - 1) Statutory minimum wage, (2) Basic minimum wage, (3) Minimum wage, (4) Fair wage, (5) Living wage.

In a developing economy like India, a balance has to be struck between the objectives of economic development and the principles of democratic system in the formulation of a national wage policy. The varied pulls and demands make it a complex exercise. As observed by the National Commission on Labour, Minimum Wages Act is an important landmark in the history of labour legislation in India. Its main objective of preventing exploitation of labour through payment of low wages seems to have been achieved as nearly 90% of industrial and commercial workers are reported to have been ensured minimum subsistence wage by the implementation and enforcement of the provisions of this Act. The implementation of the Act has also improved the level of wages both in the organised and unorganised sectors of industries, and has thus reduced the number of disputes on account of wages.

The act has been amended several times for widening its coverage. It still suffers from the limitations - 1) applicable only to employments mentioned in the schedule, (2) dues not lay down principles and criteria for determining minimum wages and (3) does not define the term 'Minimum Wages' mentioning its contents.

2.10.3 Administration :

Advisory Committee (Section-6) -- The appropriate government may constitute one or more Advisory Committees for the purpose of providing increasing employment opportunities to women. Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate government, of which one-half shall be women. The Advisory Committee shall regulate its own procedure.

Claims and Complaints :

The appropriate government may appoint an authority, not below the rank of Labour Officer, to hear and decide claims and complaints. The authority appointed for this purpose shall have all the powers of a civil court under the Code of Civil Procedure, 1908.

Maintenance of Registers :

It is the duty of every employer to maintain such registers and other documents in relation to the workers employed by him as may be prescribed (Section-8). The appropriate government may appoint inspectors for the purpose of enforcing the provisions of the Act (Section-9).

2.10.4 Offences and Penalties :

Offences : (1) No court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence punishable under this Act. (2) No court shall take cognizance of an offence punishable under this Act, except upon :

a) its own knowledge or upon a complaint made by the appropriate government or an officer authorised by it in this behalf, or

b) a complaint made by the person aggrieved by the offence or by an recognised welfare institution or organisation (Section-12).

Penalties :

The Act provides for penalties for violation of provisions of the Act (Section-10). In case the employer does not provide necessary records, fails to give evidence and information, there is a provision in the Act for imposing fine up to Rs.1,000/-.

The employer shall be punishable with fine up to Rs.5,000/- if he makes recruitment in contravention of the provisions of this Act. The employer attracts similar punishment if he pays wages to men and women at unequal rates, omits or refuses to produce to any inspector any register or other document to give any information.

2.10.5 Exemptions :

Under the Equal Remuneration Act, 1976, the requirement of equal treatment for men and women will

3. How are the claims arising from payment of less than the minimum rates of wages to employees settled?

4. What are the offences under the Minimum Wages Act, 1948 and what is the punishment for them?

5. What are the obligations of an employer under the Equal Remuneration Act 1976?

6. What difficulties arise in applying the principal of equal remuneration for same work or work of similar nature?

2.14 Reference Books

1. S.B.Rao - Law and Practice of Minimum Wages Act
2. P.C.Tripathi and C.B.Gupta - Industrial Relations and Labour Laws
3. IGNOU MS-28 - Labour Laws
4. A.M. Sharma - Industrial Jurisprudence and Labour Legislation
5. Arun Monappa - Industrial Relations
6. Equal Remuneration Act, 1976.

UNIT - IV

Lesson - 4

PRINCIPLES OF MODERN LABOUR LEGISLATION - TYPES OF LABOUR LEGISLATION

Learning Objectives:

After studying this lesson, you should be able to understand the :

labour policy and origin of Labour Legislation in India;

Objectives and Types of Labour Legislation;

Principles, Issues and Trends in Modern Labour Legislation;

Content Structure :

4.1 Introduction :

Legislation is an instrument to control, restrain and guide the behaviour and courses of action of individuals and their groups living in a society. Labour legislation seeks to deal with the problems arising out of the occupational status of individual. Consequently, such problems, as hours of work, wages, working conditions, trade unionism, industrial relations, etc. come to be the main subject of labour legislation. Thus, regulation of the behaviour of the individuals or his groups is the function of labour legislation as of any other legislation.

Labour law seeks to regulate the relations between an employer or a class of employers and their employees. The access of this law is the widest, in that it touches the lives of far more people, indeed millions of men and women as compared to any other branch of law and this is the aspect which makes it the most fascinating of all branches of law and the study of this aspect is of enormous dimension and of ever changing facets.

Over the yeras labour laws have undergone a change with regard to the object and scope. Early labour legislation were enacted to safeguard the interest of employers. It was governed by the doctrine of 'laissez faire'. Modern labour legislation on the other hand aims at protecting workers against exploitation by employers. In order to evaluate various labour legislation, it is necessary to know the Philosophy of Labour Laws.

4.2 Social Legislation and Labour Legislation:

Obviously, labour legislation is a form of social legislation but there are many points on which distinctions between the two can be made. Labour legislation regards the individual as a worker, whereas social legislation considers him primarily as a citizen.

In the realm of labour laws there has been in reality continuous legislation activity by the Supreme Court ever since the constitution was promulgated. The fundamental principle which was laid down by the Supreme Court in this respect was the principle of social justice Social justice connotes the balance of adjustments of the various interests concerned in the social and economic structure of society. It aims at promoting harmony in industrial relations upon an ethical and social basis, and its ultimate objective of peace in industry. In fact, the principles of labour law emerges from and based on the principle of social justice. Thus, social justice is an application in the field of labour laws of the basic principle of sociological jurisprudence of harmonising conflicting interests.

4.3 Concept and Origin of Labour Legislations :

Law is a dynamic concept. Life and laws have moved together in history and it must do in future. Law comes into existence to cater to the growing needs of society, which may be caused by technological, economic, political, social changes. The labour legislations are the products of Industrial Revolution and they have come into being to take care of the aberrations created by it. Society went for certain social devices to take care of the gaps, which are known as labour legislation. Labour legislation seeks to deal with problems arising out of occupational status of the individual. Consequently, such problems as hours of work, working conditions,

trade unions, industrial disputes etc., come to be the main subject of labour legislations.

Individuals have different roles to perform and different laws are designed for regulating the different roles. Under labour legislation, the individual is affected in the capacity of a worker or an employer. Therefore, the persons who are neither the employers nor the workers are least effected directly by labour legislation.

The origin of labour legislation is the history of continuous and relentless struggle between two unequals. The social scientists interpreted this struggle in different ways. Numerous forces directly and indirectly, influenced the passing of labour legislation.

The factors influencing labour legislations includes: early industrialism, growth of trade unionism, growth of political freedom and exercise of franchise, rise of socialist and other revolutionary ideas, growth of social welfare and social justice and the establishment of International Labour Organisation.

4.4 Labour Legislation in India :

In India, the labour policies and practices are influenced by a variety of considerations, based on social economic and political patterns that emerged at the time of independence. The labour policy of our country is influenced by Constitution of India, the instruments of ILO, the policies announced in successive five year plans and the report and recommendations of various major commissions like Royal Commission on Labour, the National Commission on Labour and Tripartite Committees like - Indian Labour Conference and Standing Labour Committee.

India has a law - heavy system in 67 central and 157 state legislations. Most of these laws are either outdated or irrelevant. We need an upto-date and simple labour law code. Attempts have been made in the past without much success. Labour laws reform are not easy. Some of the Acts have become irrelevant. Trade Union Act 1926, is an example. In Japan and Denmark, there is no trade union legislation but unionisation is very high. In many East Asian Countries, the right to form the trade union is limited to the private sector only.

In India the five year plans documents are only guidelines for action. Much therefore depends on the parties involved in the process, i.e., the government, the employers, the trade unions and the workers being involved with the recommendations in order to ensure their implementation. However, labour legislation being a concurrent subject, both the Central and States are involved and much therefore depends on the States and the rapport between the Central and States on these matters.

The setting up of the International Labour Organisation gave an impetus to the consideration of Welfare and working conditions of the working all over the world and also led to the growth of labour laws in all parts of the world including India.

4.5 Types of Labour Legislations :

The origin of labour legislation lies in the excesses of the early industrialism that followed Industrial

Revolution. The leaders of national movement had promised the establishment of a better and just social order after independence; which was ultimately embodies in the Fundamental Rights and Directive principles of State policy of the Indian Constitution.

On the basis of specific concrete objectives which it has sought to achieve, labour legislations can be classified under four heads: Regulative, Protective, Wage-related, Labour Welfare and Social Security, which are briefly presented below.

4.5.1 Regulative Labour Legislations:

The main objective of the regulative legislations is to regulate the relations between employees and employers and to provide for methods and manner of setting industrial disputes. Such laws also regulate the relationship between the workers and their trade unions, the rights and obligations of the organisations of employers and workers as well as their mutual relationships.

In India, the Trade Unions Act, 1926, the Industrial Disputes Act, 1947, Industrial Employment (Standing Orders) Act, 1946 and the Industrial Relations Legislations enacted by the States of Maharashtra, Gujarat, U.P. and Madhya Pradesh are the examples of regulative legislation.

4.5.2 Protective Labour Legislations :

Under this category come those legislations whose primary purpose is to protect labour standards and improve the working conditions. Laws laying down the minimum labour standards in the areas of hours of work, supply, employment of children and women etc. in the factories, mines, plantations, transport, shops and other establishments are included in this category. Some of the Acts falling under this category are:

K The Factories Act, 1948

K The Mines Act, 1952

K The Plantations Labour Act, 1951

K The Motor Transport Workers Act, 1961

K The Shops and Establishments Acts passed by various States

K The Beedi and Cigar Workers Act, 1966

4.5.3 Wage - Related Labour Legislations :

All the Acts laying down the methods and manner of Wage payment as well as the minimum wages come under this category. In India, the prominent legislations of this category are the following :

K The Payment of Wages Act, 1936

K The Minimum Wages Act, 1948

K The Payment of Bonus Act, 1965

K The Equal Remuneration Act, 1976

4.5.4 Labour Welfare Legislations :

Promoting the general welfare of the workers and improve their living conditions is the prime objective of the legislations coming under this category. Though, all labour laws aim at promoting and protecting the welfare of the workers and includes chapters on labour welfare, the Acts under this category have the specific aim of providing for the improvements in living conditions of workers. In India, they also carry the term "Welfare" in their titles. The significant Acts of this category are the following :

K The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.

K The Mica Mines Welfare Fund Act, 1946

K The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976.

K The Cine Workers Welfare Fund Act, 1981

K The Beedi Workers Welfare Fund Act, 1976

K Legislations on Welfare funds by some State Governments.

4.5.5 Social Security Labour Legislations :

This category of Labour Legislations covers those labour laws which intend to provide to the workmen social security benefit under certain contingencies of life and work. In India, the important laws falling under this category are :

K The Workmen's Compensation Act, 1923

K The Employees State Insurance Act, 1948

K The Coal Mines Provident Fund Act, 1948

K The Employees Provident Fund and Miscellaneous Provisions Act, 1952

K The Maternity Benefit Act, 1961

K Payment of Gratuity Act, 1972

4.5.6 Other kinds of Labour Laws :

In addition to the different types of labour legislation stated above, there are several other very important labour laws. Some of these are :

- The contract Labour (Regulation & Abolition) Act, 1970
- Child Labour (Prohibition and Regulation) Act, 1986
- Buildings and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- Apprentices Act, 1961
- Emigration Act, 1983
- Employment Exchange (Compulsory Notification of Vacancies Act, 1959
- Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- Working Journalists and other Newspaper Employees (Condition of Service and Miscellaneous Provision) Act, 1955
- The Industrial Disputes Act, 1947
- The Sales Promotion Employees (Conditions of Service) Act, 1976
- The Motor Transport Workers Act, 1961

The evolution of labour jurisprudence is the culmination of the incessant struggle waged by the Workers' all over the world for just and better conditions of work as well as security of their job. The Oxford Dictionary defines jurisprudence as the science or philosophy of human law. Jurisprudence is one of the social sciences.

An important feature of almost all labour laws is the existence of employer - employee nexus. Besides, each labour law has its provisions in terms of coverage, based mainly on the number of employees, salary levels and so on.

4.6 Objectives of Labour Legislation :

Labour Legislation has great impact on the industrial relations system. Labour Legislation had been instrumental in shaping the course of industrial relations in India. Establishment of social justice has been the principle which has guided the origin and development of labour legislation in India.

The objectives of labour legislation are to:

1) protect workers from exploitation

2) strengthen industrial relations

3) provide machinery for setting industrial disputes and welfare of workers.

4) establishment of justice - social, political and economic

5) provision of opportunities to all workers, irrespective of caste, creed, religion, beliefs, for the development of their personality

6) creation of conditions for economic growth

7) protection and improvement of labour standards

8) guarantee right of workmen to combine and form association or unions

9) make state interfere as protector of social well being than to remain an onlooker

10) ensure human rights and human dignity.

Thus, proper regulation of employee - employer relationship is a prerequisite for planned, progressive and purposeful development of any society. The objectives of labour legislation is a developing concept and require ceaseless efforts to achieve them on continuous basis.

4.7 International Labour Organisation (ILO) and Indian Labour Legislation :

The setting up of the International Labour Organisation gave an impetus to the consideration of Welfare and Working conditions of the workers all over the world, including India. The ILO, one of the principal international organisations established under the treaty of Versailles was created in 1919. Since then, it has been working for the establishment of universal peace through social justice. India was one of the founder members of ILO. The ILO has been attempting to promote world-wide respect for the freedom and dignity of the working men and to create the conditions in which that freedom and dignity can be more fully and effectively enjoyed.

In April 1944, a conference was convened at Philadelphia, during the Second World War. As a result of the deliberations, the aims of the ILOs were redefined. The conference reaffirmed the principles of ILO, namely :

i) Labour is not a commodity

ii) freedom of expression and of association are essential to sustained progress

iii) poverty anywhere constitutes a danger to prosperity everywhere

iv) the war against want requires to be carried on within each nation, and by continuous and concerted international effort in which the representatives of workers and employers enjoying equal status with those of government join with them in free discussion and democratic decision with a view to the promotion of common welfare.

The ILO is organised around 3 sub-systems: 1) An International Labour Conference (ILC), 2) A Governing Body and 3) An International Labour Office. The Conference is the supreme policy making and legislative body. The Governing body is the executive council and the International Labour Office is the Secretariat, Operational head quarters and information centre.

The ILO standards are analogous to treaties requiring ratification by a competent national authority within a period of one year to 18 months at the latest from the closing session of I.L.C.

In India, the treaty making power is within the competence of the Government of India. The Tripartite Committee, set up to draw the programme of ratification of the ILO conventions, makes a detailed survey. It is on the recommendation of this Committee that India ratifies conventions. In case where the committee does not recommend ratification of a particular instrument, it focuses the reasons for such actions.

International Labour Standards and Indian Labour Legislations :

The influence of International Labour Conventions and Recommendations on Legislations in India is direct in some cases while in others the relationship is not so obvious. The ILO's Conventions and Recommendations have had influence on 1) Factories and Mines Legislations, 2) Wage Legislations, 3) Social Security.

Thus, the ILO Standards have influenced Indian Labour Legislation, directly and indirectly. In fact, the blue print of our labour policy is based on ILO's Standards. The influence of ILO can be seen in our Directive Principles of State Policy (Articles 39, 41, 42, 43, 43A) which lay down policy objectives in field of labour. The Indian Labour Conference and Standing Labour Committee resemble the two main structures of ILO.

4.8 Indian Constitution and Labour Legislation :

India adopted a Constitution on 26th April, 1949. Indian constitution is an unique basic national document. Besides providing basic principles of governance, it presents the aspirations of the weaker sections of Society, specially the working classes. It has to be noted that national freedom struggle and struggle of working class coincided and our leaders fought for both the betterment of worker's lots and India's freedom. Constitution is the supreme law of a nation and all legislations draw their inspiration from it. The constitution assures its citizens to provide "Socialistic pattern of Society" and create "Welfare State" and all legislations, specially the Labour legislations, are deeply influenced by them.

The influence of Indian constitution on Labour legislations is mainly stem from preamble, fundamental rights, directive principles of state policy and judicial wisdom of the courts.

The Constitution of India has gone out of way to protect rights and privileges of workers, ensuring a decent and dignified life. But a lot is required to be done for the workers of unorganised sector - bounded labour, child labour, women workers, and agricultural labour.

4.9 Issues and Trends in Modern Labour Legislation :

Labour policy means setting trends, evolving course of actions, following principles and practices to govern labour matters. The labour policy and the role of state in a democratic country will be different from that with different philosophy for the governance of the people. Labour policies are also influenced by the stages of development of an economy and industrialisation strategies. In India, the labour policies and practices are influenced by a variety of considerations based on social, economic and political patterns that emerged at the time of independence.

There is complete change in economic environment, therefore, there is a need for paradigm shift in labour policy : Paradigm shift in fundamentals, Align Labour policy with Economic policy, go for immediate labour law reform and competitive labour policies in State.

Labour Law Reform :

Labour legislation in India has a history of over 125 years. The labour laws regulate not only the conditions of work of industrial establishments, but also industrial relations, payment of wages, trade unions. In addition, they provide social security measures for workers.

India has a heavy system in central and state legislations. Most of these laws are either outdated or irrelevant. We need an upto-date and simple labour law code. Labour law reforms are not easy. Some of the Acts have become irrelevant, for example Trade Union Act, 1926. In order to avoid confusion, it is better to have one labour code in place of many labour laws. Get over the confusion over some basic concept by eliminating multiple definitions in different legislation. Thus efficient use of labour is an important factor in market economy today and that is possible only through dynamic, pragmatic and broader labour policy.

4.10 Summary :

The labour laws have received new dimensions with the advent of the doctrine of welfare state. Labour laws should be instruments to facilitate strategic IR and HRD system and practices. The evolution of labour jurisprudence is the culmination of the incessant struggle waged by the workers' all over the world for just and better conditions of work as well as security of their job. The blue print of Indian Labour Policy is based on ILO's standards. In India, even after six decades of Independence, labourers are exploited, despite best intentions of the Constitution. Since we have already undertaken reforms in most of other areas of economy, the reform and progressive policies in labour area is overdue to make our economy really competitive.

4.11 Key terms :

Labour Law : seeks to regulate the relations between an employer or a class of employers and their employers.

ILO : the international Labour Organisation established under the treaty of Versailles was created in 1919 has been working ceaselessly for the establishment of universal peace through social justice.

Industrial Relations : means relationship that emerges out of day-to-day working and association of labour and management.

Labour Welfare : is the process of making a worker to fit in economic and social conditions within and outside the industry.

Legislation : refers to the declaration of principles of law by an authority competent to do so.

4.12 Model questions

1. Explain the role and relevance of Labour Legislation.
2. What are the constitutional limitations on labour laws ?
3. Explain the influence of ILO on Labour Legislation.
4. What are the objectives of Labour Legislation ?
5. Explain in brief the various types of Labour Legislation.

4.13 Reference Books

1.	P.R.N. Sinha, Indu Bala Sinha Seema Priyadarshini Shekhar	-	Industrial Relations Trade Unions and Labour Legislation
2.	Arun Monappa	-	Industrial Relations
3.	IGNOU	-	MS-28 Labour Laws
4.	A.M. Sharma	-	Industrial Jurisprudence and Labour Legislation
5.	I.A. Saiyed	-	Labour Law
6.	Monal Arora	-	Industrial Relations
7.	S.C. Srivastava	-	Industrial Relations and Labour Laws

UNIT IV Lesson - 3

LEGISLATION PRECEDING INDUSTRIAL DISPUTES ACT, 1947

ENACTMENT OF INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives:

After studying this lesson, you should be able to understand the :

K legislation preceding the Industrial Disputes;

K concepts, scope and coverage of industrial disputes;

K measures for the settlement of disputes under the Industrial Disputes Act, 1947;

K effectiveness of the machinery for the settlement of disputes;

Content Structure :

3.1 Introduction :

'Industrial relations' pose one of the most delicate and complex problems to modern industrial society. Employees have achieved a higher standard of living, acquired education, sophistication and greater mobility

with growing prosperity and rising wages. The two important aspects of the industrial relations scene in a modern industrial society are: i) co-operation and ii) conflict. Conflict is inherent in the industrial relations set up of today. It becomes apparent when industrial disputes resulting in strikes and lockouts become frequent. Thus the main objective of industrial relations is to avoid industrial conflict and develop harmonious relations which are essential factors in the productivity of workers and the industrial progress of a country.

3.2 LEGISLATION PRECEDING INDUSTRIAL DISPUTES ACT, 1947 :

In India the history of industrial disputes legislation is not very old. In the year 1920, The Trade Disputes Act was passed for the first time. After the end of the First World War, there was a great outbreak of industrial unrest, which led to the passing of the Trade Disputes Act by the Government of India in the year 1929. Whenever the government requires to intervene in industrial disputes, the provisions of this Act could be used to exercise its powers. It contained special provisions regarding strikes in public utility services and general strikes effecting the community as a whole. The Act made provision for only adhoc conciliation Board and courts of Inquiry. This Act was amended in the year 1938, authorising the central and provincial Governments to appoint conciliation officers who would mediate in or promote the settlement of industrial disputes.

Shortly thereafter, it became necessary for Government of India to promulgate Defence of India Rule to meet the exigency created by the World War II.

Rule 81-A of the Defence of India Rules gave powers to the appropriate government to intervene in industrial disputes and provide speedy remedy for industrial disputes by referring that compulsorily to conciliation or for adjudication. The award passed upon such a reference was made legally binding on the parties. The strikes and lockouts were prohibited during the pendency of conciliation or adjudication proceedings.

At last, the Industrial Disputes Bill was introduced in the Central Legislative Assembly on 08.10.1946. The Bill embodies the essential principles of Rule 81-A of Defence of India Rules and also certain provisions of the Trade Disputes Act, 1929.

3.3 INDUSTRIAL DISPUTES ACT, 1947 :

The Industrial Disputes Bill, introduced in the Central Legislative Assembly on 8th October 1946 was passed by the Assembly in March 1947 and became law with effect from 1st April, 1947. This Act, as amended from time to time, is the sheet-anchor of industrial adjudication in our country. The Act contains 9 Chapters with 40 sections. It has undergone so far 34 major and minor amendments by parliament.

This legislation is designed to ensure industrial peace by recourse to a given form of procedure and machinery for investigation and settlement of industrial disputes. State Governments are free to have their own labour laws. U.P. Legislation is known as U.P. Industrial Disputes Act, while others have Industrial Relations Act more or less on the lines of Bombay Industrial Relations Act, 1946.

3.3.1 Objectives, Scope and Coverage of the Act :

Object : The main objective of the Industrial Disputes Act, 1947 is to provide for a just and equitable settlement of disputes by negotiations, conciliation, dedication, voluntary arbitration and adjudication instead of by trial of strength through strikes and lockouts.

The preamble of the Act reads : "An Act to make provision for the investigation and settlement of industrial disputes and for certain other purposes".

Based on the judgements given by the Supreme Court of India from time to time, the principal objectives of the Act may be stated as follows:

a) promotion of measures for securing harmony and good relations between employer and workmen.

b) Investigation and settlement of Industrial disputes.

c) prevention of illegal strikes and lock-outs.

d) Relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking.

e) promotion of Collective Bargaining

f) to protect workmen against victimisation by the employer and to ensure termination of industrial disputes in a peaceful manner.

Scope and Coverage : The Industrial Disputes Act, 1947, extends to the whole of India, and is applicable to all Industrial establishments employing one or more workmen. It covers all employees both technical and non-technical, and also supervisors drawing salaries and wages upto Rs.1,600 per month. It excludes persons employed in managerial and administrative capacities and workmen subject to Army Act, Navy Act, Air Force Act and those engaged in policy and civil services of the Government.

As regards disputes, the Act covers only collective disputes or disputes supported by trade unions or by substantial number of workers and also individual disputes relating to termination of service.

3.3.2 Definitions :

Some of the important definitions under the Industrial Disputes Act, 1947 are as follows.

Industrial Dispute (Section 2k) : Any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or the terms of employment or with the conditions of labour, of any person.

Workman (Section 2(s)) : "Workman" means any person, including an apprentice employed in any industry to do any skilled, unskilled, manual, supervisory, operations, technical or clerical work for hire or reward,

whether the terms of employment be expressed or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or retrenchment has led to that dispute, but does not include any person :

i) who is subject to Air Force Act, Army Act or Navy Act;

ii) who is employed in the police service or as an officer or other employee of prison;

iii) who is employed mainly in managerial or administrative capacity;

iv) who being employed in a supervisory capacity, draws wages exceeding Rs.1,600/- and exercises by the nature of the duties attached to the office or by means of powers vested in him, functions mainly of a managerial nature.

Employer (Section 2(g)) : The term employer means

i) In relation to an industry carried on by or under the authority of any department of the Central or State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department.

ii) In relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of that authority.

Industry (Section 2(j)) : It means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

Appropriate Government (Section 2(a)): (a) In relation to any industrial disputes concerning any industry carried on by or under the authority of Central Government or by a Railway or concerning any such controlled industry such as may be specified or specified or linking or insurance company or oil field or major part the Central Government, and (b) In relation to other industrial disputes the State Government.

Award (Section 2(b)) : It means an interim or a final determination of any industrial dispute or of any question relating there to by any Labour Court, Industrial Tribunal, or National Industrial Tribunal and includes an arbitration award made under Section 10-A.

3.3.3 Measures for prevention of Industrial Disputes :

Prevention is always better than cure. Prevention of industrial disputes is, no doubt, more desirable than their settlement. However, it would not be wise to exclusively rely on prevention of disputes and ignore the question of their settlement. In a way the State is responsible for creating conditions in which the parties could be brought together to discuss and settle their problems in a spirit of co-operation and good will.

The Industrial Disputes Act, 1947 not only provides machinery for investigation and settlement of disputes, but also some measure for the prevention of conflicts and disputes. Important preventive measures provided under the Act are stated below.

1) Strong Trade Unions and Collective Agreements :

Trade Unions are playing a key role in bringing about relations between the workers and employers. Trade unions can have direct negotiations with employers and can remove one of the causes of disputes. An employer should find in a union the heart of the workers and once the heart is satisfied the employer can content that his employees have no ground to bridge. In India, as we have seen, the trade union movement suffers from some serious defects, and the removal of those defect, then only it will be a very effective preventive method of checking industrial disputes in the country.

2) Works Committees :

Setting up of Works Committees in establishments employing 100 or more persons, with equal number of representatives of workers and management to sort out the differences of opinion in matters of common interest, and thereby promote cordial relations between the employer and workmen.

3) Prohibition of changes in the conditions of service in respect of matters laid down in the Fourth Schedule of the Act.

4) Prohibition of strikes and lock-outs in a public utility service (a) without giving notice to other party within six weeks before striking or locking out, (b) within 14 days of giving such notice, (c) before the expiry of the date of strike or lock-out specified in the notice.

5) Prohibition of unfair Labour Practices (Section 25 T and 25 U).

6) Requiring employers to obtain prior permission of the authorities concerned before whom disputes are pending for conciliation, arbitration and adjudication.

7) Regulation of lay-off and retrenchment and closure of establishment.

Thus the preventive process of industrial dispute would also include the activities of institution of labour welfare officer, tripartite bodies, standing orders and grievance procedure, ethical codes and workers' participation in management.

3.3.4 Machineries for Settlement of Disputes :

As mentioned earlier, dispute in an industrial situation arises due to many reasons. However, the pattern of dispute lead by various factors like - the organisation of unions, technology, maturity of parties, equality of partners and wage rates.

The Industrial Disputes which are not prevented or settled by, the following settlement measures are

provided under the Industrial Disputes Act for resolving the same.

1) Conciliation :

Conciliation in industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person or a body of persons with a view to induce or persuade them to arrive at some agreement to their satisfaction. In the field of industrial relations, conciliation has been most frequently used for settling disputes.

The Central and State Governments are empowered under the Industrial Disputes Act, 1947 to appoint such number of conciliation officers as may be considered necessary for specified areas or for specified industries either permanently or for limited periods. The main duty of the conciliation officer is to investigate and promote settlement of disputes.

Conciliation Process :

The conciliation officer, in this process listens to the case of both the parties, either jointly or singly and proposes a compromise or a solution to the problem, which may or may not be acceptable to the parties. It is essentially a process of trying to bring the two parties together, without an imposition of the conciliation officer's decision.

Conciliation proceedings are to be conducted expeditiously in a manner considered fit by the conciliation officer for the discharge of his duties imposed on him by the Act. If a settlement is arrived at in the course of the conciliation proceedings, memorandum of settlement is worked out and signed by the parties concerned, and it becomes then binding on all parties concerned for a period agreed upon.

The conciliation officer is to send a report to the Government giving full facts along with a copy of the settlement. If no agreement is arrived at, the conciliation officer is required to submit a full report to the Government explaining the causes of failure.

a) Powers of Conciliation Officer :

The conciliation officer is not a judicial officer. Under the Act, conciliation is not a judicial activity. It is only administrative, since it is executed by the Government agency. He can also interrogate any person there in respect of anything situated therein or any matter relevant to the subject matter of conciliation. The conciliation officer shall have the same power as are vested in a civil court under the code of civil procedure. He is also deemed to be public servant within the meaning of Section 21 of the IPC.

b) Board of Conciliation :

This is a higher forum constituted as an adhoc body by the appropriate government for a specific dispute. The government may, an occasion arises, constitute a Board of Conciliation for settlement of an industrial dispute with an independent chairman and equal representatives of the parties concerned as its members. As soon as a dispute is referred to a Board, it has to endeavour to bring about a settlement of the same. Procedure followed by the Board in this regard is almost the same as adopted by the conciliation

officers. The Board cannot admit a dispute in conciliation on its own. It can act only when reference is made to it by the government.

The Board has to submit a copy of the settlement to the government if the settlement is arrived. After considering its findings the government may refer the dispute for voluntary arbitration if both the parties to the dispute agree for the same, or for adjudication to Labour Court or Industrial Tribunal or National Tribunal.

In the present day context, the Boards of conciliation are rarely appointed by the government. It was found that when the parties to the dispute could not come to an agreement between themselves, their representatives on the Board in association with independent chairman could rarely arrive at a settlement. The much more flexible procedure followed by the conciliation officer is found to be more acceptable. The Chief Labour Commissioner (Central) or Labour Commissioner of the State Government generally intervene themselves in conciliation when important issues form the subject matters of the dispute.

2) Court of Enquiry :

A court of enquiry is another authority set up by the Government under Industrial Disputes Act, for enquiring into any matter connected with a dispute. It is meant for voluntary settlement of disputes. The Court of Enquiry is not required to make any recommendation for resolving disputes. It has no power to impose any settlement upon the parties. It is merely a fact-finding machinery.

3) Voluntary Arbitration :

Arbitration is an age old practice in India for settlement of differences or conflicts between two parties. It is a process in which a dispute is submitted to an impartial outsider who makes a decision which is usually binding on both parties. When conciliation officer or Board of conciliation fail to resolve dispute, parties can be advised to agree to voluntary arbitration for settling their dispute. The Government of India has been emphasising the importance of voluntary arbitration for settlement of disputes in the labour policy. Parties were enjoined to adopt voluntary arbitration without any reservation. In 1956 the Government decided to place voluntary arbitration as one of the measures for settlement of a dispute through third party intervention under the law. Section 10A was added to the Industrial Disputes Act, and it was enforced from 10th March, 1957.

Reference of Dispute :

If any dispute exists or is apprehended, it may be referred for arbitration any time before the dispute sent for adjudication under the provisions of the ID Act, 1947. Parties must represent the majority of their respective sides, otherwise the Government can reject the request for arbitration.

The appropriate government shall within one month from the date of the receipt of the copy of the arbitration agreement publish the same in the Official Gazette. The arbitrator shall investigate the dispute and submit to the government the Arbitration Award signed by him.

Acceptance of Arbitration :

The arbitration award which is submitted to the government and becomes enforceable, is binding on all the parties to the agreement. Arbitration Award is enforceable in the same manner as the adjudication award of Labour Court or Industrial Tribunal. Arbitration is an alternative to adjudication and the two cannot be used simultaneously. There must be no violation of the principles of natural justice.

Although the Government has been pressing for arbitration, experience shows that, not even 2% of the disputes were referred. The practical hurdles may be : (a) Choice of suitable arbitrator acceptable to both parties and (b) Payment of arbitration fees. The arbitrator can give a decision more promptly and enjoys greater freedom since he is not bound by letters of law and procedure. The sanctity of the decision by an arbitrator is also held in doubt. Arbitration if accepted voluntarily and not under any pressure, should solve the problems in this regard.

In order to encourage this process for solving industrial disputes, the Government of India has set up National Arbitration Promotion Boards in all the States.

4) Adjudication :

Adjudication is compulsory method of resolving the industrial dispute. If a dispute is not settled by any other method (such as conciliation and arbitration) the government may refer it for adjudication. It is a process of dispute settlement wherein the government submits the case to a competent authority and enforces its award on the parties. The Industrial Disputes Act provides the machinery for adjudication, namely, Labour Courts, Industrial Tribunals and national Tribunals. The Labour Courts and Industrial Tribunals can be constituted by both Central and State Governments, but the National Tribunals can be constituted by the Central Government only. The procedure of adjudication involves : compulsory attendance of witnesses, compulsory powers of investigation, enforcement of awards with penalties for breaches of these awards.

Labour Courts (Section 7):

The appropriate government may constitute one or more labour courts to adjudicate industrial disputes relating to any matter specified in the Second Schedule of the Act (Appendix - III). It consists of one person only, who is also called the Presiding Officer, and who is or has been a judge of a High Court / District Judge / Additional District Judge for a period not less than three years. The Industrial Disputes relating to any of the following matters are referred to the 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 orders;

3) Discharge or dismissal of workmen including reinstatement of, or grant of relief to workmen wrongfully dismissed;

4) Withdrawal of any customary concession of privilege;

5) Illegality or otherwise of a strike or lock-out;

6) All matters other than those specified in the third schedule.

Industrial Tribunals (Section 7A) :

This is also one-man body (Presiding Officer). The Third Schedule of the Act mentions matters of industrial disputes which can be referred to it for adjudication. Industrial Tribunal has wider jurisdiction than the Labour Court. The Government concerned may appoint two assessors to advise the Presiding Officer in the proceedings. Matters within the jurisdiction of Industrial Tribunals are given below.

1) Wages, including the period and mode of payment;

2) Compensatory and other allowances;

3) Hours of work and rest intervals;

4) Bonus, profit sharing, provident fund and gratuity;

5) Leave with wages and holidays;

6) Shift working otherwise than in accordance with standing orders;

7) Classification by grades;

8) Rules of discipline;

9) Rationalisation;

10) Retrenchment of workmen and closure of establishment; and

11) Any other matter that may be prescribed.

National Tribunals (Section 7B) :

The Central Government may by notification in the Official Gazette, constitute one or more national industrial tribunals for the application of industrial tribunals for the adjudication of the industrial disputes. It can deal with any dispute mentioned in Schedule II and III of the Act or any matter which is not specified therein. This also consists of one person to be appointed by the Central Government, and he must have been a Judge of a High Court. He may also be assisted by two assessors appointed by the Government to advise him in adjudicating disputes.

Effectiveness of Adjudication Machinery :

In the beginning trade unions affiliated to all political parties were enthusiastic in getting their disputes settled by conciliation and adjudication. Trade Unions now prefer to get disputes settled by bargaining rather than adjudication. Disputes are reported to be pending with Labour Courts and Industrial Tribunals for four or five years, and for still loner periods in High Courts and the Supreme Court. It appears that the machinery provided by the Industrial Disputes Act is failing to cope with demand made on it. This may be due to red-tapism and bureaucratic delays and complicated procedure which are inherent in the Government organisation. These delays make the parties concerned impatient and they often resort to other measures to resolve their conflict. Inspite of the legal framework and increasing intervention by the Government in the field of industrial relations, still we need arrangements for settlement of industrial disputes.

3.3.5 Strikes and Lockouts :

In early days of industrialisation strikes and lockouts used to effect the efforts for peaceful industrial relations.

Strikes (Section 2(q)): Strike means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.

Lockouts (Section 2(i)) : Lockout means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

Strikes and Lockouts are prohibited in any establishment (a) during the tendency of conciliation proceedings, (b) during the pendency of proceeding before an arbitrator, a Labour Court, Tribunal and National Tribunal, (c) during the period in which a settlement or award is in operation in respect of any of the matters covered by the settlement of award.

In a public utility service strikes and lock-outs are prohibited (a) without giving notice in the prescribed manner to the other party within six weeks before striking or lock-out; (b) within 14 days of giving such notice, (c) before the expiry of the date of strike or lock-out specified in the notice, and (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

3.3.6 Lay-Off and Retrenchment :

Section 2(kk) of the Act defines lay-off as "the failure, refusal or inability of an employer on account of shortage of coal and power or raw material or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his establishment and who has not been retrenched".

Whenever a workman is laid-off, he shall be entitled to lay-off compensation. A workman is entitled for compensation for all the days of lay-off unless there is an agreement to the contrary between him and the employer to limit it to 45 days and is retrenched.

Section 2(oo) defines retrenchment as "the termination of the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action".

All retrenchment will result in termination of service but all termination of service will not amount to retrenchment. No workman, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until : (i) The workman has been given three months' notice in writing, (ii) The workman has been paid, compensation which shall be equivalent to 15 days' average pay for every completed year and (iii) Notice in the prescribed manner is served on the appropriate government.

Ordinarily retrenchment is to be carried out on the principle of "last come first goes" unless, for the reason to be recorded in writing, employer retrenches otherwise.

3.4 Summary :

The Industrial Disputes Act is a restrictive as well as a beneficial and protective legislation. Primary cause for disputes are union, technology, maturity and equality of partners and wage rates. Industrial Disputes Act 1947, provides for settlement of disputes. The important beneficial provisions of the Industrial Disputes Act are those relating to the payment of lay-off and retrenchment compensation.

Inspite of the legal framework and increasing intervention by the Government in the field of industrial relations, we still find that the machinery is not able to cope with the demands made on it. Its record proves it to be far from successful in effective conflict resolution. The Government has to lay more stress on the settlement machinery and try to make it more effective. Employers and employees have to understand the necessity of working together.

The Industrial Disputes Act has been amended many times and the recent Industrial Disputes (Amendment) Bill, 1982 is significant as far as resolution of industrial conflict is concerned. Increasing population and unemployment, an unstable political situation, growing alertness among the unorganised sectors who are beginning to be aware of their rights, etc., are the challenges faced by industries, which make the achievement of the objective of industrial harmony all the more difficult.

3.5 Key terms :

Conciliation : The practice by which the services of a neutral third party are used in a dispute.

Arbitration : Arbitration is one of the means of the securing an award on a conflict issue by reference to a third party.

Industrial Tribunal : An adjudication body which deals with matters specified in Third Schedule of the ID Act.

Strike : Means a cessation of work by a body of persons employed in any industry acting in combination.

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.

3.6 Model questions

1. What is the object of the Industrial Disputes Act, 1947 ?
2. What are the various measures for the prevention of industrial disputes ?
3. Outline the machinery for settlement of industrial disputes.
4. Arbitration and adjudication are almost similar with a vast difference. Comment.
5. Industrial Disputes Act, 1947, plays an important role in settling of disputes. Discuss.

3.7 Reference Books

PRM Sinha, Indu Bala Sinha, Seema Priyadarshini Shekhar	-	Industrial Relations, Trade Unions and Labour Legislation
A.M. Sharma	-	Industrial Jurisprudence and Labour Legislation
Monal Arora	-	Industrial Relations
IGNOU	-	MS-28 - Labour Laws
S.C. Srivastava	-	Industrial Relations and Labour Laws

UNIT V Lesson - 4

EVOLUTION AND GROWTH OR SOCIAL SECURITY LEGISLATION IN INDIA - WORKMEN'S COMPENSATION LEGISLATION IN INDIA (MAIN PROVISIONS)

Learning Objectives:

After studying this lesson, you should be able to understand the :

K historical evolution of social security legislation in India;

K main provisions of workmen compensation legislation in India;

K problems associated with the administration of social security schemes;

Content Structure :

4.1 Introduction :

Social security is an important part of labour welfare providing the security which is of great importance to the workers. Labour welfare is an important facet of industrial relations, which has acquired importance with the growth of industrialisation and each employer depending on his priorities gives varying degrees of importance to labour welfare and social security. The committee on Labour Welfare (CLW), formed in 1969 to review the labour welfare scheme, described it as a social security measure that contribute to improve the conditions under which workers are employed in India. The Government has introduced statutory legislation from time to time to bring about some measure of uniformity regarding the implementation of labour welfare and social security measures.

4.2 EVOLUTION AND GROWTH OF SOCIAL SECURITY IN INDIA:

The development of social security systems traced form the enactment in 1883 of the first social insurance law in Germany under Bismark. The modern concept of industrialisation has been the result of industrialisation. In the Industrialised countries, social security was first introduced in the form of social insurance. Its application was limited to certain occupational groups and in course of time its coverage was extended to all or more occupational groups.

4.2.1 ILO and Social Security :

The term social security came into general use after 1935, the year the US passed the social security Act introducing the old age pension system. It gradually referred to similar schemes in other countries. The formation of ILO in 1919 to promote social justice through: (1) international standards; (2) providing information; (3) technical assistance and guidance; and (4) co-operation with other international organisations, provided the direction and impetus needed by most countries. Twenty-nine conventions and 27 resolutions passed by ILO refer to social security. ILO objective in passing resolution was to set minimum standards. India was a founder member of the ILO.

The Social Security (Minimum Standards) Convention (No.102), which was adopted by the International Labour Conference on 28th June, 1952, defines the nine branches of social security benefit.

These are:

1. Medical Care
2. Sickness benefit
3. Unemployment benefit
5. Employment injury benefit
6. Family benefit
7. Maternity benefit
8. Invalidity benefit
9. Survivors benefit

All but the first of these benefits are paid in cash, but two of them - employment injury and maternity - also include an element of medical care; family benefit may comprise of variety of components.

4.2.2 Social Security in India :

The evolution of social security measures in India has been rather slow, and on a more or less selective basis. In our country social security programmes have been in existence since times immemorial. Joint families, gram panchayats, community development centres and charitable trusts have contributed to provide assistance to the needy for various risks and contingencies. In those days, the main objective was collective security of life and property, freedom from misery, and security against common risks. The modern concept and organised social security measures in statutory form are only of recent origin. The Indian Constitution guarantees social security as follows:

The State shall, in particular, direct its policy towards securing:

a) right to an adequate means of livelihood (Article 39(a));

b) the State shall within the limits of its economic capacity and development, old-age, sickness, disablement and other cases of undeserved want (Article 41);

c) the State shall endeavour to secure to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life (Article 43).

4.2.3 Social Security Legislation in India :

In India, various factors contributed to the evolution of social security legislation. The growth of industrialisation, exodus to the cities, disintegration of joint family system etc., have lead to the disappearance

of resources on the part of individuals to cope with the unexpected risks. During the Fourth Five Year Plan a variety of social security measures, among them the employees' family pension scheme, legislation requiring the payment of gratuity at the time of retirement and finally extension of the ESI scheme to insured persons' families. The Fifth and Sixth plans continued to expand the social security benefits, including expansion of the ESI scheme.

Social security legislation in India in the industrial sector consists of the enactments: (1) The workmen's Compensation Act, 1923; (2) The Employees State Insurance Act, 1948; (3) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; (4) The Maternity Benefit Act, 1961; and (5) The Payment of Gratuity Act, 1970.

The Workmen's Compensation Act is being administered by the State Governments / Union Territory Administrations. The Employees' Provident Funds and Miscellaneous Provisions Act is administered by the Government of India through the Employees' Provident Fund Organisation. In the administration of the ESI Act, the Central Government and State Governments share the responsibility. Cash benefits under the ESI Act are administered by the Central Government through the Employees' State Insurance Corporation (ESIC). The Payment of Gratuity Act is being administered by the Central Government in establishments under its control, and also establishments having branches in more than one state - major ports, mines, oil fields and the railways; and by the respective State Governments and Union Territory Administration in all other cases. The Maternity Benefit Act are administered by the Central Government in mines and circus industry and by the State Governments in factories, plantations and other establishments. In our country the passing of Workmen's Compensation Act marks the beginning of institutionalised form of social security.

4.2.4 Concept and Meaning of Social Security :

Social security is a dynamic concept, which has been considered most essential for the industrial workers and with the development of the idea of welfare state, its scope now includes all sections of society. As the State exists for the general well-being of people, it is a proper function of the State to promote social security.

Social security is the security that society furnishes, through appropriate organisation, against certain risks to which its members are exposed. These risks are essentially contingencies against which the individuals of small means, or the worker, cannot effectively provide for by his own ability or fore-sight alone or even in private combination with his fellows.

Social Security and Social Insurance :

Social security is a very comprehensive term and includes in it, schemes of social insurance and social assistance as well as some schemes of commercial insurance. Social insurance forms the most important part of any social security scheme.

Social insurance is one of the devices to prevent an individual from failing to the departments of poverty and misery and to help him in times of emergencies. Insurance involves the setting aside of sums of money in

order to provide compensation against loss, resulting from particular emergencies. The elimination of the risk of the individual is the basic idea of insurance. Social insurance can be defined as "a co-operative device, which aims at granting adequate benefits to the insured on the compulsory basis, in times of unemployment, sickness and other emergencies, with a view to ensure a minimum standard of living, out of a fund created from the tripartite contributions of the workers, employers and the State and without any means test, and as a matter of right of the insured".

Social insurance is also somewhat different from social assistance and public assistance. Social assistance scheme is a device according to which benefits are given as a legal right to workers, fulfilling prescribed conditions, by the State out of its own resources. Public assistance is based on need and implies the acceptance of responsibility by the State to provide a minimum standard of living to all its citizens.

4.2.5 Social Security enactments :

In India, the significant enactments with regard to the provision of social security are the following :

1) Workmen's Compensation Act, 1923 :

This Act was passed in the year 1923 to provide employment injury compensation to industrial workers. The compensation is related to the extent of the injury or death, but the employer is not responsible if a workman sustains his injuries under the influence of drugs, drinks etc. It is administered by a Commissioner, appointed by the government.

2) The Employees State Insurance Act, 1948 :

Under the scheme medical facilities and unemployment insurance are provided during illness to industrial workers. The Scheme is administered by the ESI Corporation, an autonomous body consisting of representatives of the Central and State Governments, employers, employees, medical professionals and also members of parliament. The scheme operates on a contributory basis and it offers five major benefits - medical, sickness, maternity, disablement and dependent's benefits.

3) Employees Provident Fund Act, 1952 :

The EPF scheme framed under the Act is administered by a tripartite central board, consisting of representatives of employers, employees, Central and State Governments. The PF is refunded with interest in the event of death, permanent disablement, superannuation, retrenchment, migration or on leaving service. All PF accumulations are invested in government and other guaranteed securities, according to the pattern specified by the Central Government.

4) Maternity Benefit Act, 1961 :

The general maternity benefit Act, 1961 applies to women in factories, mines and other establishments. It does not apply to those covered by the ESI scheme. It is administered by the Factories Inspectorates of State Governments in respect of factories, the Welfare Commissioner in coal mines and the Director General

(Safety) in other mines.

5) Payment of Gratuity Act, 1972 :

The Payment of Gratuity Act, 1972 applies to all factories, mines, oilfields, plantations, ports, railways, shops and such other establishments as specified by a Central Government notification. The Act provides that for every year's continuance in service, an employee should get 15 days wages and the total gratuity payable shall not be more than 20 months wages. Gratuity is payable on termination of employment after rendering continuous service for at least 5 years unless termination is because of death or disablement.

4.2.6 Integrated Social Security Scheme :

In India, the size of the country has presented its own problems, especially in the administration of social security schemes. The National Commission on Labour felt that it "should be possible over the next few years to evolve an integrated social security scheme which will, with some marginal addition to the current rate of contribution, take care of certain risks not covered at present. This will be limited to the benefits of: (i) PF and retirement / family pension; and (ii) unemployment insurance. They also suggested the pooling of social security collections in a single fund, for different agencies to draw upon, and disburse for various benefits according to their needs".

The government appointed a one-man commission and asked N.N. Chatterjee to draw up a blueprint for the enactment of common code of social security. He drafted a five-year plan for step-by-step integration of the ESI and EPF schemes including those of plantations and mines, and a comprehensive piece of legislation for all social security schemes. He felt that unemployment insurance at this stage of economic development could only be introduced as a pilot project in some selected industries. These recommendations are still under consideration. India is still climbing the hill in the field of economic development. Employers today are by and large sympathetic to their workers' needs and make the necessary effort to provide welfare amenities.

Social security schemes are hardly subsidised by the government except in the case of their own employees, and a small contribution to the ESI Scheme. However, given the situation and the amenities available to the average citizen in India, the industrial worker has been given a better deal.

4.3 Workmen Compensation Legislation in India (Main Provisions) :

Although the need for protecting workmen against even the common hazards of life such as injury, sickness, maternity, and old age was realised soon after the advent of industrialisation in the country, no concrete measures were adopted for a long time. Only in the case of fatal injuries, some relief was available to the dependents of the deceased workmen under the Fatal Accidents Act, 1855. But the measure was not of much avail owing to the ignorance and illiteracy of the workmen and their dependents, and a complicated legal procedure involved in establishing a claim. It was under these conditions that the question of providing security to the workers against the contingencies of life received the attention of the State.

4.3.1 Workmen Compensation Act, 1923 :

The principle of workmen's compensation was formally adopted in India in 1923, i.e., about 25 years after the adoption of the principle in Great Britain. A beginning of social security in India was made with the passing of the workmen's Compensation Act in 1923 which was put into force on July 1, 1924. Subsequently, there were a number of amendments to the Act. The Act contains 36 sections and four schedules. Prior to 1923, it was almost impossible for an injured workman to recover damages or compensation for an injury sustained by him in the ordinary course of his employment.

4.3.1.1 Object, Scope and Coverage of the Act :

The object of the workmen compensation Act 1923 is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workmen in lieu of wages, but to pay compensation for the injury sustained to him.

The Act extends to the whole of India and applies to any person who is employed, otherwise that in clerical capacity, in the railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads, bridges, etc., electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II of the Act. Under Subsection (3) of section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the Official Gazette. The Act, however, does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees State Insurance Act, 1948 as disablement and dependents' benefit are available under this Act.

4.3.1.2 Definitions :

Workman : In order to be a "workman" within the meaning of section 2(1) (n) of the Workmen's Compensation Act, a person should first be employed; second, his employment should not be of a casual nature, third, he should be employed for the purposes of the employer's trade or business; and, lastly, the capacity in which he works should be one set out in the list in Schedule II of the Act.

Dependents: For the purposes of the Act dependents have been grouped into two classes :

i) Those who are considered dependents without any proof; and

ii) Those who must prove that they are dependents.

The first group includes a widow, a minor legitimate son, an unmarried legitimate daughter or a widowed mother. The following are included in the second group if they were wholly are partially dependant on the earnings of the workers at the time of his or her death; a widower, a parent other than a widowed mother, a minor legitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and minor, or if widowed, and a married brother or unmarried sister or widowed sister, if a minor, a widowed

daughter-in-law, a minor child of a predeceased son, a minor child of a predeceased daughter where no parent of the child is alive, or a paternal grand parent, if no parent of the workman is alive.

Partial disablement means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time provided that every injury specified in (Part II of Schedule I) shall be deemed to result in permanent partial disablement.

Total Disablement means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

4.3.1.3 Payment of Compensation under the Act :

The main provisions of the Workmen Compensation Act, 1923 regarding the payment of compensation includes the following.

4.3.1.4 Distribution of Compensation :

The Compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment. However, the employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days, if the injury is caused when the workmen was under or violated a rule expressly framed for the purpose of securing his safety or wilfully removed or disregarded a safety device. A workman is also not entitled to compensation if he does not present himself for medical examination when required, or if he fails to take proper medical treatment which aggravates the injury or disease. In case it is not fatal, an employment injury may cause any injury resulting in permanent total disablement; permanent partial disablement; or temporary disablement (Section 3).

Rate of Compensation :

The rate of compensation in case of death is an amount equal to 50 percent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs. 80,000, whichever is higher. Where permanent total disablement results from the injury, the compensation will be an amount equal to 60 percent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of Rs. 90,000, whichever is higher.

Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the above purposes will be four thousand rupees only. The ceiling on maximum amount of compensation is Rs.4.56 lakh in case of death and Rs.5.48 lakh for permanent total disablement.

In case of temporary disablement, a half-monthly payment of the sum equivalent to 25 percent of monthly wages of the workman has to be paid.

If the workman contracts any occupational disease peculiar to that employment, that would be deemed to be an injury by accident arising out of and in the course of his employment for purposes of this Act. In the case of occupational diseases, the compensation will be payable only if the workman has been in the service of the employer for more than six months. Some of the occupational diseases listed in Schedule III to the Act are: anthrax, poisoning by lead, phosphorous or mercury, silicosis, asbestosis, and bagassosis (Section 3).

4.3.1.5 Administrative Authority :

The Act is administered by state governments which are required to appoint Commissioners for Workmen's Compensation. The functions of the Commissioner include :

(i) Settlement of disputed claims;

(ii) Disposal of cases of injuries involving death; and

(iii) Revision of periodical payments (Section 20)

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of Compensation or otherwise (Section 31).

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability which he accepts, and such payment must be deposited with the Commissioner or paid to the Workman. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. The amount deposited with the Commissioner for Workman's compensation is payable to the dependents of the workman.

If employer is in default, in paying the compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of 6 percent per annum.

4.3.1.6 Contracting Out :

A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation. The compensation payable to the workman or to his dependents cannot be assigned, attached or charged (Section 9 and 17).

4.3.1.7 Claims and Appeals :

The workman concerned or his dependents may file an application before the Commissioner for Workmen's Compensation in case the compensation is not paid by the employer. The claim shall be filed within a period of two years of the occurrence of the accident or death. The application which is filed after the period of limitation can be entertained if sufficient cause exists. An appeal will lie to the High Court against certain orders of the Commissioner if a substantial question of law is involved. An appeal by an employer against an award of compensation is incompetent unless the memorandum of appeal is accompanied by a certificate that the employer has deposited the amount of such compensation. Unless such a certificate accompanies the memorandum of appeal, the appeal cannot be regarded as having been validly instituted. The period of limitation for an appeal under Section 30 is sixty days (Sections 10 and 30).

4.4 Summary :

In India social security programmes have been in existence since times immemorial. But organised social security measures in statutory form are only of recent origin. India has been a pioneer in introducing social security for its people. The beginning of social security may be traced back to the 1920s when the Workmen's Compensation Act was passed. Subsequently, the country made significant progress during the first decade after independence from 1947-57 and against between 1967-77.

Workman's Compensation Act, 1923 was India's first social security legislation, which came into force on July 1, 1924. Subsequently there were a number of amendments to the Act.

There is a vital need for a social security scheme for organized labour. The size of the country has presented its own problems, especially in the administration of social security schemes. It is generally agreed that if the administration of these schemes is decentralised, there could be better coverage and a drastic cut in costs. Social security system in India is characterised by multiplicity of schemes administered by different agencies without any co-ordination. A co-ordinated or systems approach has been lacking. That too, the dichotomy in the administration of the schemes is not conducive to effective implementation.

On the whole, the social security legislation in our country suffer from several defects like - uneven scope, narrow coverage, duplication and overlapping provisions, and different administrative authorities for implementation and enforcement. A vast majority of labour force in the unorganised and agricultural sector are beyond the benefits of organised social security schemes. There is a need for an integrated and comprehensive social security system.

4.5 Key terms :

Social Insurance : is one of the devices of social security and involves the setting aside of sums of money in order to provide compensation against loss.

Contracting Out : A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation.

4.6 Model questions

1. Define social security. How did social security measures came into existence ?
2. What is the object of the Workmen's Compensation Act, 1923 ? What are the various benefits payable under the Act ?
3. What are the powers of the Commissioner for Workmen's Compensation ?
4. Discuss the stand of ILO on social security.

4.7 Reference Books

Bare Act on the Workmen's Compensation Act, 1923 (Latest Edition)

P.R.N. Sinha, Indu Bala Sinha, Seema Priyadarshini Shekhar	-	Industrial Relations, Trade Unions and Labour Legislations
A.M. Sharma	-	Industrial Jurisprudence and Labour Legislation
Arun Monappa	-	Industrial Relations
Monal Arora	-	Industrial Relations
IGNOU	-	MS-28 - Labour Laws
S.C. Srivastava	-	Industrial Relations and Labour Laws
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