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## **CENTRE FOR DISTANCE AND ONLINE EDUCATION**

### **(CDOE)**

## **BACHELOR OF COMMERCE**

### **SEMESTER- II**



## **SKILL ENHANCEMENT COURSE III– INDUSTRIAL LAW**

**(Candidates admitted from 2024 onwards)**

Prepared by

**Centre for Distance and Online Education (CDOE)**

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## SYLLABUS

## INDUSTRIAL LAW

## UNIT I

**Factories act 1948:** Factories act 1948. Definitions – Health – Safety – Welfare – Working Hours of Adults – Employment of Women – Employment of Young Persons – Leave with Wages.

## UNIT II

**Industrial Disputes Act, 1947:**

Industrial Disputes Act, 1947: Definition, Authorities, Awards, Settlements, Strikes, Lockouts, Layoffs, Retrenchment and Closure.

## UNIT III

**The Workmen's Compensation Act:** The Workmen's Compensation Act – Nature and Scope – Definitions – Workmen's Compensations – Employ's Liability – Meaning of Accident Compensation Permanent – Partial and Temporary – Disablement Compensation of Half Month Payment (Table Not Necessary).

## UNIT IV

**Employees State Insurance Act 1948:** Employees State Insurance Act 1948 Objects- definitions-ESI Corporation, functions- contribution and recovery benefits. Employees Provident Fund and Miscellaneous Provision Act, 1952 Objects- definition-provident fund schemes-contribution and recovery.

## UNIT V

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### UNIT OBJECTIVES

The Factories Act, 1948, mandates the payment of minimum wages to the workers by prescribing a fixed pay rate. An employer shall pay their employees at least the prescribed minimum wage rate. If an employee is paid less than minimum wage, the employer should pay that employee at least what the law requires. This Act reminds employers that any failure on their part to comply with its provisions will have serious legal consequences.



## FACTORIES ACT 1948

### SECTION 1.1: INTRODUCTION OF FACTORIES ACT

Production of goods is an inevitable part of a country or economy. Undoubtedly, if production is important then everything related to production is important. Hence, Factory forms an important part of the economy. It is such a wide term that it requires special provisions to carry on all activities smoothly. In this article, we will look at various definitions under the Factories Act, 1948.

In general terms 'Factory' is a building or buildings where people use machines to produce goods. But whenever a thing becomes extremely complex and important, general terms are no longer valid.

Hence, in 1948, the Factories Act, 1948 came into existence. Factories Act, 1948 does not only define things related to factories but also solves certain confusions.



#### 1.1.1: HISTORICAL BACKGROUND OF FACTORIES ACT

Factory Act is a central legislation which came into existence in 1881. It regulates the working conditions of the workers and lays down various provisions which are related to health, safety, working conditions, hazardous processes of the workers.

It also provides procedures for penalties in case of any contravention of provisions of factory Act. The Act was amended in the year 1891, 1911, 1922, 1934, 1948, 1976 and 1987. It was extensively amended in the year 1948.

The Factory Act 1948 is more comprehensive than the previous act and focuses mainly on health, safety, welfare of the workers inside factories, working hours, minimum age to work, leave with pay etc.

This act is based on the provisions which are provided under Factory Act of Great Britain passed in the year 1937. Today however factory and industry are understood to be interchangeable.

But this is incorrect. Industry is a steady and systematic activity in which trade is organized whereas factory refers to the place where such activities are carried on. The entire day to day activity taking place in the factory is governed by the Factory Act 1948.

This act extends to the whole of India including Jammu & Kashmir. The Bhopal Gas Tragedy in 1984 has made the people aware of the pollution and hazards of factories and therefore necessitated the government to take timely steps facilitating amendments in the act. Factory Act is applied to all factories employing 10 persons or more when it uses power and 20 persons when no power is used.

The main provision of the act are safety, guarding of machines, health and cleanliness, drinking water, washing and latrine facilities, lunch rooms and rest rooms, sitting arrangements, first aid and dispensary facilities in factories employing more than 500 workmen, creches where more than 50 women are employed, welfare officer where more than 500 workmen are employed, spittoons, holidays with wages at the rate of one day for every 20 days worked, weekly hours 48 for adults and 27 for younger persons, regulations regarding young persons, rate of payment for overtime work, rest for half an hour after maximum of 5 hours of work, number of hours of work, and weekly holiday.

Since there are many changes and developments related to safety and health the need for effective implementations of various provisions duly amended have been felt. The ILO conventions have also necessitated the means for amendments in the Factory act. In order to study the administration, enforcement and implementation of Factory Act several Labour and employment statistics are collected by the central and state government and disseminated by the labour bureau.

With the help of these statistics we can analyze the current scenario of the implementation of the Factory Act, the employment position, the women workers employment with respect to their male counterparts, the hazardous processes, the number of fatal accidents, and the inspection being carried out along with prosecution and penalty and the safety measures undertaken.

This puts out a picture for further development and enhancement related to all these parameters in the provisions mentioned in the Factory act and thus calls for amendments. The history of Factory Act is more than 100 years old. As the process of modern industrialization came to India almost a century after its beginning in Great Britain, the beginnings of factory legislation had to wait for the same period of time. The first cotton textile factory was set up at Bombay as early as 1854.

The pace was accelerated & by 1870 a large number of factories were setup at Bombay, Nagpur, Kanpur & Madras. The first Iron & Steelwork started at Bihar in 1873. Jute

spinning mill were started at Rishra in 1855. By 1881 there were 5000 power looms at work in Bengal. In 1870, Bally Paper mills were setup at Hoogly & several tanning & leather factories were also setup at Kanpur which led to factory establishment existence in India. This brought factories evils such as employment of women & children at tender age, excessive hours of work & hazardous & insanitary working conditions.

Great need for protective labour legislations to fight the conditions of workers (specially women & children) was felt as early as 1850, but nothing was done by British Government (By this a series of Factories Act was already passed in Great Britain). Occasional notes of dissatisfaction were raised by philanthropist who was led by Sorabjee Shahpurjee Bengali.

In 1878, Sasipad Bannerjee laid the foundation of Bara Bazar organization for the welfare of jute mill workers. There is also a record of a strike in Nagpur Empress Mill in 1877. The industrial revolution that took place between 1760 and 1820 in England changed the techniques of production. Many mechanical inventions then came in quick succession such as the invention of steam engine enabled man to drive the machines by power. With the industrial revolution, capital became an important factor of production with the technological advances; the employment in factories rose up tremendously.

Two distinct classes emerged namely the capitalist class and the working class. The workers were largely untrained, uneducated, and unorganized and the capitalists of 'hard grind' nature exploited the workers and paid lower wages, working conditions remained unhygienic. There was a total lack of welfare measures. Thus protective labour legislations was embodied in Factory Act 1881. Thus joint efforts of philanthropist, social workers in India & Lancashire manufacturers in Great Britain resulted in Factory Act 1881 (though with different considerations).

The Act of 1881 was inadequate. Narayan Meghaji Lokhandey, a disciple of Mahatma Jyotiba Phule, emerged as the first labour leader in India. He was a storekeeper in a textile mill and devoted his whole life to the cause of labour movement. He presented a memorandum signed by 5300 workers and presented it to the Factory Commission appointed in 1884. The Factory Commission was appointed by the Government of India in 1890. An act was passed in 1891 on the basis of the recommendation of this commission, whereby the definition of Factory was amended to include premises in which fifty persons or more were employed.

The Local Governments were empowered to extend it to premises in which twenty persons or more were employed. It included provisions for women employees and working hours for them were limited with a provision for thirty minute's interval for rest. The Factory act was amended from time to time.

The First World War and the Russian Revolution of 1917 affected the labour movement. International Labour Organization (ILO) was set up in 1919. It was later amended twice in the year 1923 and 1926. On the basis of recommendations made by the Royal Commission on Labour 1929, the Act was thoroughly revised and redrafted in

## 1.1.2 MEANING AND DEFINITION OF FACTORIES ACT

According to Sec 2(m), “factory” means any premises including the precincts thereof—

(i) whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on.

### -Definition

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

### 1.1.3 Various Judgements regarding Definitions

(a) The establishment of a hotel would not fall for classification as a factory under section 2(m) of the Act, [LalBovta Hotel Aur Bakery Mazdoor Union vs Ritz Private Ltd 2007]

(b) All the workers employed by the construction company would squarely attract the definition of the term “workmen” a found in Section 2(l) of the Act as they are working for remuneration in the manufacturing process carried out by the project[Lal Mohammad v Indian Railway Construction Co Ltd.

### Let's Sum Up

In first section a clear description of what a factory is, which factories are held to this standard, what defines a manufacturing process, and so on. Whether or not children under a specific age can work and how much labor a teenager can be allotted in a workplace

**Check Your Progress-QUIZ –1**

**1. In which year did factories act come into force?**

- a. 23rd September, 1948
- b. 1st April, 1949
- c. 4th April, 1949
- d. 12th September, 1948

**2. How many days in advance does the occupier of a factory premises gives notice of occupancy to the chief inspector?**

- a. 15 days
- b. 20 days
- c. 10 days
- d. 25 days

**3. What are the general duties of an Occupier?**

- A. Maintenance of a plant and system of work in factory are safe, without risks to health.
  - B. Ensure safety and absence of risks to health in, use, handling, storage and transport of articles and substances.
  - C. Specifying the area
  - D. Defining the local mean time ordinarily deserved therein.
- a. D b. C c. Only A & B d. All of the above

**4. Which provisions regarding health are mentioned in the sections 11 to 20 in factories act?**

- A. Cleanliness B. Dust and fumes
  - C. Ventilation and temperature D. Disposal of wastes
- a. Only B & C b. Only A & D c. None of the above d. All of the above

**5. As per the factories act, after how many years should the factory premises be painted and refurbished?**

- a. 5 years b. 2 years c. 10 years d. Annually

## SECTION 1.2 HEALTH AND SAFETY MEASURES

Health is an important part of everyone's life. Being healthy does not only mean being 'disease free'. It includes physical, social, and mental health too. Maintaining sound health is undoubtedly a concern for everyone but it is more necessary for those who are constantly under threat of health hazards. These are the factory workers. They are constantly under the danger of health risks.

Hence, it becomes necessary to concentrate on the health of the workers in the factories as well as people in society. In order to standardize the health measures and safety provisions, the Factories Act, 1948 lays down certain 'health measures'.

### 1.2.1 Health Measures and Safety Provisions as per Factories Act, 1948

- Section 11: Cleanliness in every factory
- Section 12: Disposal of effluents and wastes
- Section 13: Ventilation and Temperature
- Section 14: Dust and Fume
- Section 15: Artificial Humidification
- Section 16: Overcrowding
- Section 17: Lighting
- Section 18: Drinking Water

### 1.2.2 Section 11: Cleanliness in Every Factory

Under Section 11, every factory need to keep itself clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

-Accumulation of dirt and refuse should be removed daily by any effective method from the floors of workrooms and from staircases and passages and disposed of in a suitable and efficient manner.

- In case the floor is subject to become wet during the working time, then they should take proper drainage process or steps.

-Clean the worker's floor every week with proper disinfectant or any other effective method of cleaning.

- Paint or repaint walls, ceilings, and staircases of the factory once in every 5 years
- Repaint the walls once in every 3 years in case of washable water paints.
- Paint and varnish all doors and window-frames and other wooden or metallic framework and shutters at least once in a period of 5 years.

### **1.2.3 Section 12: Disposal of Effluents and Wastes**

Under this section following things should be considered:

- (a) It is necessary for the factories to arrange proper and effective waste treatment and its disposal.
- (b) The State Government may make rules prescribing the arrangements for the disposal and treatment of waste and effluents.

### **1.2.4 Section 13: Ventilation and Temperature**

#### **-This section states:**

- Effective and suitable provisions should be made in every factory for securing and maintaining in every workroom proper ventilation by circulation of fresh air. It also involves providing an adequate temperature at the workplace. For this, they should select the material of the walls accordingly.
- The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories.
- Lastly, if it appears to the Chief Inspector that excessively high temperature in any factory can be reduced by the adoption of suitable measures, he can order them to use such a method.

### **1.2.5 Section 14: Dust and Fume**

#### **-This section states that:**

- If dust and fume release in the manufacturing process of a factory then they should take effective measures to prevent its inhalation and accumulation in the workplace. For this, they should use proper exhaust appliances in the workplace.
- In any factory, no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air.

### **1.2.6 Section 15: Artificial Humidification**

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

- Firstly, prescribing standards of humidification;
- Secondly, regulating the methods used for artificially increasing the humidity of the air;



- directing tests for determining the humidity of the air for correct carrying out and recording.

- Lastly, prescribing methods for securing adequate ventilation and cooling of the air in the workrooms. 2. In any factory in which the humidity of the air artificially increases, they should purify the water (drinking water) before the supply.

### 1.2.7 Section 17: Lighting

#### -This section states:

Firstly, There should be proper lighting in all the places of the factory from where the workers of the factory pass.

In every factory, effective provision shall, so far as is practicable, be made for the prevention of

- • glare, either directly from a source of light or by reflection from a smooth or polished surface;

- the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.

### 1.2.8 Section 18: Drinking Water

This section states that in every factory, there should be proper arrangements for a sufficient supply of wholesome drinking water and shall be legibly marked as “drinking water”.

### 1.2.9 Section 19: Latrines and Urinals

This section states that every factory should make arrangements of latrine and urinals for the employees and the rules are laid down by the State Government in this behalf.

### 1.2.10 Section 20: Spittoons

There should be a sufficient number of spittoons in the factories for the employees and they should be in clean and hygienic condition according to this law.

### Let's Sum Up

Employee welfare measures are also known as **fringe benefits and services**. 'Labour Welfare' is a very broad term, covering social security and such other activities as medical aid, crèches, canteens, recreation, housing, adult education, arrangements for the transport of labour to and from the workplace.



## SECTION 1.3 WELFARE (Section 42- 50), THE FACTORY ACT, 1948

### 1.3.1 The provision relating to the Labour Welfare mentioned in the Factories Act, 1948

#### 1.3.2 SECTION 42: WASHING FACILITIES

- Every factory must provide-
- Workers with adequate and suitable facilities for washing,
- Male and female workers, a separate and adequate screening facility,
- Convenient access and clean maintenance of such facilities.
- The state government may, prescribe standards of adequate and suitable facilities for washing, for any-
  - Factory or class or description of any factories or,
  - Description of any manufacturing process.

#### 1.3.3. SECTION 43: FACILITIES FOR STORING AND DRYING CLOTHING

The State government may for, any factory or class or description of factories, make rules regarding-

- Suitable places for keeping clothing not worn during working hours and
- Drying of wet clothing.

#### 1.3.4 SECTION 44: FACILITIES FOR SITTING

- Factory obligation-
- Every factory shall provide with and maintenance suitable sitting arrangements for all workers, who are obliged to work in standing position. So, while them in course of their work they find any opportunity to rest by availing the advantage of sitting.
- Chief inspector responsibility-
- If in his opinion a worker would rather work efficiently in a sitting position, when a worker is engaged in:
  - Particular manufacturing process or
  - Work particularly carried out in a room

### 1.3.5 SECTION 45: FIRST AID APPLIANCES 9

• During all working hours, every factory provides and maintains at least one of the following for every 150 workers, ordinarily employed at any one time in factory-

- First aid boxes or
- Cupboards equipped with prescribed contents.
- No add on content needs to be in a first aid box or cupboard except those prescribed.
- A separate responsible person must be in charge of each first aid box or cupboard, who-
- Holds certificate in first aid treatment (recognized by state government)

### 1.3.6 SECTION 47: SHELTERS, REST ROOMS AND LUNCH ROOMS

• Every factory with 150 workers as ordinary employed ones must provide and maintain the workers with adequate and suitable-

- Shelter or rest rooms and
- Lunch room:
  - With drinking water provision,
  - Where workers can eat, meals brought by them.
- Above mentioned facilities of this section must be provided with-
- Sufficient light and ventilation.

### 1.3.7 SECTION 48: CRECHES

• All factories with more than 30 ordinarily employed women workers shall provide and maintain-

- Suitable room or rooms for the use of children under age of 6 years) of such women.
- Such room must be provided with-
- Adequate accommodation
- Adequate light and ventilation
- Maintained clean and sanitary conditions.
- A woman trained in care of children and infants, as in charge.
- The state government may make rules

### 1.3.8 SECTION 49: WELFARE OFFICERS

• Factory with 500 or more workers ordinarily employed, the occupier shall employ the prescribed number of welfare officers.

- State government prescribed, officers employed under this section- 10
- Duties,
- Qualifications and

- Conditions of service.

### 1.3.9 SECTION 50: POWER TO MAKE RULES TO SUPPLEMENT THIS CHAPTER

The state government may make rules for any factory or description of factories from compliance with any of provision of this chapter-

- To exempt, subject to compliance with such alternative arrangement for the welfare of workers as may be prescribed.
- To make representatives of the workers employed in the factory, associated with the management of the welfare arrangement of workers.

#### Let's Sum Up

In general terms, 'welfare' is nothing but the health, happiness, and fortunes of a person or group. Some people consider it as a statutory procedure or social effort designed to promote the basic physical and material well-being of people in need. Hence, it is pretty clear from the above statements that it is a thing that everyone desires. People working in different sectors and at different levels have different welfare needs. The workers working in the factories too have certain welfare needs. The Factories Act, 1948, defines certain provisions regarding this concept. In this article, we will look at all those provisions.

## SECTION 1.4 WORKING HOURS OF ADULTS

### 1.4.1 FEATURES OF WORKING HOURS OF ADULTS

#### -Weekly hours

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

#### -Weekly holidays

No adult worker shall be required or allowed to work in a factory on first day of the week (hereinafter referred to as the said day), unless –

1. he has or will have holiday for whole day on one of three days immediately before or after the said day, and

2. the manager of the factory has, before said day or the substituted day under clause (a), whichever is earlier:-

- delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and
- displayed a notice to that effect in the factory :

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

### **Compensatory holidays**

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

### **Daily hours**

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day. 87[Provided that subject to the previous approval of the Chief Inspector the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.]

### **Intervals for rest**

88[(1)] 89[The periods of work]of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

90[(2)] The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for reason specified therein, exempt any factory from the provisions of subsection(1) so however that the total number of hours worked by a worker without a interval does not exceed six.]

### **Spread-over**

The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spreadover more than ten and a half hours in any day

Provided that the Chief Inspector may, for reasons to be specified in writing, increase the 90[spread over up to twelve hours.

### **Night Shifts**

Where a worker in a factory works on a shift which extends beyond midnight :-

- for the purposes of section 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends; 12
- the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

### **Extra wages for overtime**

- (1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.
- (2) 92[(2) For the purposes of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker for the time being entitled to, but does not include a bonus and wages for overtime work.
- (3) Where any workers in a factory are paid on a piece-rate basis, the time-rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar months during which the overtime work was done, and such time-rates shall be deemed to be the ordinary rates of wages of those workers.

### **Restriction on double employment**

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

### **Notice of periods of work for adults**

- There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section(2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.
- The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 94[55, 56 and 58].

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

### Register of adult workers

• The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing :-

- the name of each adult worker in the factory ;
- the nature of his worker ;
- the group, if any, in which he is included;
- where his group works on shift, the relay to which he is allotted ;

### Let's Sum Up

This section is nothing but the extension of Section 51. Keeping in view the weekly working hours limit prescribed by Section 51, this section states the limit on a daily basis. It states that a factory should allow a worker to work for more than 9 hours per day.

### Check Your Progress-QUIZ –2

1. As per section 2 in factories act, who will be called as an adult?
  - a. A person who has completed 21 years of age
  - b. A person who is less than 19 years of age
  - c. A person who has completed 24 years of age
  - d. A person who has completed 18 years of age
2. Section 2(g) under the act defines \_\_\_\_\_
  - a. Factory
  - b. Manufacturing process
  - c. Worker
  - d. Occupants
3. Match the following
  1. Approval, licensing and registration of factories ----a.) Section 18
  2. Arrangements for drinking water ----- b.) Section 35
  3. Maintenance of buildings ----- c.) Section 6
  4. Protection of eyes ----- d.) Section 40A
  - a.) 1 - c, 2 - a, 3 - d, 4 - b
  - b.) 1 - b, 2 - a, 3 - d, 4 - c
  - c.) 1 - c, 2 - d, 3 - a, 4 - b
  - d.) 1 - a, 2 - c, 3 - d, 4 - b
4. If there are \_\_\_\_ numbers of employees, then the employer has to provide a canteen.

a. 250 b. 510 c. 320 d. 101

5. Which of the following diseases is not mentioned in the section 89 of factories act?

a. Anthrax b. Asbestosis c. Phosphorus d. Pneumonia.

## SECTION 1.5 EMPLOYMENTS OF WOMEN

### 1.5.1 Restriction on Employment Of Women

1. The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further instructions, namely.
2. no exemption from the provisions of section 54 may be granted in respect of any woman ;
3. no woman shall be 14[required or allowed to work in any factory] except between the hours 6 A.M. and 7 P.M. :
4. Provided that the ![State] Government may, by notification in the Official Gazette, in respect of 15[any factory or group or class or description of factories], vary the limits laid down in clause(b), but so that no such variation shall authorize the employment of any woman between the hours of 10 P.M. and 5 A.M.;
5. 16[(c) there shall be no change of shifts except after a weekly holiday or any other holiday]

### 1.5.2 Provisions Relating To Women Worker in Factories Act, 1948

- 1) INTRODUCTION:
- 2) PROVISIONS WITH RESPECT TO HEALTH OF WORKERS
- 3) PROVISIONS WITH RESPECT TO SAFETY OF WORKERS
- 4) PROVISIONS WITH RESPECT TO WELFARE OF WORKERS
- 5) PROVISIONS WITH RESPECT TO WORKING HOURS
- 6) PROVISIONS WITH RESPECT TO EMPLOYMENT OF YOUNG PERSONS
- 7) PROVISIONS WITH RESPECT TO ANNUAL LEAVE WITH WAGES
- 8) CONCLUSION

## **-INTRODUCTION:**

Factories Act came into force on 01.04.1949. The Preamble of the Factories Act, 1948 states that it is an act to consolidate and amend the law regulating labour in factories. This Act specifically takes care of the well-being, health and safety, basic provisions of working hours, holidays, lighting and ventilation i.e. lays down the provisions for welfare of the workers employed in a factory.

Factories Act ordinarily lays down provisions for all adult (Whether male or female) adolescents, child worker (child not below 14 yrs.) in various respects. The facilities and provisions enacted in general are for every worker but few provisions had been specifically laid down for female workers. Those all provisions relating to women in Factories Act are mentioned below

## **-PROVISIONS WITH RESPECT TO HEALTH OF WORKERS**

Under Section 19(1)(b) of the Act, there's a provision of separate enclosed accommodation (for latrines and urinals) for both males and females. Such Accommodation should be adequately lighted and ventilated

## **-PROVISIONS WITH RESPECT TO SAFETY OF WORKERS**

For Safety of the Women Workers in the Factory, women workers are excepted from the work of lubrication of machinery in motion. It shall be done only by a specially trained adult male worker wearing tight-fitting clothing.

Section 22(2) of the Act specifically mandates on the factory owner that no woman or young person shall be allowed to clean, lubricate or adjust any part of the machinery when it is in motion. This Provision aims to prevent the women from exposure to dangerous injury that can be caused by such moving part.

Under Section 27 of the Act, there is a prohibition of employment of women and children near "cotton openers". Women and children cannot be employed in any part of the factory where pressing of Cotton are going on subject to only one exception. The Exception is the Area between the feed end and delivery end extends to a particular height and subject to the permission of Inspector authorized under the Act.

## **-PROVISIONS WITH RESPECT TO WELFARE OF WORKERS**

For the welfare of the women worker, under Section 42 of the Act, separate and adequately screen facilities for washing shall be provided for the privacy of female workers. 19



Under Section 48 of the Act, wherever there are more than 30 women workers, there is a mandate on the owner of the factory to provide and maintain suitable room/crèche facility for the use of children under the age of 6 years of such mothers. This Provision indirectly increases the efficiency of female worker who can side by side look after their children without worrying about them. Those rooms should provide adequate accommodation, ventilation, lighting and such rooms should be under the charge of a women who can take care of such children.

### **-PROVISIONS WITH RESPECT TO WORKING HOURS**

Under Section 66 of the Act, For the safety and well-being of the Female gender, their working hours in a factory shall be between 6 A.M. to 7 P.M. only. It is also provided in this Section that there shall be no change of shifts except after a weekly holiday or other Holiday.

Further in Sub Section 2 of Section 66 mentions that the State Government can prescribe Special Provisions for fish curing or fish canning factories where employment of women beyond particular hours is necessary to prevent damage to any raw material.

### **-PROVISIONS WITH RESPECT TO EMPLOYMENT OF YOUNG PERSONS**

Under Section 70 of the Act, Any Adolescent female or male worker who has got the fitness certificate to work can only work between 6 A.M. to 7 P.M. except in case of few categories of factories where State Govt. can relax the timings but in no case, it can be in between 10 PM to 5 AM.

Under Section 71(5) No female child shall be allowed to work in any factory except between 8 AM to 7 PM.

### **-PROVISIONS WITH RESPECT TO ANNUAL LEAVE WITH WAGES**

Section 79 (1) Explanation 1 says that Every female worker who has worked for a period of 240 days or more in a factory shall be allowed leave with wages and in case of a female worker, maternity leave upto 12 weeks.

Under Section 87(b) of the Act, Power to the State Government is given that if it opined that any manufacturing process or operation carried in any factory exposes any person to a serious risk of bodily injury, it may prohibit or restrict the employment of women, adolescents or children in such manufacturing process or operation.

## Let's Sum Up

Women in factories have faced many hardships, there was a time they were denied jobs or were given jobs with sub-par conditions and less than average wages which they had to still take as they were desperate. It improved to the point that legislation was implemented to aid them but the benefits were only on paper and not practically. Now, finally, the benefits are showing in practice, with the help of different NGOs and United Nations Welfare schemes along with our women care bodies established by the government, women in factories are finally getting what they duly deserve.

## SECTION 1.6 EMPLOYMENTS OF YOUNG PERSONS IN FACTORIES

### 1.6.1 PROVISIONS RELATING TO YOUNG PERSONS

#### 1.6.1 a) Provision # 1. Prohibition of Employment of Young Children [Section 67]:

A child who has not completed his fourteenth year is prohibited from working in any factory. Under any circumstances, whatsoever, no exemption even in case of emergency can be allowed to overcome the provisions of this section.

#### 1.6.1 b) Provision # 2. Non-Adult Workers to Carry Tokens [Section 68]:

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless he is given a certificate of fitness by a competent certifying surgeon. Such a certificate shall be in the custody of the manager of the factory.

The young person shall carry while he is at work a token giving a reference to such a certificate. The object of section 68 is to prevent the exploitation of the young labour force.

#### 1.6.1 c) Provision # 3. Certificate of Fitness [Section 69]:

The certificate of fitness is granted by a certifying surgeon on the application of young person or a guardian. The application must be accompanied by a document signed by the manager of a factory that the young person will be employed therein if certified to be fit for work in a factory.

**If the certifying surgeon is satisfied, he may grant or renew to such young person in the prescribed form:**

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

(b) A certificate of fitness to work in a factory as an adult, provided he has completed his fifteenth year and is fit for a full day's work in a factory.

#### **1.6.1 d) Provision # 4. Effect of Certificate of Fitness Granted to Adolescent [Section 70]:**

An adolescent who has been granted a certificate of fitness to work as an adult, would be deemed to be an adult and all provisions of the Factories Act relating to adult workers would apply to him.

Provided that the State Government may by notification in the Official Gazette, in respect of any factory or group or class or description of factories:

- (i) Vary the limits laid down in this sub-section so that, no such section shall authorise the employment of any female adolescent between 10 P.M. and 5 A.M.
- (ii) Grant exemption from the provisions of the sub-section in case of serious emergency where national interest is involved.

#### **1.6.1 e) Provision # 5. Working Hours for Children [Section 71]:**

No Child can be employed or permitted to work in any factory

- (1) For more than four and a half hours in any day;
- (2) During the night i.e., a period of at least twelve consecutive hours including the interval between 10 p.m. and 6 a.m.
- (3) On any day on which he has already been working in any other factory.

#### **1.6.1 f) Provision # 6. Notice of Periods of Work for Children [Section 72]:**

Every factory must display and correctly maintain a notice of periods work for children. Such notice should show clearly the periods during which children may be required or allowed to work. The periods shown in the notice shall be fixed beforehand as per section 61 regarding period of work for adults, but there shall be no contravention of the provisions of section 71.

#### **1.6.1 g) Provision # 7. Register of Child Workers [Section 73]:**

The manager of every factory in which children are employed shall maintain a register of child workers showing:

- (a) The name of each child worker in the factory
- (b) The nature of his work

- (c) The group in which he is included
- (d) Where his group works on shifts, the relay to which he is allotted
- (e) The number of his certificate of fitness

### **1.6.1 h) Provision # 8. Hours of work to Correspond with Notice Under Section 72 and Register Under Section 73 [Section 74]:**

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

### **1.6.1 i) Provision # 9. Power to Require Medical Examination [Section 75]:**

An inspector has power to server a notice on the manager of the factory asking him for the medical examination of the young person who works in a factory either without a certificate of fitness, or with a certificate of fitness but is no longer fit to work in that capacity.

### **1.6.1 j) Provision # 10. Power to make Rules [Section 76]:**

This section authorises the state Government to make rules:

- (a) Prescribing the forms of certificates of fitness to be granted to young persons, and the procedure for their issue
- (b) Prescribing the physical standards to be attained by children and adolescents working in factories
- (c) Regulating the procedure of certifying surgeons
- (d) Specifying other duties which the certifying surgeons may be required to perform in connection with the employment of young persons in factories.

### **1.6.1 k) Provision # 11. Provisions relating to Safety of Young Persons:**

The provisions relating to the safety of young persons are scattered through the Act, but for the convenience of the readers are summarised as under:

1. No young person shall be allowed to clean, lubricate, or adjust any part of the machinery while it is in motion if it is likely to expose him to risk of injury from any moving part (Section 22).
2. No young person shall work at any dangerous machine unless:
  - (a) He has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and

(b) He has received sufficient training in work at the machine or is under adequate supervision by a person who has a thorough knowledge and experience of the machine (Section 23).

3. No child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work. This prohibition may be relaxed in certain cases (Section 27).

### Let's Sum Up

This chapter prohibits the employment of children below the age of 14 years. There must be working hours, a notice of periods of work, register of child workers among others. In addition, they must be issued a certificate of fitness.

## SECTION 1.7 LEAVE WITH WAGES

### 1.7.1 DEFINITONS

According to Sec 79 Every employee in the world shall get the leaves when in need along with the fixed weekly leave and other holidays. In the factory act, 1948 every working employee who has exceeded the 240 days working in a factory during a calendar year has the sole right for leaves with wages for a number of days.

### 1.7.2 The calculation of annual leave with wages is done on the basis

- In case of an adult – one day for every twenty days of work, during the previous calendar year.
- In case of a child- one day for every fifteen days, during the previous calendar year.
- The leaves shall be exclusive of all the holidays occurring in between or end of the leave period.
- If a worker has worked for the two third of the total number of days in the balance of the calendar year
- If a worker is being dismissed or resigns from the work or if s/he dies during his service period, the amount shall be paid to the nominee.
- While calculating the leaves the fraction of half day or more would be considered as a full day.
- If any worker/s hasn't taken any leave in the previous year calendar, then his previous leaves will be added to the current year of leaves calendar.

- The paid leaves shall be granted to the worker who is on sick leave, under the section 81, the worker should be allowed to have paid leave to cover the period of illness.

## Let's Sum Up

Similar to Factories Act, 1948 (7) Annual Leave with Wages It is a lump sum payment made by an employer to an employee in consideration of his past service when the employment is terminated.

### Check Your Progress-QUIZ –3

1. As per section 94, a person who repeats an offence, he shall be punishable with an imprisonment for a term which may extend upto \_\_\_\_\_ years and fine which shall not be less than 10,000 Rs but which may extend upto \_\_\_\_\_ or both.

- |    |                      |        |          |    |
|----|----------------------|--------|----------|----|
| a. | 3                    | years/ | 2,00,000 | Rs |
| b. | 5                    | years/ | 1,20,000 | Rs |
| c. | 2                    | years/ | 2,50,000 | Rs |
| d. | 4 years/ 3,00,000 Rs |        |          |    |

2. If a company has \_\_\_\_\_ number of employees, then the appointment of a safety officer is mandatory \_\_\_\_\_ under \_\_\_\_\_ the \_\_\_\_\_ factories \_\_\_\_\_ act.

- |         |          |     |
|---------|----------|-----|
| a. 500  | b.       | 100 |
| c. 1000 | d. 10000 |     |

3. Which section of the act covers the topic annual leave with wages?

- |    |            |    |
|----|------------|----|
| a. | Section    | 27 |
| b. | Section    | 5  |
| c. | Section    | 86 |
| d. | Section 79 |    |

4. How many hours in a week can an adult work as per factories act?

- |    |          |       |
|----|----------|-------|
| a. | 9        | hours |
| b. | 56       | hours |
| c. | 34       | hours |
| d. | 48 hours |       |

5. State true or false for the below given statement.

i. Under sub section 2A, the state government by notification in the gazette can appoint only one of each, i.e. chief inspector, joint chief inspectors, inspectors and deputy chief inspectors.

- |    |       |
|----|-------|
| a. | True  |
| b. | False |

## 1.8 UNIT SUMMARY

The Factories Act, 1948, mandates the payment of minimum wages to the workers by prescribing a fixed pay rate. An employer shall pay their employees at least the prescribed minimum wage rate. If an employee is paid less than minimum wage, the employer should pay that employee at least what the law requires. This Act reminds employers that any failure on their part to comply with its provisions will have serious legal consequences.

The Act requires employers to allow a weekly holiday to their workers. It further makes it obligatory for the employer to provide proper sanitary facilities and a clean potable water supply in the factory or workplace. Strict action will be taken against the employer if they fail in providing these facilities to the workers.

Employers are also required to set up first aid boxes in their factory, store first aid records, and ensure proper arrangements for transporting injured workers to a hospital or in-house medical facilities.

The safety standards for workers employed in factories. It is applied to manufacturing goods, including weaving, knitting of hosiery and other knitwear, clothing and footwear production, dyeing and finishing textiles, etc.

## 1.9 Glossary

<b>Normative</b>	Relating to norms, standards, or values that prescribe how things should be or how people ought to behave, serving as guidelines for moral or ethical conduct.
<b>Normal Dilemmas</b>	Facing everyday challenges and making choices, including ethical decisions, when there are multiple options or conflicting interests.
<b>Ethical Theories</b>	Using ethical frameworks or principles to guide decision-making in business situations, considering factors like fairness, honesty, and the welfare of stakeholders.
<b>Utilitarianism</b>	Making decisions based on what will bring the most happiness or benefit to the greatest number of people.
<b>Ethical Egoism</b>	Believing that individuals should act in their own self-interest, prioritizing their own benefit over others'.

## 1.10 SELF ASSESSMENT

### Essay type questions

1. Provision relating to working in factory hours in adult
2. What are the rules and provision relating to employment of women in factor
3. shot note on employment of women in factory
4. What are the provisions relating to leave with salary in factory
5. Enumerate the health and safety sector in factory
6. Evaluate the history of factories act 1948.
7. Discuss about various sections of welfare in factories.
8. Explain the features of working hours in factories
9. Enumerate the provisions regarding women employment in factory
10. Define employment regards young persons.



## 1.11 CASE STUDY

**The Factories Act 1948:** In India, the Factories Act of 1948 is applied with appropriate amendments. Certain changes have been made in order to comply. All manufacturing employees are protected by the Act, but young and female workers are particularly well-protected. The Act provides certain facilities in the factory, and anyone who breaches the Act or the Rules will be subject to specific penalties. The inspector, who is chosen by the state and central governments, will conduct the inspection of the factory. The Factories Act, which benefits the factory, its employees, occupiers, and owners, has been in effect for around 37 years. As a result of the Act, their working and employment conditions have gradually improved. The Act outlines the time that employees work, their working hours, paid time off, paid overtime, their age restriction, etc. Additionally, it details how the environment, human health, and safety are protected at the factory.

**Question:** How has the Factories Act benefited to the employees?

## 1.12 ANSWERS FOR CHECK YOUR PROGRESS

Section 1.1	The Factories Act 1948
1.	a. 23rd September, 1948
2.	a. 15 days
3.	d. Only B
4.	d. All of the above
5.	a. 5 years
Section 1.3 & 1.4	Welfare and working hours of Adults
1.	d. A person who has completed 18 years of age
2.	b. Manufacturing process
3.	a.) 1 - c, 2 - a, 3 - d, 4 - b
4.	a. 250
5.	d. Pneumonia
Section 1.3	Employment of Young persons and Leave with Wages
1.	a. 3 years/ 2,00,000

2.	c. 1000
3.	d. Section 78
4.	d. 48 hours
5.	b. False

## 1.13 REFERENCES & SUGGESTED READINGS

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<b>UNIT 2–INDUSTRIALDISPUTESACT,1947</b>		
IndustrialDisputesAct,1947: Definition ,Authorities, wards, Settlements, Strikes Lockouts, Layoffs, Retrenchment and Closure.		
<b>Introduction To Industrialdisputesact,1947</b>		
<b>Section</b>	<b>Topic</b>	<b>Pages</b>
<b>UNIT-II</b>		
<b>Unit Objectives</b>		
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### UNIT OBJECTIVES

The act was implemented to provide for machinery and procedures for the investigation and settlement of industrial disputes, applicable to all irrespective of size and sector. It even has provisions regarding conditions for layoffs, retrenchment (reduction in the size of operations) and closure of industry

## INDUSTRIAL DISPUTES ACT, 1947

### SECTION 2.1 INTRODUCTIONS TO INDUSTRIAL DISPUTES ACT, 1947

#### 2.1.1 HISTORY OF INDUSTRIAL DISPUTES ACT, 1947

- World War I sparked a new awakening among working-class individuals who had previously been ruled by employers regarding service and compensation.
- To meet their goals, employees went on strike, while bosses countered by announcing lockouts. Several strikes and lock-outs in 1928-29 compelled the government to pass the Trade Disputes Act 1929.
- The Trade Dispute Act of 1929 was enacted to resolve industrial disputes. The Trade Union Act established trade unions as legal entities.
- The fundamental flaw of the Act was that no provision was provided for the procedures launched under the Act to be rendered when restrictions on the right to strike and lock-out in public utility services were enforced. However, this flaw was eventually remedied by authorising, under Rule 81-A of the Defense of Indian Rules, the referral of industrial conflicts to adjudicators for resolution during the Second World War (1938-1945).
- Rule 81-A was going to expire on October 1, 1946, with the end of the Second World War, but it was saved using the Government's Emergency Powers. The major clause was kept in the 1947 Industrial Disputes Act.

#### 2.1.2 OBJECTIVES OF THE INDUSTRIAL DISPUTES ACT, 1947

- The Industrial Disputes Act aims to ensure industrial peace and harmony by establishing apparatus and procedures for investigating and resolving industrial disputes through discussions.
- The legislation only applies to the organized sector.
- This Act provides precise instructions and guidelines for the works committee for firms.

### 2.1.3 FEATURES OF INDUSTRIAL DISPUTES ACT, 1947

- ❖ While the mediation and adjudication are underway, strikes and lockouts are unlawful.
- ❖ Any industrial dispute can be referred to an industrial tribunal by consent of the parties involved or by the State Government.
- ❖ An award must be binding on both parties to the dispute for no more than one year, and the government must enforce it.
- ❖ In the public interest or an emergency, the competent authority may declare the transportation, coal, iron, and steel industries public utility services under the Industrial Disputes Act for six months.
  - o When an employee is laid off or reduced in size, the company is required to provide compensation.
  - o Workers' compensation is also covered in the statute.
- ❖ Several agencies are available to resolve industrial disputes, including a works committee, a Conciliation Officer, a Board of Conciliation, a Labor Court, and a Tribunal

#### Let's Sum Up

The main purpose of the Industrial Disputes Act, 1947 is to ensure fair terms between employers and employees, workmen and workmen as well as workmen and employers.. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

**Check Your Progress-QUIZ –1**

**1. In which year did the act come into operation?**

- a. 1947      b. 1949,      c. 1953      d. 1963

**2. To which settlement machinery can the central government refer the disputes under rule 81 - A?**

- a. Conciliation      b. Arbitration      c. Adjudicator      d. Supreme Court

**3. Before the industrial disputes act was implemented in the year 1947, which act took care of the industrial disputes?**

- a. Trade Disputes Act, 1929      b. Royal Commission on Labour, 1934      c. Labour Management Relations Act, 1947      d. None of the above

**4. Choose the correct option that correctly states out the defect in the Trade Disputes Act, 1929.**

- a. Restraints imposed on the rights of strike  
b. To render the proceedings unstatutable under the Act for the settlement of an industrial dispute  
c. Solution to industrial unrest  
d. All of the above

**5. The bill passing rule 81A has made two new institutions for the prevention and settlement of industrial disputes, i.e. Work Committees and \_\_\_\_\_**

- a. Industrial Tribunal      b. Commission on Labour      c. Arbitration      d. Adjudication



## SECTION 2.2 AUTHORITIES UNDER THE INDUSTRIAL DISPUTES ACT

The act establishes several authorities, including the works committee, conciliation officer, conciliation board, courts of inquiry, labour court, tribunal, and national tribunal.

### Works Committee

- ❖ This is stated in section 3 of the legislation, which states that each industrial establishment must have a works committee with equal participation from both the employer and the employee.
- ❖ It is to settle the issue in the first instance through the mediation procedure in the early stages of the conflict. The works committee also makes remarks on disputed issues from time to time.

### Conciliation officer

- ❖ The provisions of the conciliation officer are discussed in Section 4 of the Industrial Disputes Act of 1947.
- ❖ It specifies that the competent government, i.e. the federal government, state government, or local authority, will appoint as many conciliation officers as necessary.
- ❖ The conciliation officer's responsible for mediating and facilitating the resolution of industrial disputes. The conciliation officer might be appointed permanently or temporarily.

### Board of Conciliation

- ❖ The competent government appoints the board of conciliation under Section 5. The Board of Conciliation was formed to promote the resolution of industrial disputes. The board comprises the chairman and two or four additional members.
- ❖ The board's chairman is independent, and the other members are appointed in equal numbers to represent the parties in disputes. The party appoints the person who represents the party.
- ❖ The party must designate such representatives within the time frame specified. If the party fails to do so, the competent government may appoint the individual to be the party's representative.

## Courts of Inquiry

- ❖ Section 6 of the legislation goes on to discuss the establishment of a court of inquiry to investigate the topic at hand.
- ❖ The court of inquiry will be presided over by an independent person or individuals chosen by the competent authorities. If the court has two or more members, any one of them may be selected as chairman.

## Labour Court

- ❖ Section 7 of the legislation discusses the competent authorities' establishment of the labour court. It may establish as many labour courts as it sees proper for adjudicating industrial disputes as indicated in Schedule II.
- ❖ It is made up of one individual who the appropriate government selects. Tribunal o Section 7A deals with the provision for the establishment of one or more tribunals for the adjudication of disputes concerning the features stated in schedules second or third. The tribunal will be composed of one person chosen by the relevant government.

### 2.2.1 POWERS AND DUTIES OF AUTHORITIES

#### **-Notice to enter premises:**

An official or board member, for investigating an existing or past industrial dispute, can enter the premises of the relevant establishment after giving reasonable notice.

#### **- Production of documents before Tribunals:**

An official can summon individuals for assessment or request and review necessary documents related to the industrial dispute.

#### **-Cost:**

The council, national council, or labour courts have the authority to decide and determine the payment of costs incurred in the proceedings.

#### **-Granting of adjournments:**

The bench of judges in various tribunals and courts may grant adjournments to the concerned parties.

#### **- Powers of the Tribunal:**

Tribunals and courts have similar powers as vested in a common court under the Code of Civil Procedure, 1908, for various issues.

**- Fixation of wage structure:**

Compensation for supervisory work and those drawing more than 1600 per month for activities primarily of a managerial nature. Retirement age on account of industrial workers: Workers may retire upon reaching the superannuation age as per the contract between the employer and employee.

**-Incentive Payment Scheme:**

Incentives are given to those wrongfully terminated from their services. Jurisdiction to decide the dispute regarding factory closure: Courts can resolve disputes related to factory closure based on relevant facts, ensuring individual or party rights are protected.

**-Power of the Tribunal to interfere with the action taken by the management:**

The tribunal can interfere with management actions only under court supervision  
Award of Industrial Tribunal:

The tribunal's award must be in writing and signed by the presiding officer.

**- Power of Labour Court:**

The labour court can decide industrial disputes through adjudication as per the second schedule.

## 2.2.2 PENALTIES UNDER INDUSTRIAL DISPUTES ACT, 1947

**-Section 26:** Penalty for illicit strikes and lock-outs  
o Any workman who participates in an unlawful strike will face imprisonment for up to six months, a fine of up to 60 rupees, or both.  
o Any employer initiating an illegal lock-out will be imprisoned for up to one month, a fine of up to 1000 rupees, or both.

**-Section 27:** Penalty for inducement, etc. Anyone inducing or encouraging others to participate in an unlawful strike or lockout will be liable for imprisonment of up to six months, a fine of up to 1000 rupees, or both.

**Section 28:** Penalty for providing financial aid to unlawful strikes and lock-outs  
Anyone providing financial aid directly to support any unlawful strike or lockout will face imprisonment for up to six months, a fine of up to 1000 rupees, or both.

**Section 29:** Penalty for breach of settlement or award  
A person breaking any term of a settlement or award binding on them under this Act will face imprisonment for up to six months,

a fine, or both. An additional fine of up to 200 rupees per day may be imposed if the breach is continuous.

**Section 30:** Penalty for disclosing secret information Any willfully revealing confidential information as referred to in Section 21, contrary to its provisions, will face imprisonment for up to six months, a fine of up to one thousand rupees, or both.

**Section 30-A:** Penalty for closure without notice An employer shutting down an undertaking without complying with the above provisions will face imprisonment for up to six months, a fine of up to 5000 rupees, or both.

**Section 31:** Penalty for various offences o An employer violating the provisions of Section 33 will face imprisonment for up to six months or a fine of up to one thousand rupees, or both.

Anyone contravening any provisions of this Act or any rules made under it, for which no specific penalty is given elsewhere, will be liable to a fine of up to 100 rupees.

### 2.2.3 SIGNIFICANT OBJECTIVES OF THE INDUSTRIAL DISPUTES ACT, 1947

- To promote good relations between labour and industry and to offer a forum for conflict resolution through adjudicator authority.
- To establish a committee for conflict resolution between industry and labour, with the right of representation by a registered trade union or an employer organization.
- Prevent illegal strikes and lockouts. o Reach out to workers who have been laid off, unfairly terminated, etc.
- Give workers the right to collective bargaining and encourage conciliation.

### 2.2.4 APPLICABILITY OF INDUSTRIAL DISPUTES ACT, 1947

- The Industrial Disputes Act applies across India to every industrial institution engaged in any business, commerce, production, or distribution of products and services, regardless of the number of workers employed.
- The Act applies to everyone hired in an institution for hire or reward, including contract labour, apprentices, and part-time workers, to do any manual, clerical, skilled, unskilled, technical, operational, or supervisory work.

- This Act does not apply to persons primarily engaged in a managerial or administrative capacity, persons engaged in a supervisory capacity and persons subject to the Army Act, Air Force Act, and Navy Act, or those in police service or officers or employees of a prison.

## 2.2.5 CONTROVERSY RELATED TO INDUSTRIAL DISPUTES ACT, 1947

- The two sections of Chapter V-B of the Industrial Disputes Act are considered labour market rigidity.
- This provision's principal goal is to ensure that an employer cannot recruit or fire an employee at will.
- To take such action, they must first obtain approval from the labour commissioner. Because this issue is also on the concurrent list, various states have imposed even harsher restrictions and requirements, making layoffs, reductions, and closure much more difficult.

## 2.2.6 PROTECTION PEOPLE UNDER INDUSTRIAL DISPUTES ACT, 1947

The Industrial Dispute Act of 1947 includes provisions for the protection of people in the context of industrial disputes.

- **Layoff and Retrenchment:**

The Act places restrictions on the layoff and retrenchment of workers, ensuring job security to a certain extent.

- **Compulsory Recognition of Trade Unions:**

It provides for the compulsory recognition of trade unions by employers, allowing workers to collectively bargain for their rights.

- **Prohibition of Unfair Labor Practices:**

The Act prohibits unfair labor practices by both employers and trade unions, safeguarding the interests of employees.

- **Right to Strike:**

While it recognizes the right to strike, the Act lays down specific conditions and procedures to be followed before workers can resort to strikes.

- **Settlement of Disputes:**

It establishes mechanisms for the settlement of industrial disputes, including the formation of boards and labor courts.

➤ **Retrenchment Compensation:**

In cases of retrenchment, the Act mandates the payment of compensation to affected workers, offering them financial protection.

### Let's Sum Up

Any industrial disputes may be referred by the Appropriate Government under section 10 for adjudication, to the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal.

The settlement of industrial disputes may be done through voluntary reference under section 10-A

The conciliation officer or a member of a Board or Court or the Presiding officer of a Labour Court, Industrial Tribunal or National Tribunal has the same power as are vested in the Civil Court under the Code of Civil Procedure, 1908.

### Check Your Progress-QUIZ -2

1. The industrial peace is secured through voluntary \_\_\_\_\_ and compulsory \_\_\_\_\_

- a. Compromise and Arbitration b. Adjudication and Arbitration c. Work Committee and Industrial Tribunal d. Negotiation and Adjudication

2. Choose the correct objective of the Industrial Disputes Act.

- a. To prevent illegal strikes  
b. To promote measures for securing and preserving good relations between the employers and the employees  
c. To provide relief to workmen in matters of lay - offs, retrenchment, wrongful dismissals  
d. All of the above

3. State true or false i. Industrial disputes act can be described as the milestone in the historical development of industrial law in India.

- a. True b. False

4. The act was first amended in the year \_\_\_\_\_

- a. 1929 b. 1946 c. 1947 d. 1949

5. Power has been given to \_\_\_\_\_ to require Works Committee to be constituted in every industrial establishment employing 100 workmen or more.

a. Appropriate Government      b. State Government      c. High Court      d. Board of Conciliation

## SECTION 2.3 STRIKE, LOCK OUT, LAYOFF AND RETRENCHMENT OF EMPLOYEES- INDUSTRIAL DISPUTES ACT

The objective of the Industrial Disputes Act 1947 is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations. This act deals with the retrenchment process of the employees, procedure for layoff, procedure and rules for strikes and lockouts of the company. What is an industrial dispute?

According to Section 2A: Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute..

### 2.3.1 SCOPE AND OBJECT

- ✚ The Industrial Dispute Act of 1947, came into force on the first day of April, 1947. Its aim is to protect the workmen against victimization by the employers and to ensure social justice to both employers and employees. The unique object of the Act is to promote collective bargaining and to maintain a peaceful atmosphere in industries by avoiding illegal strikes and lock outs.
- ✚ The Act also provides for regulation of lay off and retrenchment. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

## 2.3.2 DEFINITIONS

### **-Appropriate Government [Sec. 2(a)]:**

Appropriate Government means the Central Government in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, any industry carried on by a Railway Company, any controlled industry specified by the Central Government, The Unit Trust of India. Corporations under the Central Statutes, Banking company, Insurance company. Mines. Oil field, Cantonment board, Major ports, etc. In relation to any other industrial dispute, the appropriate Government is the State Government.

**-Award [Sec 2 (b)]** means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A; 32

### **- Industry [Sec. 2 (j)]:**

Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

### **-Industrial Dispute [Sec. 2 (k)]:**

Means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

## SECTION 2.4 PUBLIC UTILITY SERVICES

### 2.4.1 FIRST SCHEDULE

INDUSTRIES WHICH MAY BE DECLARED TO BE PUBLIC UTILITY SERVICES UNDER SUBCLAUSE (VI) OF CLAUSE (N) OF SECTION 2 Transport (other than railways) for the carriage of passengers or goods by land or water.

#### **Ports or Docks**

- any postal, telegraph or telephone service;
- any industry which supplies power, light or water to the public



- any system of public conservancy or sanitation;
- Banking.
- Cement.
- Coal.
- Cotton textiles.
- Foodstuffs.
- Iron and steel.
- Defense establishments.
- Service in hospitals and dispensaries.
- Fire brigade service.
- India Government Mints.
- India Security Press.
- Copper Mining.
- Lead Mining.
- Zinc Mining.
- Iron Ore Mining.
- Service in any oil field.
- Manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like.
- Service in the International Airports Authority of India.
- Industrial establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals & Atomic Energy.

**2(k) "industrial dispute"** means 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 non-employment or the terms of employment or with the conditions of labour, of any person;

**Settlement [Sec. 2(p)]:** Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between an employer and a workman arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed

and a copy thereof has been sent to an officer authorised by the Appropriate Government and the Conciliation Officer.

**Wages [Sec. 2(rr)]:** Wages mean all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied were fulfilled, be payable to a workman in respect of his employment or of the work done in such an employment and includes:

- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- (iii) Any traveling concession. But the following are excluded: (a) Any bonus.

**2(n) "Public utility service" means –**

- (i) any railway service or any transport service for the carriage of passengers or goods by air;
- (ii) any service in, or in connection with the working of, any major port or dock;
- (iii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- (iv) any postal, telegraph or telephone service;
- (v) any industry which supplies power, light or water to the public;

## 2.4.2 DISPUTES SETTLEMENT AUTHORITIES

The I.D. Act provides elaborate and effective machinery for the investigation and amicable settlement of industrial disputes by setting up the various authorities. These are:

1. Works Committee;
2. Conciliation Officer;
3. Conciliation Board;
4. Court of Enquiry;
5. Labour Court;
6. Industrial Tribunal;

7. National Tribunal;
8. Arbitrators;
9. Grievances Settlement Authority.

### 2.4.3 DISPUTES SETTLEMENT DISMISSAL AUTHORITIES

#### **DISMISSAL, ETC., OF AN INDIVIDUAL WORKMAN TO BE DEEMED TO BE AN INDUSTRIAL DISPUTE. [Sec 2A]**

Difference in between the workman and his employer connected arising out of following activities shall be deemed to the industrial dispute.

- ✚ Dismissal of workman
- ✚ Discharge of workman
- ✚ Retrenchment of the workman
- ✚ Termination of workman from his services

#### **-[Sec 2A (2)]**

Workman having the disputes can make a application to the conciliation officer to settle the dispute. After the expiry of 3 months of time conciliation officer fails to settle the dispute, workman can make a direct application to labour courts or tribunals for adjudication.

#### **-[Sec 2A (3)]**

Workman should make an application to labour courts or tribunals for adjudication before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination of service of workman.

### 2.4.4 WORKING COMMITTEE

[Sec. 3]: In the case of an industrial establishment in which 100 or more workmen are employed, the appropriate Government may require the employer to constitute a 'Work Committee'. It consists of equal number of representatives of employers and workmen engaged in the establishment.

The representatives of the workmen shall be chosen from amongst the workmen engaged in the establishment and in consultation with the registered trade union, if any. Works committee deals with the workers problem arising day to day in the industrial establishment.

## 2.4.5 CONCILIATION OFFICER

-[Sec. 4]: The appropriate Government is empowered to appoint any number of persons, as it thinks fit, to be conciliation officers. The conciliation officer having duty of mediating and acts as the mediators in between the parties to resolve the dispute.

-In the case of public utility services matters like strikes and lockouts the conciliation officer can initiate the conciliation proceeding and tries to settle the dispute in between the parties.

-If the conciliation officer fails to resolve the dispute between the parties, he should report to the appropriate government. If necessary the dispute shall be referred to the Board, Labour Court, Tribunal or National Tribunal, by the appropriate government. [Sec 12 (5)].

## 2.4.6 DUTIES OF CONCILIATION OFFICER

- + Hold conciliation proceedings relating to Strikes and lockouts procedural matters of public utility services.
- + Investigate the matters of the disputes.
- + Conciliation officers shall induce the parties to come to a fair and amicable settlement of the dispute.
- + Duty to send the report of settlement of dispute and memorandum of the settlement signed by the parties to the dispute to the government or his superior.
- + In case of failure of settlement of dispute in between parties, duty to send them to the government or his superior, report of facts and circumstances relating to the disputes and in his opinion, a settlement could not be arrived at,
- + Duty to send the report to the government or his superior within 14 days from the commencement of the proceeding. or within such shorter period as may be fixed by the appropriate Government .

## 2.4.7 CONCILIATION BOARD

[Sec. 5]: as occasion arises appropriate Government is also authorised to constitute a Board of conciliation for promoting the settlement of an industrial dispute. It consists of a chairman who shall be an independent person, and two or four other members. The members appointed shall be in equal numbers to represent the parties to the dispute.

On the dispute being referred to the Board it is the duty of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to fair and amicable settlement.

According to [Sec 10 (2)] when parties in the industrial dispute apply to the government to refer dispute to the Conciliation Board and if government satisfies it shall make the reference to the Conciliation Board.

### DUTIES OF BOARD. [SEC 13]

It shall be the duty of the Board to endeavour to bring about a settlement of dispute.

- Investigate the matters relating to the dispute between parties and inducing the parties to come to a fair and amicable settlement of the dispute.

- In case of failure of settlement of dispute in between parties, duty to send to the government the report of facts and circumstances relating to the disputes and board opinion, a settlement could not be arrived at,

- The Board shall submit its report under this section within 2 months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government.

### COURT OF ENQUIRY

[Sec. 6]: as occasion arises, Government can initiate a Court of Inquiry. This Court of Inquiry was to find out matters connected with or relevant to an industrial dispute. Where a Court consists of two or more members, one of them shall be appointed as the chairman.

A Court of Inquiry looks into only matters which are referred to it by Government and submits its report to the Government ordinarily within certain period from the date of reference.

## Let's Sum Up

On the other hand, any matter of the industrial disputes which may relate to the Second Schedule or Third Schedule may refer to the Industrial Tribunal. Where the disputes relate to a public utility service and a notice of the same is given, it becomes mandatory of the Appropriate Government or the Central Government to refer the matter for adjudication. But the power of the Appropriate Government to make a reference is discretionary and it is open to judicial review.

### Check Your Progress-QUIZ –3

1. **No person employed in a public utility service shall go on strike in breach of contract within \_\_\_\_ of giving such a notice.**
  - a. 14 days
  - b. 6 weeks
  - c. 7 days
  - d. None of the above
2. **Choose the correct option where no workmen shall go on a strike in breach of contract and no employer of any such workmen shall declare a lock - out during:**
  - a. The pendency of conciliation proceedings before a board and 7 days after the conclusion of such proceedings
  - b. The pendency of proceedings before labour court, tribunal or national tribunal and 2 months, after the conclusion of such proceedings
  - c. During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award
  - d. All of the above
3. **Which one of the following is not a machinery for settlement of Industrial Disputes under the Industrial Disputes Act, 1947?**
  - (A) Conciliation Officer (B) Board of Conciliation (C) Collective Bargaining (D) Labour Court
4. **Under which Schedule of the Industrial Disputes Act, 1947 Public Utility Services have been listed out?**
  - (A) 1st Schedule (B) 2<sup>nd</sup> Schedule (C) 3<sup>rd</sup> Schedule (D) 4<sup>th</sup> Schedule
5. **Under which of the following legislations there is a provision called 'protected workmen'?**
  - (A) Trade Unions Act, 1926 (B) Industrial Employment (Standing Orders) Act, 1946 (C) Factories Act, 1948 (D) Industrial Disputes Act, 1947.

## SECTION 2.5 ADJUDICATION

### 2.5.1 LABOUR COURT

**[Sec. 7]:** The appropriate Government is empowered to constitute one or more Labour Courts. Its function is the adjudication of industrial disputes relating to any matter specified in the Second Schedule.

A Labour Court consists of one person only. A person is qualified to be appointed as presiding officer of a Labour Court, if:

- (a) he is, or has been a judge of a High Court, or
- (b) he has been a District judge or an Additional District judge for at least three years

### 2.5.2 MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS

#### 2.5.2 i) SECOND SCHEDULE

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and

According to [Sec 10 (1) (c)] matters specified in THIRD SCHEDULE, dispute not effecting more than 100 workers can be referred to labour court.

According to [Sec 10 (2)] when parties in the industrial dispute apply to the government to refer dispute to the labour court and if government satisfies it shall make the reference to the labour courts.

According to [Sec 10 (6)] no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal.

#### **Industrial Tribunal [Sec. 7A]:**

The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes

relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

For appointment as the presiding officer of a Tribunal ▪

- he is, or has been, a Judge of a High Court; or
- he has, for a period of not less than 3 years, been a District Judge or an Additional District Judge;
- he is or has been a Deputy Chief Labour Commissioner (Central) or Joint

Commissioner of the State Labour Department, having a degree in law and at 7 seven years' experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer.

### **2.5.2 ii) THIRD SCHEDULE**

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity

According to [Sec 10 (2)] when parties in the industrial dispute apply to the government to refer dispute to the industrial tribunal and if government satisfies it shall make the reference to the industrial tribunal.

According to [Sec 10 (6)] no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal.

### **Chapter IIA - Notice Of Change**

#### **Notice of change [Section 9A.]**

No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

### **2.5.2 iii) THE FOURTH SCHEDULE :**

#### **Conditions of Service for Change of which notice is to be given**

(Section 9A)

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



2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades

### **National Tribunal [Sec. 7 (B)]:**

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals. Its main function is the adjudication of industrial disputes which involve questions of national importance or affecting the interest of two or more States.

**According to [Sec 10 (1-A)]** dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State, whether it relates to any matter specified in the Second Schedule or the Third Schedule, the government will order in writing refer to National Tribunal for adjudication.

**According to [Sec 10 (2)]** when parties in the industrial dispute apply to the government to refer dispute to the National Tribunal and if government satisfies it shall make the reference to the National Tribunal.

### **Let's Sum Up**

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of disputes through Conciliation officer or member of a Board or Court or Presiding officer of a Labour Court, Industrial Tribunal or National Tribunal.

Any industrial disputes may be referred by the Appropriate Government under section 10 for adjudication, to the Conciliation Board, Labour Court, and Court of Inquiry, Industrial Tribunal or National Tribunal.

The settlement of industrial disputes may be done through voluntary reference under section 10-A

The conciliation officer or a member of a Board or Court or the Presiding officer of a Labour Court, Industrial Tribunal or National Tribunal has the same power as are vested in the Civil Court under the Code of Civil Procedure, 1908.

**Check Your Progress-QUIZ –4**

1. Which of the following is machinery for settlement of industrial disputes?  
(A) Indian Labour Conference (B) Joint Management Council (C) Industrial Tribunal (D) Standing Labour Committees
2. Grievance redressal Machinery is given in  
(A) Industrial Disputes Act (B) Factories Act (C) Both (A) and (B)
3. The dispute of individual workman is deemed to be industrial dispute if the dispute or difference is connected with or arising out of the following where no other workman nor any union of workman is a party to the dispute.  
(A) Grievance of an individual workman.  
(B) Discharge of an individual workman.  
(C) Dismissal of an individual workman.  
(D) Discharge, dismissal, retrenchment or otherwise
4. Match the following schedules under the I. D. Act, 1947  
(a) I schedule (i) conditions of service for change of which notice is to be given  
(b) II and III schedules (ii) Labour courts and Industrial Tribunals  
(c) IV schedule (iii) Industries which may be declared as public utility services  
(d) V schedule (iv) Unfair labour practices
5. As per section 8, if a vacancy arises in the office of the presiding officer of labour court, Tribunal or National Tribunal or in the chairman's office in the case of National Tribunal, the \_\_\_\_\_ and in any other office the \_\_\_\_\_ shall appoint another person in accordance with the provisions of this Act.  
A. Central Government for both  
B. Appropriate Government for both  
C. Central Government; Appropriate Government  
D. Appropriate Government; Central Government

## SECTION 2.6 UNIT SUMMARY

The act was implemented to provide for machinery and procedures for the investigation and settlement of industrial disputes, applicable to all irrespective of size and sector. It even has provisions regarding conditions for layoffs, retrenchment (reduction in the size of operations) and closure of industry.

Thus, this was the Industrial Disputes Act which was passed by the government of India in 1947. This Act ensures peace and harmony among all the industrial establishments, and if any conflict arises, the provisions in the Industrial Disputes Act helps in solving the issue in a systematic manner in which all the parties are satisfied and every decision made is fair and just.

## SECTION 2.7 GLOSSARY

<b>Industrial Disputes</b>	The act was drafted to make provision for the investigation and settlement of industrial disputes and to secure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication
<b>Authorities</b>	Territories under direct British control, later implemented in the Princely States upon their integration with the Indian Union
<b>Strike, Lockouts, Layoff and Retrenchment of employees</b>	Based on the phenomena of strikes around the world, strikes can be categorised into economic strikes, sympathy strikes, general strikes, sit-down strikes, slow down strikes, hunger strikes and wildcat strikes have been experienced
<b>Public utility and Adjudication</b>	In accordance with the provisions of this Act, the award may be given to the party as per the appropriate provisions of the government. When an application is given to a conciliation officer, they should give the approval of the Action taken within three months of giving the application.

## SECTION 2.8 SELF ASSESSMENT

### Essay type questions

1. Define Industrial Disputes Act. Explain its objectives.
2. What are the rules and authorities of industrial act?
3. Short note on History of Industrial Disputes Act.
4. What are the powers and duties of authorities?
5. Enumerate the penalties under Industrial Disputes Act.
6. Explain the significance and applicability of Disputes Act.
7. Discuss about the Strike, lockout and layoff and retrenchment of employees.
8. Explain the Disputes settlement authorities under this act.
9. Explain the duties and responsibilities of conciliation Board.
10. Define Adjudication. Explain the various schedule under the National Tribunal.

## 2.9 CASE STUDY

**Industrial Disputes Act, 1947:** Thus, this was the Industrial Disputes Act which was passed by the government of India in 1947. This Act ensures peace and harmony among all the industrial establishments, and if any conflict arises, the provisions in the Industrial Disputes Act helps in solving the issue in a systematic manner in which all the parties are satisfied and every decision made is fair and just.

Question: Overview of Industrial Disputes Act

## 2.10 ANSWERS FOR CHECK YOUR PROGRESS

Section 2.1	Industrial Disputes Act, 1947
1.	a. 1947
2.	c. Adjudicator
3.	a. Trade Disputes Act, 1929
4.	b. To render the proceedings unstatutable under the Act for the settlement of an industrial dispute
5.	a. Industrial Tribunal

Section 2.2	Authorities under the Industrial Disputes Act, 1947
1.	d. Negotiation and Adjudication
2.	d. All of the above
3.	a. True
4.	c. 1947
5.	a. Appropriate Government
Section 2.3 & 2.4	Strikes, Lockout & Public Utility services
1.	b. 6 weeks
2.	d. All of the above
3.	C) Collective Bargaining
4.	A) 1stSchedule
5.	D) Industrial Disputes Act, 1947.

## 2.11 REFERENCES

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### UNIT-3 THE WORKMEN'S COMPENSATION ACT, 1923

The Workmen's Compensation Act – Nature and Scope – Definitions – Workmen's Compensations – Employ's Liability – Meaning of Accident Compensation Permanent – Partial and Temporary Disablement Compensation of Half Month Payment (Table Not Necessary)

#### Introduction and Objectives

Section	Topic	Pages
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### UNIT-III

#### Unit Objectives

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## UNIT OBJECTIVES

Workmen Compensation Act of 1923 is the first social security measure implemented in India to provide workers and their dependents relief for harm by accident that results in either death or disability. It is a fictitious employment extension, in accordance with the theory of notional extension of employment.

According to government regulations, employers are required by the Workmen Compensation Act of 1923 to offer insurance benefits to their personnel. As a result, employees are guaranteed financial security even in the event of unfortunate accidents, which might aid them in dealing with the situation and that of their families.

# THE WORKMEN'S COMPENSATION ACT 1923

## 3.1 INTRODUCTION AND OBJECTIVES

There is no doubt that employees are an organization's pillars of success. Thus, it falls upon employers to ensure that their workforce receives proper financial compensation in case they meet with an unfortunate accident at the workplace.

Now, to ensure proper enforcement of this facility, several laws like the 1884 Compensation Act and the Fatal Act of 1885 were implemented. However, they were not enough to financially compensate workers in case they met with harm while performing their duties. Thus, the Indian Parliament passed the Workmen's Compensation Act in 1923.

### 3.1.1 DEFINITION AND SCOPE

The Workmen Compensation Act 1923 aims to provide financial compensation to employees in case they meet with an unfortunate accident while performing their duties.

- ✓ All employees working full-time, part-time, temporarily or casually are liable to receive financial protection under this law. It comes into effect in case they secure injuries, incapacity, and disfigurement or die while performing their duties.
  - ✓ Front-line workers in the following industries are liable to protection under this law:
  - ✓ Non-permanent employees of the Railways who do not fall under the sub-divisional, district or administrative offices.
- ✓ Captains and crew members on an aircraft.
  - ✓ Labours employed abroad as per Schedule II of the Workmen Compensation Act 1923.
  - ✓ Individuals working in construction sites, mines, docks, factories and specific places as per Schedule II of the above mentioned Act.
  - ✓ Drivers, mechanics, helpers and any other person associated with working with vehicles.



According to this Act, any company or establishment operating in the sector highlighted above and having more than 10 employees are liable to abide by its rules.

### COVERAGE RECEIVABLE UNDER THE WORKMEN COMPENSATION ACT 1923

The type and extent of financial coverage as well as its applicable terms and conditions fully depend on the insurance company that is affiliated with the employer. Here are some basic things which all insurers cover:

- Bodily or other injuries during an accident while on duty
- Temporary disablement
- Permanent disablement (complete or partial)
- Death due to an accident at work
- Injury, disease or death resulting from working conditions
- All legal or any other expenses incurred by an employee in the above circumstances

### 3.1.2 WORKMEN'S COMPENSATION ACT 1923- AMOUNT OF COMPENSATION

According to Section 4 of the Workmen's Compensation Act 1923, the amount of compensation workers are liable to receive is as follows:

#### **Temporary disabilities**

For temporary disabilities, the Workmen's Compensation Act 1923 provides financial compensation of up to 25% of the concerned employee's monthly wages.

#### **Permanent total disabilities**

In an unfortunate event when an employee suffers from permanent disablement, that individual has the right to receive 60% of his/her monthly wage or Rs.1,20,000, whichever is higher.

#### **Permanent partial disabilities**

Injuries that fall under permanent partial disabilities are stated in Part II Schedule I of the Act. The payable corpus is a certain percentage of earnings loss by the employee due to his/her injury.

## Death

When an employee dies due to an accident at his/her workplace, their family is liable to receive 50% of the deceased's monthly wages or Rs.1,20,000, whichever is higher.

Note – Individuals who are liable to receive compensation under the Employees' State Insurance Scheme of India (ESIC) cannot get financial benefits from the above mentioned Act.

### 3.1.3 Updates in the Workmen Compensation Act 1923

Since its inception in 1923, there have been two major changes in the Workmen Compensation Act. They are as follows:

In 2010, this law's name was changed to Employee's Compensation Act.

On January 3, 2020, the Ministry of Labour and Employment raised the amount on which compensation was calculated as per the Act from Rs. 8,000 to Rs. 15,000.

### 3.1.4 Features of the Workmen Compensation Act 1923

- Employers are under the obligation to provide financial compensation as per the Workmen Compensation Act 1923 in the following circumstances:

- An accident or injury occurs at the workplace while carrying out a task.
- If the applicant provides proof that the injury or accident that has occurred at the workplace is aggravating his/her medical condition.

In case a worker becomes disabled or dies while on duty.

### 3.1.5 Employer not liable to pay compensation

As per the Act, employers are not liable to financially compensate their employees under the following circumstances:

#### **Employee suffers from an injury or accident by disregarding the safety norms.**

- Injury resulting in partial or total disablement for less than three days. '
- For accidents or injuries under the influence of alcohol or drugs.

#### **Let's Sum Up**

It is mandatory as per government rules for employers to provide insurance benefits to their workforce under the Workmen Compensation Act 1923. This ensures that even in the

case of unfortunate accidents, employees can get financial security, which can help them and their families deal with the situation.

### Check Your Progress-QUIZ –1

#### 1. Under Workmen's Compensation Act, 1923

- (A) Individual manager subordinate to an employer cannot act as managing agent.
- (B) Managing agent includes an individual manager subordinate to an employer.
- (C) Only employer can act as managing agent.
- (D) The appropriate government shall appoint managing agent.

#### 2. The Workmen's Compensation Act, 1923, the Maternity Benefit Act, 1965 and the Employees State Insurance Act, 1948

- (A) Together can be applicable.
- (B) The Maternity Benefit Act and the Employees State Insurance Act can be applicable at a time.
- (C) The Workmen's Compensation Act and the Employees State Insurance Act can be applicable at a time.
- (D) If the Workmen's Compensation Act and the Maternity Benefit Act are applicable, the Employees State Insurance Act is not applicable.

#### 3. Assertion (A): Provisions of Employees' compensation Act and Maternity Benefit Act do not apply to all industries.

**Reason (R): Employees' Compensation Act is comprehensive social security legislation.**

- (A) (A) is wrong, but (R) is right. (B) (A) is right, but (R) does not related to the (A).
- (C) (A) and (R) are right, and (R) validates the (A).
- (D) (A) and (R) are wrong.

#### 4. While working at the construction of a multi-storeyed building of a company, a worker employed by a 'contractor', supplied by a 'sirdar', faced an accident and became temporarily disabled. For paying compensation to the worker, who shall be held responsible as per law?

- (A) The contractor who employed the worker
- (B) The sirdar who supplied the worker
- (C) Both (A) and (B)
- (D) None of the above

**5. No contribution is required for getting benefit under which of the following legislations?**

- (A) Maternity Benefit Act.. (B) Employees' Compensation Act 47  
(C) Both under (A) & (B) (D) None of the above

## **3.2 PERMANENT PARTIAL DISABLEMENT OR PERMANENT PARTIAL DISABILITY IS A CONDITION**

Where an individual has suffered permanent damage to, or loss of limbs or organs. This is a categorization under the workmen's Compensation insurance whereby an individual has been rendered partially incapable of performing duties due to a workplace accident or hazard..

### **3.2.1 Permanent Partial Disablement in Workmen's Compensation**

Permanent Partial Disablement under Workmen's Compensation policy is a doctor-certified condition of disablement that is due for compensation by the employer. There are certain physical conditions listed as per the Workmen's Compensation insurance in which an employee is eligible for compensation.

**Compensation is due when the loss or damage is irrecoverable. Some of these include:**

- ✓ Loss of toes 44
- ✓ Loss of limbs
- ✓ Loss of eyesight
- ✓ Loss of fingers

**Some of these exclusions include:**

- Accidents arising from disregard of workers to safety protocols and guidelines
- Injury or damage arising from war, invasion or other related perils
- Accidents due to the influence of alcohol or drugs
- Injury that does not last for more than three days (resulting in total or partial disablement)

### 3.2.2 Calculating Compensation for Permanent Partial Disablement

In case of an accident or workplace hazard, the compensation is calculated based on the assessment by a qualified medical practitioner. The medical practitioner, post evaluation, provides an understanding of the extent of damage or loss, and the degree to which the worker's earning capacity has been reduced.

Permanent Partial Disablement or permanent partial disability is a condition where an individual has suffered permanent damage to, or loss of limbs or organs. This is a categorization under the workmen's Compensation insurance whereby an individual has been rendered partially incapable of performing duties due to a workplace accident or hazard.

### 3.2.3 Understanding workmen's Compensation Policy

Workmen's Compensation forms a part of the Employee's Compensation Act, 1923, and outlines several conditions under which employers must pay compensation to employees. The workmen's Compensation policy is useful for employers to compensate their employees or dependents of employees (in case of death of employee) due to an accident or injury at the workplace during the working hours.

**Broadly, a workmen's Compensation insurance provides coverage in case of:**

- Accidental Death
- Permanent Partial Disability
- Permanent Total Disability
- Temporary Total Disability

**With add-ons, it is also possible to opt for coverage for certain other cases such as:**

- Medical Extension
- Occupational Diseases
- Sub-contractor Coverage
- Injury due to acts of terrorism

A workmen's Compensation insurance helps employers meet statutory norms, and hence is relevant for all business owners in India. However, workmen's Compensation insurance is most beneficial for:

- Manufacturing / trading / servicing setups (for floor workers and office staff)
- Contractors / Sub contractors
- Individual /public or private companies / partnership firm
- Any business / trading entity

### 3.2.4 Amount of compensation

Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

- (a) where death results from the injury an amount equal to 3 [fifty per cent.] of the monthly wages of the deceased 1 [employee] multiplied by the relevant factor; or an amount of 4 [one lakh and twenty thousand rupees], whichever is more
- (b) where permanent total disablement results from the injury an amount equal to 5 [sixty per cent.] of the monthly wages of the injured 1 [employee] multiplied by the relevant factor; or an amount of 6 [one lakh and forty thousand rupees], whichever is more

[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b);]

- (c) Where permanent partial disablement results from the injury.
  - (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or
  - (ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter.

### Let's Sum Up

The documents that an employee needs to submit while claiming a workmen's compensation insurance policy are the completed and signed application form, medical bills, and compensation records. Moreover, for mishaps causing disabilities or death, medical

certificates confirming the same need to be submitted. According to the law, when an employee dies at the workplace, all his/her dependants are liable to receive financial compensation. This benefit is also applicable in case of accidents causing disablement.

### Check Your Progress-QUIZ -2

**1. Which of the following statements relating to the Employees' Compensation Act is not correct?**

- (A) This Act has a link with the Workmen's Compensation Act
- (B) This act is the outcome of the amendment that was made to the Workmen's Compensation Act
- (C) This act does not have any provision relating to temporary disablement of workmen
- (D) This act has a provision relating to permanent partial disablement

**2. If there is willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing safety of workman,**

- (A) Employer is liable to pay compensation
- (B) Employer is not liable to pay compensation
- (C) Appropriate government is liable to pay compensation
- (D) The Trade Union is liable to pay compensation

**3. In case of fatal accident if the commissioner serves notice to the employer based on his source**

- (a) The employer can neglect the notice.
- (b) If the employer thinks liable, he shall make the deposit within sixty days of the service of notice.
- (c) If the employer thinks liable, he shall make the deposit within thirty days of the service of notice.
- (d) If the employer is not liable, he shall in his statement indicate the grounds on which he disclaims liability.

- (A) All statements are correct
- (B) All statements are incorrect
- (C) Only (a) and (d) are correct
- (D) Only (c) and (d) are correct

**4. Assertion (A): Industrial accidents occur inter-alia due to fatigue.**

**Reason (R): Fatigue is the result of personal health condition of the worker as well as by overwork, monotony and boredom as part of work experience. Codes:**

- (A) (A) is right but (R) is wrong.      (B) (A) is right and the (R) rightly explains the (A).  
(C) Both (A) and (R) are wrong      (D) (A) is wrong but (R) is right

**5. The name of which of the following legislations has been recently changed?**

- (A) Workmen's' Compensation Act      (B) Employees' State Insurance Act  
(C) Maternity Benefit Act      (D) Payment of Gratuity Act

### 3.3 UNIT SUMMARY

Workmen Compensation Act of 1923 is the first social security measure implemented in India to provide workers and their dependents relief for harm by accident that results in either death or disability. It is a fictitious employment extension, in accordance with the theory of notional extension of employment.

According to government regulations, employers are required by the Workmen Compensation Act of 1923 to offer insurance benefits to their personnel. As a result, employees are guaranteed financial security even in the event of unfortunate accidents, which might aid them in dealing with the situation and that of their families. Compensation shall be paid as soon as it falls due. Where the employer does not accept the liability to the extent claimed, he must make provisional payment based on the extent of liability which he accepts. This is without prejudice to the right of the workman to make any further claim. If an employer fails to pay the compensation within one month of the date on which it fell due, the Commissioner may direct the payment of simple interest.



### 3.4 GLOSSARY

<b>Workmen's Compensation Act</b>	Employees Compensation Act, 1923 is one of the important social security legislation. The act aims to provide financial protection to employees and their dependents
<b>Disablement Condition</b>	Disablement, in ordinary language, means loss of capacity to work or move. Such incapacity may be partial or total and accordingly there are two types of disablement, partial and total.

### 3.5 SELF ASSESSMENT

#### Essay type questions

1. Define Workmen's Compensation Act. Explain its objectives.
2. What are the rules and regulations of amount of workmen's compensation Act?
3. What are the features of workmen's compensation Act 1923?
4. Enumerate the permanent partial disablement in condition.
5. Explain the computation for permanent partial disablement.
6. Define Amount of compensation. Explain its process.
7. Explain the Disputes settlement authorities under this act.

### 3.6 CASE STUDY

**Workmen's Compensation Act 1923:** The Act is basically made for the employees so that when they incur expenses for the injury suffered during an accident, they can get compensation from the employers. The basic rule of Vicarious liability applies in the act. The employer is the master and the employee is the servant. The employee gets compensation only when the injury takes place in the course of employment and in the workplace.

### 3.7 ANSWERS FOR CHECK YOUR PROGRESS

Section 3.1	Workmen's Compensation Act, 1923
1.	D) The appropriate government shall appoint managing agent.
2.	D) If the Workmen's Compensation Act and the Maternity Benefit Act are applicable, the Employees State Insurance Act is not applicable.
3.	C) (A) and (R) are right, and (R) validates the (A).
4.	A) The contractor who employed the worker
5.	C) Both under (A) & (B)
Section 3.2	Permanent Partial Disablement is a condition
1.	C) Both under (A) & (B)
2.	B) Employer is not liable to pay compensation
3.	D) Only (c) and (d) are correct
4.	B) (A) is right and the (R) rightly explains the (A).
5.	A) Workmen's' Compensation Act

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<b>UNIT-4 EMPLOYEE STATE INSURANCE ACT, 1948</b>		
Employees State Insurance Act 1948 Objects-definitions-ESI Corporation, functions- contribution and recovery benefits. Employees Provident Fund and Miscellaneous Provision Act,1952 Objects- definition-provident fund schemes-contribution and recovery.		
<b>Introduction of Employee State Insurance Act, 1948</b>		
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## UNIT OBJECTIVES

For a working-class employee in India, the ESI Act is an essential utility that works in their favour, while also being beneficial for sectors outside that of the working class.

The ESI Act is unique in the fact that it works in advantageous ways for both employees and employers. While employees are insured under the act and get financial aid in case of an injury, the employers are also protected from being jeopardized twice in lieu of paying compensation to the employees.

## EMPLOYEES STATE INSURANCE ACT, 1948

### SECTION 4.1: INTRODUCTION ABOUT EMPLOYEES STATE INSURANCE ACT 1948

#### INTRODUCTION

The Employees' State Insurance Act contains several parts that give medical benefits and insurance to employees who work in factories that are registered with the ESI Corporation. As the start of a formal social security scheme in India, this is an intriguing prospect for both employees and lawyers.

This article will explain the highlight sections of the Act, as well as elaborate landmark cases that prove the authenticity of the scheme, and how it worked for the benefit of its employees at times of need.

#### 4.1.1 Application and Scope of the Act

The Employees' State Insurance Act, 1948 (ESI), enables the financial backing and support to the working class in times of medical distress such as:

- Sickness.
- Maternity Leave.

- Disorders (mental or physical).
- Disability.
- Death.

It is a self-financed initiative, which serves as a type of social security scheme, to prevent the working class from any financial problems arising out of the above medical issues.

### 4.1.2 Constitutionality of the Act

The ESI Act serves as a constitutional instrument because of its practice of providing insurance and medical insurance. While the ESI Act is mostly executed through the ESI Corporation, the Central Government takes control of most of the proceedings.

This control by the Central Government largely contributes to the constitutionality of the Act, because Insurance, be it public or private, is listed in the Seventh Schedule of the Indian Constitution as a Union List subject i.e. it can only be legislated by the Central Government.

### 4.1.3 Meaning & Definition

The ESI Act 1948, encompasses certain health related eventualities that the workers are generally exposed to; such as sickness, maternity, temporary or permanent disablement, Occupational disease or death due to employment injury, resulting in loss of wages or earning capacity-total or partial.

The Employees' State Insurance Scheme is an integrated measure of Social Insurance embodied in the Employees' State Insurance Act and it is designed to accomplish the task of protecting 'employees' as defined in the Employees' State Insurance Act, 1948 against the impact of incidences of sickness, maternity,...

### 4.1.4 EMPLOYEE STATE INSURANCE (ESI)

The Employees' State Insurance Act, 1948, is a social security plan offered by the Indian government. Employees are covered under the plan if they become disabled or die as a result of work-related injuries, illnesses, or maternity leave. Employees must enroll in the plan in

order to receive medical treatment and other benefits. The financial aid provided by the scheme may be used to compensate employees for lost wages due to illness.

This is a self-financing program in which employees and employers contribute a certain percentage of their wages to the scheme on a monthly basis.

### 4.1.5 Application and scope of the Act

The Employees' State Insurance Act (ESI) of 1948 provides financial support and assistance to the working class in times of medical difficulty, such as:

- ✓ Parental Leave
- ✓ Disturbances (mental or physical).
- ✓ Disability.
- ✓ Death

#### Let's Sum Up

The Employees State Insurance Act contains several important definitions that explain the meaning of important provisions. We must understand all of these provisions in detail to comprehend the Act. The Employees State Insurance Act, 1948 is beneficial and social legislation. Its main aim is to provide economic security to people who work in certain factories and establishments. The Act contains several important definitions and provisions that regulate these workers.

#### Check Your Progress-QUIZ -1

- 1. Under ESI Act, 1948 a member of the Corporation, Standing Committee or the Medical Council shall cease to be a member of the body if he fails to attend**
  - A. Two consecutive meetings
  - B. three meetings intermittently
  - C. Three consecutive meetings
  - D. four consecutive meeting
- 2. What is the content of the Schedule I of the ESI Act, 1948?**
  - A. list of injuries deemed to result in permanent total disablement.
  - B. list of injuries deemed to result in permanent partial disablement
  - C. list of occupational diseases.
  - D. none of the above

**3. The Workmen's Compensation Act, 1923, the Maternity Benefit Act, 1965 and the Employees State Insurance Act, 1948**

A. together can be applicable.

B. the maternity benefit act and the employees state insurance act can be applicable at a time.

C. the workmen's compensation act and the employees state insurance act can be applicable at a time.

D. if the workmen's compensation act and the maternity benefit act are applicable, the employees state insurance act is not applicable.

**4. Under ESI Act, 1948 a member of the Corporation, Standing Committee or the Medical Council shall cease to be a member of the body if he fails to attend**

(A) Two consecutive meetings

(B) Three meetings intermittently

(C) Three consecutive meetings

(D) Four consecutive meetings

**5. Which of the following benefits have not been provided under the Employee's State Insurance Act, 1948?**

(A) Sickness Benefit

(B) Unemployment Allowance

(C) Children's' Allowance

(D) Disablement Benefit

## SECTION 4.2 BENEFITS OF ESI

### 4.2.1 Types of Benefits of ESI

Employees are entitled to benefits under Section 46 of the ESI Act as social security in the event of injury while on the job. There are six different sorts of advantages available:

- Medical benefit.
- Sickness benefit
- Maternity benefit
- Dependents' benefits.
- Disability benefits
- Additional benefits.

**a) Medical Benefits**

These benefits are guaranteed to employees as soon as they are hired, and they also apply to their family members. This benefit pays for any treatment costs incurred by the



employee as a result of medical difficulties. From the first day of insurable employment, an insured person and his family receive full medical treatment. There is no limit on how much an insured person or a family member can spend on treatment. On payment of a **nominal annual premium of Rs.120/-**, medical care is also provided to retired and permanently disabled covered persons and their spouses.

#### **b) Sickness Benefits**

Section 46(1)(a) of the ESI Act allows covered employees to receive periodic payments in the event of sickness, as long as the medical condition is validated by an authorized medical practitioner. The compensation is roughly 70% of their salaries, with a maximum of 91 days of compensation each year. The employee must have worked for a minimum of 78 days over a 6-month term of employment to be eligible for the benefit.

#### **c) Extended Sickness Benefit (ESB)**

In the case of 34 malignant and long-term conditions, SB can be extended for up to two years at an enhanced rate of 80% of salaries. o Enhanced Sickness Benefit: Insured persons undergoing sterilization for 7 days/14 days for male and female workers receive an Enhanced Sickness Benefit equal to their full earnings.

#### **d) Benefits of Maternity**

An insured woman can receive periodical payments under Section 46(1)(b) of the ESI Act if any of the following scenarios occur:

- confinement (labour that leads to birth or birth after 26 weeks);
- pregnancy-related illness
- childbirth complications

The benefit is payable for three months, with a one-month extension available if needed. In the year preceding the pregnancy, a minimum of 70 days of employment must be completed.

#### **e) Dependents' Benefits**

Section 46(1)(d) provides for recurrent compensation (typically provided monthly) to the dependants/family members of someone who dies while working, with the cause of death being an employment injury or occupational hazard. Compensation is usually 90% of the employee's salary.

#### **f) Disability Benefits**

In the event that an employee is disabled as a result of an injury sustained while on the job. The disability may be transitory or permanent in nature. The disablement benefit, unlike the other benefits, does not require a minimum work contribution, albeit eligibility will be evaluated by the Medical Board. This decision has an impact on the amount of compensation awarded, if any, with the average percentage of wages awarded being about 90%.

**g) PDB (permanent disability benefit)**

The benefit is provided in monthly installments at a rate of 90% of wage, depending on the level of loss of earning capacity as determined by a Medical Board.

**h) Other Benefits**

Other benefits relate to non-essential benefits that employees can receive in addition to the five primary perks. The following are some examples:

- **Funeral Expenses:** The eldest surviving member of an employee's family gets compensated Rs. 10,000 to execute his dying rites.
- **Vocational Rehabilitation:** This benefit is for disabled workers who are undergoing rehabilitation.
- **Old age medical care:** This benefit is accessible to retired employees or those who have left their jobs due to an injury, with a general compensation of Rs. 120 per month.
- **Confinement Expenses:** An insured woman or an I.P. in respect of his wife if confinement occurs in a location where requisite medical facilities are not accessible under the ESI Scheme.
- **Physical Rehabilitation:** In the event of a physical disability caused by an occupational harm.
- **Rajiv Gandhi ShramikKalyanYojana:** This unemployment allowance plan began on April 1, 2005. An insured person who becomes unemployed after three years of coverage due to factory/establishment closure, retrenchment, or permanent invalidity is entitled to the following benefits:
  - o Unemployment Allowance equal to 50% of wage for a maximum of two years.

Medical care from ESI Hospitals/Dispensaries for self and family throughout the time IP is receiving jobless benefits.

## 4.2.2 Contribution period Corresponding Cash Benefit period

Contribution Period Cash Benefit Perio	Contribution Period Cash Benefit Period
1st April to 30th Sept. 1st Jan of the following year to 30th June	1st April to 30th Sept. 1st Jan of the following year to 30th June
1st Oct to 31st March of the year following. 1st July to 31st December	1st Oct to 31st March of the year following. 1st July to 31st December

### In the first case, the Principal employer must contribute.

- The primary employer has to collectively pay the contribution, both his own and that of his employees, regardless of whether they are directly employed under him or are working through an immediate employer.

- If a directly employed employee fails to pay his contributions, the employer can only recover that contribution by deducting the employee's wages.

### Contribution reimbursement from the immediate employer

The principal employer has the right to collect the payment made on behalf of an indirect employee from the immediate employer as a debt owing to him in the case of an employee who is indirectly employed under the principal employer via an immediate employer. Before paying his dues, the immediate employer must also prepare a list of all the employees under him and submit it to the primary employer.

### Contribution payment provisions in general

In the event that an employee's wage falls below the Central Government's stipulated wage range, the employee is not accountable for his contribution and it is not payable. Method of payment of contributions.

### The Act's payment regulations have been specified under the following conditions:

- The type and timing of the contribution.
- Payment involving the application of stamps or other adhesives to books of accounts or other documents.
- The contribution evidence that reaches the Corporation must be dated.
- The various entries in the books of accounts, as well as the insured persons' information.
- Replacing papers that have been misplaced, damaged, or disfigured.

## 4.2.3 Sections included in the Act

- ✚ Section 45E. Validity of certificate and amendment thereof.
- ✚ Section 45F. Stay of proceedings under certificate and amendment or withdrawal thereof.
- ✚ Section 45G. Other modes of recovery.
- ✚ Section 45H. Application of certain provisions of the Income-tax Act.
- ✚ Section 45-I. Definitions
- ✚ Section 46. Benefits.
- ✚ Section 47. [Omitted.]
- ✚ Section 48. [Omitted.]
- ✚ Section 49. Sickness benefit

### Let's Sum Up

The Employees' State Insurance Act incorporates a number of sections, these sections provide for medical benefits and insurance for any employees working under factories registered under the ESI Corporation. This is an exciting prospect from both an employee's and a legal perspective as the beginning of a formal social security program in India.

## SECTION 4.3 CORPORATIONS, STANDING COMMITTEE

### 4.3.1 ESTABLISHMENT OF ESI

The ESI Act exercises its function through the Employees' State Insurance Corporation, established via [Section 3](#), a body created to maintain social security. It was established on 24 February, 1952. The corporation is supposed to grant relief to the employees in case of medical emergencies.

### 4.3.2 Term of office of members of the Corporation

Via [Section 5](#), the following members are appointed for up to a 4 year period:

- Director-General.
- Chairman.
- Vice-Chairman.
- The 5 people nominated by Central Government.
- The members representing each state.
- The members representing each Union Territory.

### 4.3.3 Eligibility for re-appointment or re-election

An outgoing member of ESIC, the Standing Committee of ESIC, or the Medical Benefit Council is automatically eligible for re-appointment or re-election into office as the case may be, at the pleasure of the appointing Central Government.

### 4.3.4 Authentication of orders, decisions, etc.

The signature of the Director-General of ESIC is the only necessary requirement to authenticate an outgoing order or a decision, there is no other way to authenticate or enforce an order.

The Director-General can also temporarily delegate his authority to any other officer. In this case, the signature of the authorized officer will also suffice to authenticate an order.

### 4.3.5 Constitution of Standing Committee

**The composition of the Standing Committee of ESIC is as follows:**

- A chairman appointed by Central Government.
- 3 members within the corporation representing 3 state governments.
- 3 members within the corporation representing employers.

- 3 members within the corporation representing employees.
- 1 member within the corporation representing the medical profession.
- One MP belonging to the corporation.
- The Director-General.

### 4.3.6 Members and No of period

The following members are appointed for a two year period:

- The Chairman.
- The 3 members representing the states.

### Let's Sum Up

The ESI Act exercises its function through the Employees' State Insurance Corporation, established via [Section 3](#), a body created to maintain social security. It was established on 24 February, 1952. The corporation is supposed to grant relief to the employees in case of medical emergencies.

### Check Your Progress-QUIZ –2

**1. Who is an 'exempted employee' under the Employee's state Insurance Act, 1948?**

- A. employee who is minor
- B. employee who is not liable under the act to pay the employee's contribution
- C. minor employee who is not liable under the act to pay the employee's contribution
- D. none of the above

**2. Which of the following legislations was based on the recommendations of the B.P. Adarkar Committee Report?**

- A. maternity benefit act
- B. employees' compensation act
- C. employees' provident funds act
- D. employees' state insurance act, 1948

**3. 'Unemployment allowance' payable is stated in which of the following legislations was based on the recommendations of the B.P. Adarkar Committee Report?**

- A. employee state insurance act, 1948
- B. employee state insurance act, 1948
- C. unorganized sector workers social security act, 2005
- D. None of the above

**4. Which of the following legislations extends some sort of benefit to retired employees also?**

- A. maternity benefit act                      B. employees' compensation act  
C. employees' state insurance act              D. payment of bonus act

**5. Employees' share of contribution under the ESI Act is**

- A. 12%    B. 8.33%  
C. 1.75 %    D. 4.75%

## SECTION 4.4 MEDICAL BENEFIT COUNCIL

### 4.4.1 MEDICAL BENEFIT COUNCIL

The Medical Benefit Council is an advisory council that advises on medical benefit management under the ESI plan.

- The Director-General of ESIC, who serves as Chairman.
- As co-Chairman, the Director-General of Health Services.
- ESIC's Medical Commissioner
- . • Each state has one member appointed by the state government.
- Employers are represented by three members, while employees are represented by three members..

### 4.4.2 Tenure of the members of the Medical Benefit council

The following members of the Medical Benefit Council are appointed for a period of 4 years, these are:

- The Director-General of ESIC as Chairman.
- The Director-General of Health Services as co-Chairman.
- The Medical Commissioner of ESIC.
- One member for each state appointed by State Government.

**-Resignation of membership**

A member of the Corporation's resignation is complete when a written notice of resignation is delivered to the Central Government, and his seat will become empty upon acceptance of his resignation.

If a member of the ESIC misses three consecutive meetings, he or she will be removed from his or her relevant body (Corporation, Standing Committee, or Medical Council). However, under the guidelines established by the Central Government, the same member can be restored by the concerned authority.

Any employer, employee, or medical representative who, in the judgment of the Central Government, fails to represent their qualification will lose their ESIC membership.

### **Cessation of Membership**

A member of the ESIC shall cease to be a member of his respective body (Corporation, Standing Committee or Medical Council) upon failing to attend three consecutive meetings. However, the same member can be restored by the concerned body via the rules made by the Central Government.

If in the opinion of the Central Government, any employer, employee or medical representative fails to represent their qualification, they shall cease to be members of ESIC.

### **-Disqualification**

- If a qualified judge declares him to be of unsound mind, he can be disqualified as an ESIC member.
- If he is an unpaid insolvent;
- If he has ever been convicted of a crime involving moral turpitude. Allowances and fees

The fees that members of the ESIC must pay for their services can be paid at any moment at the discretion of the Central Government. There is no set timeline in place.

Penalties

Punishments

### **-Filling of vacancies**

Any vacancy in the office of ESIC shall be filled by appointment or election, as the case may be.



A member of ESIC can only hold the ex-member's spot in the respective committee, if the original holder of that position was found to be eligible for the same. Otherwise, the position is void.

### **Fees and allowances**

The fees which are payable to the members of the ESIC for their services can be payable at any time, at the discretion of the Central Government. There is no definitive schedule.

### **All of the penalties for default stated in the ESI Act are covered under Sections 84, 85, and 85A.**

- False Statement: Any individual caught raising the payment or benefit to avoid payment by himself is suspected of lying. Punishable by up to six months in prison and/or a fine of not more than Rs. 2000. Insured people who are convicted of this will be denied monetary benefits. Power of Court to make orders.

## **4.4.3 Benefits of ESI in Medical Council**

Factory/establishment or a class of factories/establishments.

- Persons or classes of persons.
- Government-owned factories or establishments.
- Any of the aforementioned from a specific Act provision
- . • Any of the above could be excused in the future for a set amount of time

### **Wage Limit**

Employees with a monthly income of less than Rs.21,000 are eligible for the scheme's benefits. To summarize, employees who work for companies or establishments with 10 or more employees and monthly earnings of up to Rs.21,000 are eligible for health benefits under the ESI Act.

In the case of daily average wages of Rs.137, there are exceptions to the rule. They are not required to contribute from their earnings to the scheme. For such people, just the employer's payment is paid.

### 4.4.4 Duties of the Medical Council

The Medical Council's functions are as follows:

- Advise the other two ESIC bodies on matters relating to the implementation that would be beneficial in the medical field. It acquires certification for the grant of medical benefits.
- Investigate against complaints lodged against medical practitioners with relevance to the medical relief offered.

### Let's Sum Up

The ESI Act 1948 encompasses certain health related eventualities that the workers are generally exposed to; such as sickness, maternity, temporary or permanent disablement, Occupational disease or death due to employment injury, resulting in loss of wages or earning capacity-total or partial.

### Check Your Progress-QUIZ -3

**1. The State Governments as per provisions of the act, contribute 1/8<sup>th</sup> if the expenditure of medical benefit within a per capita ceiling of ----- per insured person per annum.**

- |               |               |
|---------------|---------------|
| a. Rs. 1000/- | b. 1500/-     |
| c. Rs. 850/-  | d. Rs. 2000/- |

**2. Medical care is provided to retired and permanently disabled insured persons and their spouses on payment of a token annual premium of-----**

- |              |              |
|--------------|--------------|
| a. Rs.75/-   | b. Rs. 125/- |
| c. Rs. 100/- | d. Rs. 120/- |

**3. Sickness benefit in the form of cash compensation at the rate of 70 percent of wages is payable to insured workers during the periods of certified sickness for a maximum of \_\_\_\_\_ days in a year**

- |            |             |
|------------|-------------|
| a. 91 days | b. 100 days |
| c. 75 days | d. 90 days  |

**4. The ESI Scheme has been extended to following establishment employing 10 or more persons.**

- |                                    |   |
|------------------------------------|---|
| a. Shops, hotels, restaurants,     | b. establishmet engaged in Insurance Business |
| c. Non Banking Financial Companies | d. all the above                              |

**5. Which of the following legislations in India is governed by a tripartite organization consisting of representatives of labour, management and Government?**

- a. Industrial Disputes Act
- b. ESI Act
- c. Maternity Benefits Act
- d. Payment of Bonus Act

## SECTION 4.5 CONCEPT OF EMPLOYEE PROVIDENT FUND

EPF is a welfare scheme brought into force to secure a better future for employees. It is a statutory benefit available to the employees post retirement or when they leave the services. In case of deceased employees, their dependents will be entitled for the benefits. Under the Employees' Provident Fund Scheme (EPF Scheme) both employers and employees have to make their contributions towards the Fund.

Interest earned on the amount is credited to the member's Provident Fund Account (PF account) and is available to the employee at the time of retirement or exit from employment as the case may be, provided certain conditions are fulfilled.

### 4.5.1 Types of schemes under the Act

#### Applicability

Employees' Provident Fund has been set up under The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("Act") applicable pan-India. The Act is applicable to every factory or industry mentioned in Schedule 1 of the Act, wherein 20 or more persons are employed or to any other establishment which the Central Government specifies by notification in the official Gazette, even when the number of employees is less than 20.

### 4.5.2 Eligibility to be the member of EPF

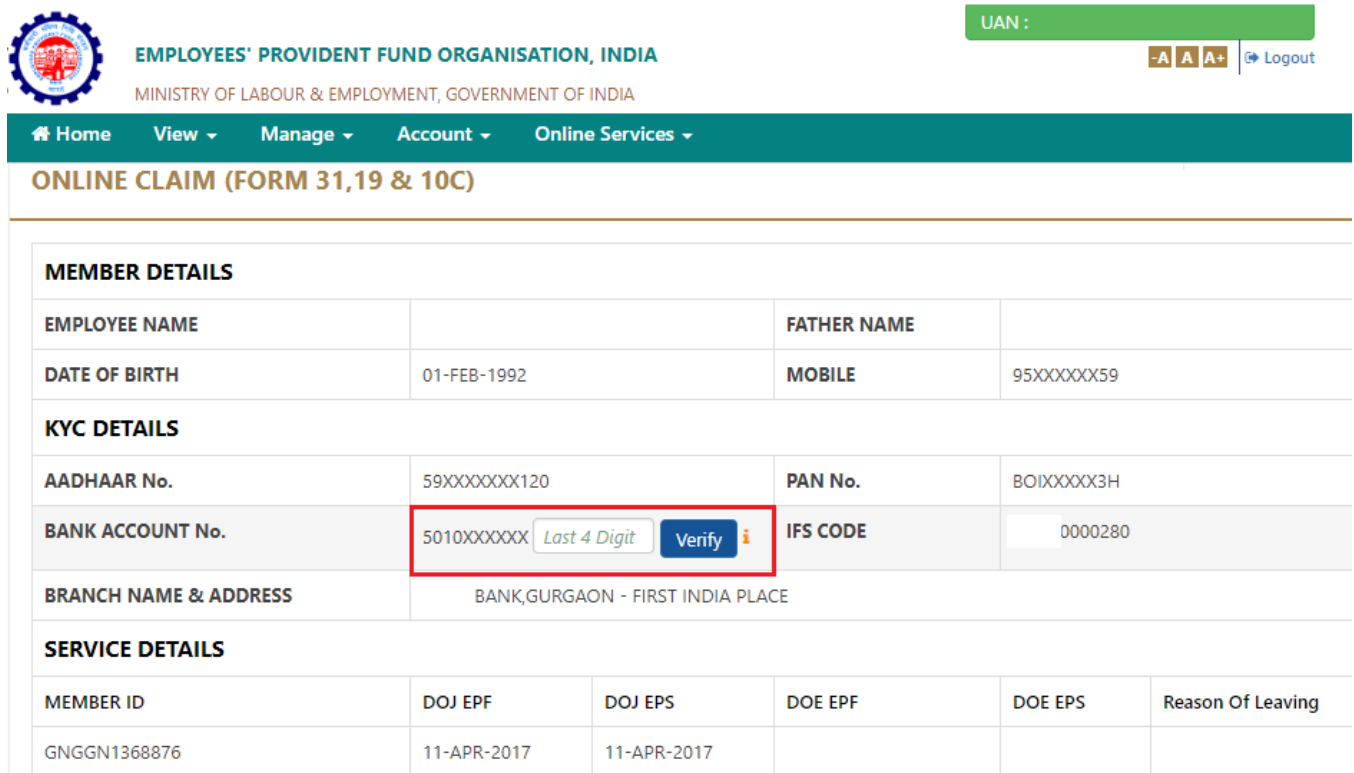
- Enrollment for PF membership is mandatory for:
  - Any person employed for wages for any work of an establishment either manual or otherwise.
  - Any person employed through a contractor or engaged as an apprentice but not being an apprentice under Apprentices Act, 1961.

➤ Any person under the standing orders of an establishment, earning less than or equal to Rs. 15,000 per month other than the excluded and exempted employees under Section 17 of the Act.

### 4.5.3 Withdrawals from EPF account

The funds from an EPF account can be withdrawn completely in full settlements on attaining 58 years of age or at the time of retirement the employee can claim for a complete settlement or if an employee remains unemployed for a period of 2 months or more or in the case of death while in service before attaining the age of retirement, in which case the nominees or legal heirs are entitled to withdraw the accumulated fund.

The partial withdrawal of funds from the EPF is available for educational opportunity, medical treatment, repayment of home loan, marriage, purchase of land/house/flat, in case the establishment/factory is closed, natural calamity, an year before retirement and unemployment for a period of more than one month.



The screenshot displays the EPF online claim portal interface. At the top, there is a logo for the Employees' Provident Fund Organisation, India, and the text 'EMPLOYEES' PROVIDENT FUND ORGANISATION, INDIA' and 'MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA'. A green bar shows 'UAN :'. To the right, there are navigation options '-A A A+' and 'Logout'. Below this is a dark green navigation bar with 'Home', 'View', 'Manage', 'Account', and 'Online Services'. The main heading is 'ONLINE CLAIM (FORM 31,19 & 10C)'. The form is divided into sections: 'MEMBER DETAILS', 'KYC DETAILS', and 'SERVICE DETAILS'. The 'MEMBER DETAILS' section includes fields for Employee Name, Date of Birth (01-FEB-1992), Father Name, and Mobile (95XXXXXX59). The 'KYC DETAILS' section includes AADHAAR No. (59XXXXXX120), PAN No. (BOIXXXX3H), Bank Account No. (5010XXXXXX), IFS CODE (0000280), and Branch Name & Address (BANK,GURGAON - FIRST INDIA PLACE). The 'SERVICE DETAILS' section includes Member ID (GNGGN1368876), DOJ EPF (11-APR-2017), DOJ EPS (11-APR-2017), DOE EPF, DOE EPS, and Reason Of Leaving. A red box highlights the Bank Account No. field, which contains '5010XXXXXX' and a 'Last 4 Digit' input field with a 'Verify' button.

MEMBER DETAILS					
EMPLOYEE NAME		FATHER NAME			
DATE OF BIRTH	01-FEB-1992	MOBILE	95XXXXXX59		
KYC DETAILS					
AADHAAR No.	59XXXXXX120	PAN No.	BOIXXXX3H		
BANK ACCOUNT No.	5010XXXXXX <input type="text" value="Last 4 Digit"/> <input type="button" value="Verify"/>	IFS CODE	0000280		
BRANCH NAME & ADDRESS	BANK,GURGAON - FIRST INDIA PLACE				
SERVICE DETAILS					
MEMBER ID	DOJ EPF	DOJ EPS	DOE EPF	DOE EPS	Reason Of Leaving
GNGGN1368876	11-APR-2017	11-APR-2017			

**EMPLOYEES' PROVIDENT FUND ORGANISATION, INDIA**  
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA

Home View Manage Account Online Services

UAN Card Account Settings

**Member Profile**

UAN		
Name		
Birth Date		
Gender		
AADHAAR		
PAN		
Bank Account No.		
Mobile No.		
E-mail		
<a href="#">More information</a>		

Alert

**EMPLOYEES' PROVIDENT FUND ORGANISATION, INDIA**  
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA

Home View Manage Account Online Services

**Add KYC**

Select	Document Type	Document Number	Name as per Document	Other
<input type="checkbox"/>	Bank	DOCUMENT NUMBER	NAME AS PER DOCUMENT	IFSC
<input type="checkbox"/>	PAN	DOCUMENT NUMBER	NAME AS PER DOCUMENT	
<input type="checkbox"/>	AADHAAR	AADHAR NUMBER OR VID	NAME AS PER DOCUMENT	
<input type="checkbox"/>	Passport	DOCUMENT NUMBER	NAME AS PER DOCUMENT	EXPIRY DT
<input type="checkbox"/>	Driving License	DOCUMENT NUMBER	NAME AS PER DOCUMENT	EXPIRY DT
<input type="checkbox"/>	Election Card	DOCUMENT NUMBER	NAME AS PER DOCUMENT	
<input type="checkbox"/>	Ration Card	DOCUMENT NUMBER	NAME AS PER DOCUMENT	
<input type="checkbox"/>	National Population Register	DOCUMENT NUMBER	NAME AS PER DOCUMENT	

\*\*\*Submit document proof to your employer.

Save Cancel

MEMBER DETAILS					
EMPLOYEE NAME			FATHER NAME	A	
DATE OF BIRTH	15-JUL-1983		MOBILE	90XXXXXX09	
KYC DETAILS					
AADHAAR No.	51XXXXXXXX249		PAN No.	N.A.	
BANK ACCOUNT No.	2016XXX <input type="text" value="Last 4 Digit"/> <input type="button" value="Verify"/>		IFS CODE	SBIN0002704	
BRANCH NAME & ADDRESS	STATE BANK OF INDIA,CHITTIVALASA				
SERVICE DETAILS					
MEMBER ID	DOJ EPF	DOJ EPS	DOE EPF	DOE EPS	Reason Of Leaving
GRV <input type="text" value="31"/>	01-OCT-2016	01-OCT-2016	28-FEB-2018	28-FEB-2018	CESSATION (SHORT SERVICE)

## 4.5.4 Benefits

The employees covered under the various schemes of the Act are entitled for the following benefits

- ✚ Employees can take advances or make withdrawals
- ✚ PF amount of a deceased member is payable to the nominees or legal heirs. 54
- ✚ The employer not only contributes towards the PF but also makes the necessary contributions towards the employee's pension which can be used by the employee post-retirement
- ✚ Under the EDLI Scheme employees are properly insured in order to avail the lump sum benefit at the time of death while in service.
- ✚ EEE (Exempt, Exempt, Exempt) tax benefit under the Income Tax Act enables tax-free returns for the employees.
- ✚ Employees receive special benefits in the form of added income to their savings in the form of interest
- ✚ PF account can be transferrable if any member changes employment from one establishment to another where such Provident Fund scheme is applicable.
- ✚ What happens when employer delays EPF contribution?

### 4.5.5 Nonpayment of EPF contributions can lead to penalties to employers

Non-payment of Employers Provident Fund (EPF) contributions on time might attract penalties and higher interest payment to employers. According to a Supreme Court ruling, employers are liable to cover damages if there is a delay in the payment of an employee's EPF contribution.

### 4.5.6 Amount paid by the employee & employer in EPF

According to section 7Q of Employee's Provident Funds and Miscellaneous Provisions Act, 1952, employer is liable to pay a simple interest at the rate of 12 per cent per annum. It is mandatory that employee and employer should contribute equal amount to the EPF account of 12 per cent of the employee's basic salary, dearness, allowance, and retention allowance, if applied.

#### Let's Sum Up

Any person appointed by the Comptroller and Auditor-General to act on their behalf will temporarily have the same powers as the above parties and are authorised to demand the production of books, accounts, connected vouchers, and other documents and papers. They shall also be authorised to inspect any offices of ESIC at any time.

## SECTION 4.6 CONTRIBUTIONS IN EPF

### 4.6.1 ALL EMPLOYEES TO BE INSURED

All employees employed in the factories which meet ESIC prescribed rules (under Section 2) are insured for all the benefits offered by it.

#### Contribution

- The contribution is a determinable amount of money payable by both the employer and the employee, as per the situation, to the corporation.
- The rates, while usually prescribed by the government, are not set in stone, and are subject to change. Rates defined by the government are mostly set as the unit standard for the contribution payable by the employer.
- In the case of the employee's contribution, the wage period in relation to the respective employee shall be held as a unit to determine the compensation payable, and are normally due on the last day of the wage period.
- Failure to pay contributions by the employer will make him liable to pay an interest rate of 12%.

### 4.6.2 Principal employer to pay contribution in the first instance

- The primary employer has to collectively pay the contribution, both his own and that of his employees, regardless of whether they are directly employed under him or are working through an immediate employer.
- If a directly employed employee fails to pay his contributions, then the employer can recover that contribution only by deducting the wages of said employee.
- The employer bears all the transfer costs of the payment to the Corporation.



### 4.6.3 Recovery of contribution from the immediate employer

In the case of an employee who is indirectly employed under the principal employer, via an immediate employer, the principal employer shall be entitled to recover the payment made on behalf of an indirect employee, from the immediate employer, as a debt payable to him.

The immediate employer also has to prepare a list of all the employees under him and submit the same to the principal employer, before paying his dues.

### 4.6.4 Method of payment of contributions

The manner for payments which the Act provides regulations for, has been elaborated in the following conditions:

- The nature and time of contribution being paid.
- Payment which involves the usage of stamps or other adhesives fixed upon the books of accounts, or any other documents.
- The evidence of the contributions, which reaches the Corporation, is to be dated.
- The different entries in the books of accounts along with the details of the insured persons.
- The replacement of documents which have been lost, destroyed or defaced.

### 4.6.5 Special Benefits in ESI

#### -Maternity Benefits

As per Section 46(1)(b) of the ESI Act, an insured woman can claim periodical payments in case of occurrence of any of the following situations:

- confinement (labour leading to birth or birth after 26 weeks)
- miscarriage
- sickness arising out of pregnancy
- premature birth of child

The benefit is payable for three months, with an extension of one month, if required. The minimum work duration must be 70 days in the year preceding the year of pregnancy.

## **-Dependants' Benefits**

Section 46(1)(d) prescribes periodical payments (often made monthly) to the dependants/family members of the person who dies during the course of employment, with the cause of death being an employment injury or an occupational hazard. Compensation is generally 90% of the employee's wages.

## **-Disablement Benefits**

In case an employee suffers an injury during the course of employment which results in their disablement. The nature of the disablement may be temporary or permanent. Unlike the other benefits, there is no minimum work contribution required to avail the disablement benefit, although eligibility for the same will be determined by the Medical Board.

This determination also affects the amount of compensation granted, if any, with the general percentage of wages granted being around 90%.

## **-Other Benefits**

'Other benefits' refer to the miscellaneous benefits apart from the five major benefits that can be availed by the employees. These are as follows:

- **Funeral Expenses:** Compensation of Rs. 10,000 is granted to the eldest surviving member of an employee's family to perform his last rites.
- **Vocational Rehabilitation:** The benefit is payable to disabled employees undergoing rehabilitation.
- **Old age medical care:** This benefit is available for retired employees, or those who left employment after suffering an injury, with general compensation being Rs. 120 p/m.

## **Let's Sum Up**

The Employees' Insurance Court will function with the same powers as that of a Civil Court, in which, to enforce the provisions of the ESI Act, it can enforce witness attendance, compel document and material evidence to be presented, it can administer an oath and can record evidence.

All expenses incurred before a proceeding are subject to the discretion and liability of the court itself.

**Check Your Progress-QUIZ –4****1. What is the contribution rate for an employee towards the EPF?**

- a. 8% of basic wages
- b. 10% of basic wages
- c. 12% of basic wages
- d. 15% of basic wages

**2. What is the current rate of interest provided on EPF deposits?**

- a. 6%
- b. 8%
- c. 10%
- d. 12%

**3. What is the maximum period for which an employees contribution to the EPF can remain inoperative?**

- a. 1 year
- b. 3 years
- c. 5 years
- d. 7 years

**4. Can an employee contribute more than the statutory limit to the EPF voluntarily?**

- a. yes, without any restriction
- b. yes, subject to approval from the employer
- c. No, contributions are limited to the statutory rate
- d. No, only the employer can contribute additional amounts

**5. How often should employers submit the EPF contribution returns to the EPFO?**

- a. Monthly
- b. Quarterly
- c. Biannually
- d. Annually

**SECTION 4.7 UNIT SUMMARY**

For a working-class employee in India, the ESI Act is an essential utility that works in their favour, while also being beneficial for sectors outside that of the working class.

The ESI Act is unique in the fact that it works in advantageous ways for both employees and employers. While employees are insured under the act and get financial aid in case of an injury, the employers are also protected from being jeopardized twice in lieu of paying compensation to the employees.

The Employees' State Insurance Act, apart from medical benefits provided to employees, also controls many more indirect aspects of efficiently managing the Corporation

established by the Act, be it its sales proceedings, account management or separation of powers amongst its various officers.

## SECTION 4.8 GLOSSARY

<b>EPF, 1948</b>	The Employees State Insurance Act contains several important definitions that explain the meaning of important provisions. We must understand all of these provisions in detail to comprehend the Act.
<b>Benefits of ESI</b>	Employees are entitled to benefits under Section 46 of the ESI Act as social security in the event of injury while on the job
<b>Corporations, Standing Committee</b>	The ESI Act exercises its function through the Employees' State Insurance Corporation, established via Section 3, a body created to maintain social security. It was established on 24 February, 1952.
<b>Medical Benefit Council</b>	A member of the Corporation's resignation is complete when a written notice of resignation is delivered to the Central Government, and his seat will become empty upon acceptance of his resignation.
<b>Concept of EPF</b>	EPF is a welfare scheme brought into force to secure a better future for employees. It is a statutory benefit available to the employees post retirement or when they leave the services. In case of deceased employees, their dependents will be entitled for the benefits.
<b>Contributions to EPF</b>	The contribution is a determinable amount of money payable by both the employer and the employee, as per the situation, to the corporation.

## SECTION 4.9 SELF ASSESSMENT

### Essay type questions

1. Define Employee Insurance Act. Explain its features.
2. What are the benefits of ESI?
3. Short note on contribution period Corresponding Cash Benefit period.
4. What are the roles and responsibilities of ESI benefits?
5. Enumerate the corporations, standing and commissions.
6. Explain the types of Medical benefit council.
7. Discuss about the contributions regarding percentage charge of employees.
8. Explain the welfare and penalties of ESI.

## 4.10 CASE STUDY

In **Employees State Insurance Corporation vs. A.K. Abdul Samad & Anr**[8], the Supreme Court held that "the purpose of creating an offense and a penalty under the Employees' State Insurance Act, 1948 is to deter violations of the act's provisions that benefit employees.

Non-payment of contributions is considered an economic crime; hence the Legislature has imposed a minimum sentence of imprisonment as well as a predetermined punishment of Rs. 5,000 under Section 85(a) I (b) of the Act. Under most provisions, there is no discretion in awarding but the required fee.

## 4.11 ANSWERS FOR CHECK YOUR PROGRESS

Section 4.1	Employee State Insurance Act, 1948
1.	C. Three consecutive meetings
2.	D. none of the above
3.	D. if the workmen's compensation act and the maternity benefit act are applicable, the employees state insurance act is not applicable.
4.	(C) Three consecutive meetings
5.	B) Unemployment Allowance

Section 4.2	Corporations, Standing Committee
1.	D. none of the above
2.	D. employees' state insurance act, 1948
3.	A. employee state insurance act, 1948
4.	C. employees' state insurance act
5.	C. 1.75 %
Section 4.4	Medical Benefit Council
1.	a. 1500/-
2.	d. Rs. 120/-
3.	a. 91 days
4.	a. Shops, hotels, restaurants
5.	b. ESI Act
Section 4.6	Contributions of EPF
1.	c. 12% of basic wages
2.	b. 8%
3.	d. 7 years
4.	b. yes, subject to approval from the employer
5.	a. Monthly

## 4.12 REFERENCE & SUGGESTED READINGS

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<https://blog.ipleaders.in/employees-state-insurance-act-1948/>

<https://www.india.gov.in/spotlight/employees-state-insurance-scheme#tab=tab-1>

[https://www.indiacode.nic.in/handle/123456789/1441?view\\_type=brows](https://www.indiacode.nic.in/handle/123456789/1441?view_type=brows)

<b>UNIT-5 THE PAYMENT OF BONUS ACT</b>		
The Payment of Bonus Act 1965–Object–Application–Definitions–Methods of Computing Gross Profits–Payment of Bonus –Importance		
<b>Introduction of The Payment of Bonus Act</b>		
<b>Section</b>	<b>Topic</b>	<b>Pages</b>
	<b>UNIT-V Unit Objectives</b>	
<b>Section 5.1</b>	<b>Introduction of The Payment of Bonus Act</b>	<b>105</b>
5.1.1	Introduction	105
5.1.2	History of the payment of Bonus Act 1965	106-107
5.1.3	Applicability of the payment of bonus act 1965	108
5.1.4	Eligibility criteria of the payment of bonus act 1965	108
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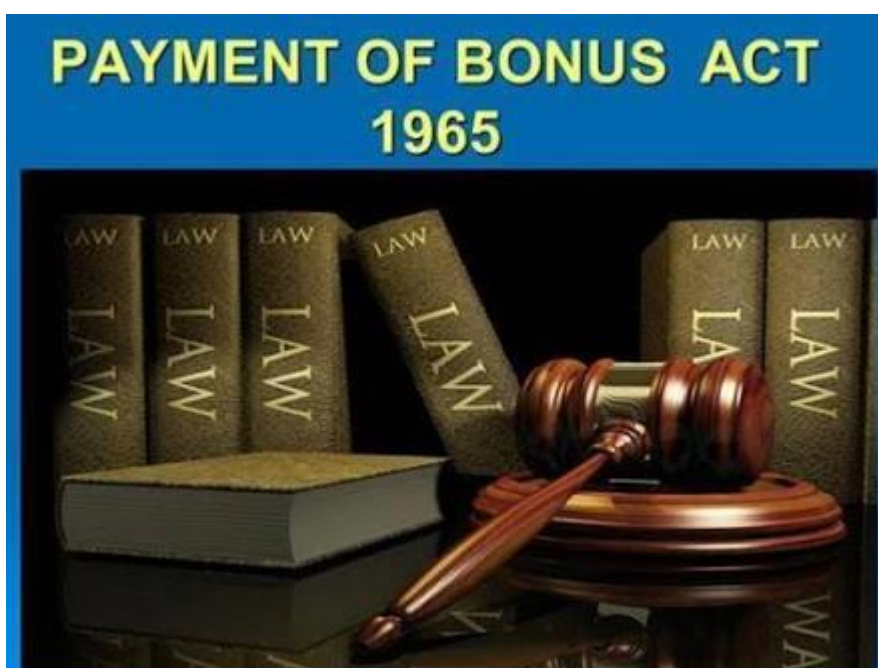
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## THE PAYMENT OF BONUS ACT 1965

### SECTION 5.1 INTRODUCTION OF THE PAYMENT OF BONUS ACT 1965

#### 5.1.1 Introduction



Payment of Bonus Act, 1965 is a statutory liability on the part of the employers of the establishment to pay to the labour, in accordance with the capital available for the peaceful functioning of the establishment. The purpose of the Act was to enable the employees to have a say in the profits of the company and to earn a little more than the minimum wage according to their performance in the organization.

(1) This Act may be called the Payment of Bonus Act, 1965.

(2) It extends to the whole of India <sup>1</sup> \*\*\*.

(3) save as otherwise provided in this Act, it shall apply to--

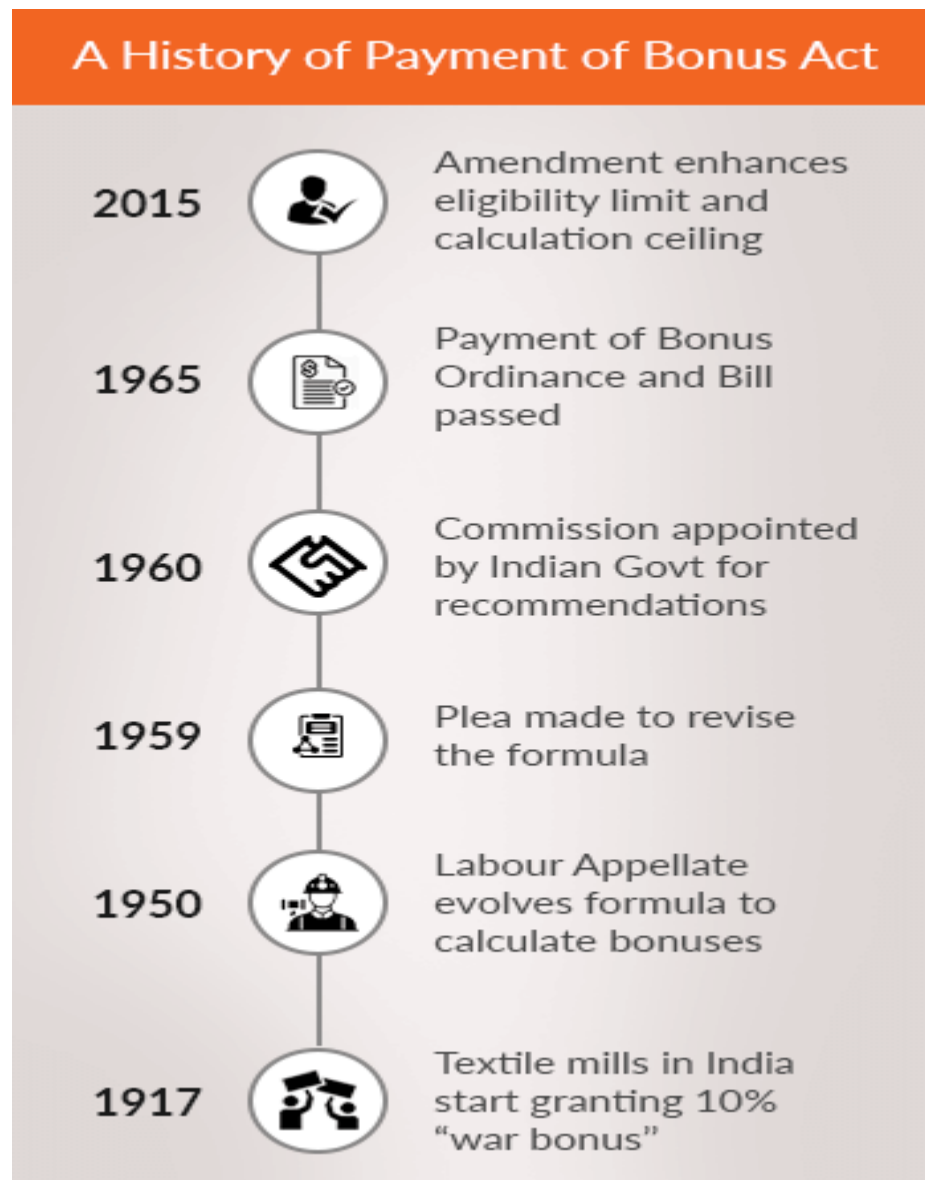
(a) Every factory; and

(b) every other establishment in which twenty or more persons are employed on any day during an accounting year:

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act with effect from such accounting year as may be specified in the notification, to any establishment or class of establishments [including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of section 2 of the Factories Act, 1948 (63 of 1948)] employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

### 5.1.2 History of the Payment of Bonus Act 1965

- ✚ In 1950, the Complete Stand was taken by the Labour Appellate which unfolded specifications for resolution of bonus for laborers. There was a pleading which was executed to propose that direction in 1959.
- ✚ The Government of India affirmed the testimonials of the Commission directed to some alterations. These recommendations by the committee regarding the Payment of **Bonus Act** Ordinance, 1965 was proclaimed on 29th May 1965 and to restore the said Ordinance the Payment of Bonus Bill was presented in the Parliament.



- ✚ The Payment of Bonus Bill was relinquished by both the Houses of Parliament but the bill secured the assent of the President on 25th September 1965. After that, it was introduced in the Statute Book as The Payment of **Bonus Act**, 1965.

#### **Why the Payment of Bonus Act, 1965 was the act introduced?**

The Payment of **Bonus Act**, 1965 is to proclaim the progression to deliver a rightful responsibility on the employers to distribute their profits with their employees on the foundation of their performance in the organization or on the source of their productivity.

### 5.1.3 Applicability of the Payment of Bonus Act, 1965

- The Act extended to the entire country and is implemented to all industries and establishments in which there were 20 or more persons are employed on any day throughout an accounting year.
- Also, the act is applicable to the factories where there are less than 20 workers, but not less than 10 workers were there in number.
- All the employees of the organization are under the preview of the act unskilled, skilled, manual, supervisory, administrative, managerial, technical or clerical work for hire or reward and whether the terms of employment are express or implied the act extended on each and every worker.

### 5.1.4 Eligibility criteria of the Payment of Bonus Act, 1965

-The **Bonus Act** is relevant for workers who draw wages/salary which is up-to 10,000/- per month. Also, only those workers are authorized for availing the bonus, who has served for at least 30 working days or more in an accounting year.

#### **Rate of Bonuses under the Payment of Bonus Act, 1965**

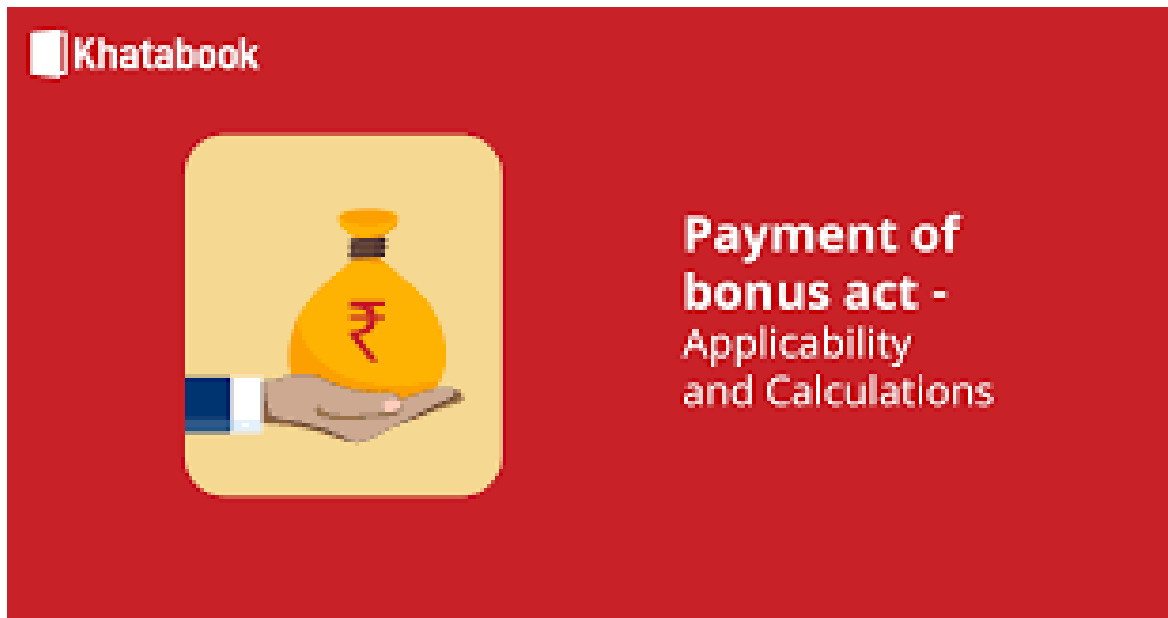
-The rate of bonus under the **Bonus act** accounted for 8.33% of the salary or wages of the employees in a year or Rs. 100, whichever is higher.

-In case the allowed bonus exceeds the expense of provision then the employer shall pay a maximum bonus. This must not surpass 20% of the salary or wages accounted for by employees.

### 5.1.5 Establishment to include department, undertakings, and branches

The term “establishment” in this Act is of great importance. It could be divided into Public and Private Establishments. However, if these establishments function as different departments or branches then those departments and branches would be treated as a single establishment, but in case, different accounts are prepared for these branches and departments, then they would be treated as different departments or branches for the sake of computation of profit for that particular accounting year.

## 5.1.6 Computation of Gross profit



Gross profit is calculated for an accounting year (i) Banking Company– in accordance with the first schedule. (ii) In other cases– according to the manner prescribed in the second schedule.

### **-Sum deductible from gross profits**

#### **The following sums need to be deducted from the gross profit:**

- Any amount by way of development rebate, investment allowance or the development allowance, which is deductible from the income according to the income tax.
- Any direct tax which the employer has to pay with respect to his income, profits, and gains during that year.
- Any other sums which are specified by the employer.
- Any amount of depreciation according to the Income Tax Act, 1961 or Agricultural Income Tax law

**-Computation of available surplus**

The available surplus is calculated taking into account the gross profit after making adjustments of depreciation, development allowance, direct taxes of the current accounting year and all the sums specified under Schedule 3 of the Act.

This gross profit has to be added to the direct taxes in respect of the gross profit for the preceding year, deducting from it the direct taxes which has been adjusted to the gross profits that are reduced to the amount of bonus, for the immediately preceding year.

**Solved Example on Payment of Bonus Act,1965**

Question: **What are the eligibility criteria for workers to fall under the Bonus Act?**

1. Drawing salary up to 20,000
2. Drawing salary up to 10,000
3. Drawing salary up to 50,000
4. Drawing salary up to 30,000

**Answer:** The correct option is (B). As the Act is relevant for workers who draw wages/salary which is up-to 10,000/- per month.

**Let's Sum Up**

Bonus is the extra given to the workers to motivate them in a monetary way so they work efficiently. The payment of Bonus Act focuses on bonuses. This system of rewarding bonuses in our country dates back to the First World War when some textile mills imparted some percentage of their wages as a war bonus to their operators which happened in 1917.

**Check Your Progress-QUIZ -1**

1. **On which date was the bonus act implemented by the government?**
  - A. 2nd September, 1980
  - B. 2nd September, 1965
  - C. 1st September, 1965
  - D. 3rd September, 1965
  
2. **The bonus act is the outcome of the recommendation made by the \_\_\_\_\_.**
  - A. State government
  - B. Central government
  - C. Labour Court
  - D. **Tripartite commission**
  
3. **In which year did the government set up the tripartite commission?**
  - A. 1951
  - B. 1972
  - C. 1961
  - D. 1965
  
4. **Which formula was given by labour appellate tribunal for the calculation of bonus?**
  - A. Full bench formula
  - B. Accrual formula
  - C. Rounding formula
  - D. None of the above
  
5. **What is the minimum amount of bonus paid to an employee?**
  - A. 8.33%
  - B. 8.5%
  - C. 8%
  - D. 8.3%

## SECTION 5.2 DIRECT TAXES PAYABLE BY THE EMPLOYER

### 5.2.1 Calculation of direct tax payable by the employer

The direct taxes are calculated as per the present year's income of the employer. In case the employer is an individual or part of the Hindu Undivided Family, then the income which will be considered for the taxes will be treated as the only income of the employer. Moreover, if the employer is a religious institute or charitable trust, not barred by Section 32 of the Act and if its income is partially or fully non-taxable then the income which is non-taxable would be treated as the income from an institution in which the public is substantially interested.

#### **-Eligibility for bonus**

Under the present enactment, every employee is entitled to get a bonus only if he has worked for a minimum period of 30 days. The minimum bonus which the employee would get in an accounting year would be 8.33% of the salary or wages of the employee or ₹ 100 whichever is more.

In cases where the age of the employee is less than 15 years at the beginning of the accounting year, this provision would have the same effect except in the place of ₹ 100 it would be ₹ 60. The maximum bonus which an employee could get in an accounting year is equal to 20% of the salary or wages of the employee in the given accounting year. The employer is bound to pay the maximum bonus when the allocable bonus has exceeded the minimum bonus of that accounting year.



## 5.2.2 Calculation of bonus with respect to certain employees

Where the salary of the employee exceed ₹ 7000 per mensem or minimum wages applicable for such employment as fixed by the government, whichever is higher, such employee would be entitled for bonus under Section 10 or Section 11 of the Act as if the salary or wages is ₹ 7000 per mensem or minimum wages applicable for such employment as fixed by the government whichever is higher.

## 5.2.3 Proportionate reduction in bonus

If an employee has not worked for any day in the accounting year, his minimum bonus which is ₹ 100 (or ₹60) or his salary or wages subject to 8.33%, whichever is higher would be reduced proportionately.

### a. Computation of the number of working days

The computation of the working day is an important criterion for the calculation of the bonus. The employee would be considered working even on the days when he is on leave but is paid salary or wages or he is on a maternity leave with salary or wages, or he met with an accident while in 59 undertaking the employment or he has been laid off under an agreement or as permitted under the Industrial Employment Act, 1946 or Industrial Disputes Act, 1947 or any legal provision which is applicable on the establishment at the given time.

### b. Set on and set off of allocable surplus

The allocable income which is left even after paying the maximum bonus at the rate of 20% on the salary or wages, would be carried forward to the next year to compensate in case there is any shortage in that year. This is called set on.

### 5.2.4 Special provisions with respect to certain establishment

In the first five accounting years, after the establishment has started selling and manufacturing goods or rendering services, it has to pay bonuses only in case of profits.

However, in the sixth, seventh and eighth accounting year, after the establishment has started selling and manufacturing goods or rendering services, the bonus shall be paid, taking into account the set on or set off.

### 5.2.5 Adjustments of customary or interim bonus against bonus payable under the Act

If the employer has paid any puja bonus or any other customary bonus or has paid the bonus before the date on which the bonus becomes payable, then, in that case, the employer has the right to deduct the amount of bonus from the actual bonus payable, and the employee shall get the remaining amount.

### 5.2.6 Deduction of certain amounts from bonus payable under the Act

If the employee is found to be guilty of misconduct due to which the establishment has to bear losses then such an establishment has the right to deduct the amount of loss from the bonus that has to be paid to the employee in that accounting year and shall be paid the balance if any

#### **-The time limit for payment of bonus**

Under the provisions of this Act, the employees must be awarded the bonus within 8 months from the closure of the accounting year. However, in cases of disputes (under the purview of the Industrial Dispute Act), the bonus has to be paid within 1 month from the time when the settlement becomes effective.

**-Application of Act to establishments in the public sector**

If any public establishment manufactures or sells any product or renders any services and the income from them is less than 20% of the gross income of such public establishment then the provisions of this Act shall apply to it in the same manner as if it is a private establishment. However, except for the above case, the provisions of this Act would not be applicable to the employees working in the public establishment.

**-Recovery of bonus due to an employer**

In case of any amount of the bonus which is due from an employer, the employee can or any of his assignees or in case of his death his heirs, have the right to make an application to the government and if it is satisfied with the veracity of the application then it shall issue a certificate to the collector who shall proceed to recover the amount in the like manner as if it were an arrear of land revenue.

**-Reference of disputes under the Act**

In case of any dispute between the employee and the employer, that shall be treated as an industrial dispute within the meaning of Industrial Dispute Act or any other Act which is dedicated to the investigation and settlement of the disputes of like nature. Such law shall be applied as expressed.

**-Companies**

The disputes falling under the purview of the Industrial Dispute Act or any other law dedicated to the investigation and settlement of the disputes of like nature would be referred to an arbitrator or a tribunal in accordance with the above-mentioned laws.

If the balance sheet or the profit and loss account of the corporations or the companies is audited by the Auditor General of India or any other auditor who is empowered to do so under the Companies Act, then there is no need to file an affidavit to prove its accuracy.

**Let's Sum Up**

Bonus is the extra given to the workers to motivate them in a monetary way so they work efficiently. The payment of Bonus Act focuses on bonuses. This system of rewarding bonuses in our country dates back to the First World War when some textile mills imparted some percentage of their wages as a war bonus to their operators which happened in 1917.

**Check Your Progress-QUIZ -2**

1. **Payment of Bonus Act, 1965 is applicable to every factory and to every other establishment where \_\_\_\_\_ workmen are employed on any day during an accounting year**
  - a. 20 or more
  - b. 10 or more
  - c. 50 or more
  - d. 30 or more
2. **Which section states about the classes of employees where Payment of Bonus Act is not applicable?**
  - a. Section 16
  - b. Section 32
  - c. Section 22
  - d. Section 30
3. **The act is not applicable to \_\_\_\_\_ except those operating in competition with similar other private undertakings.**
  - a. Public enterprises
  - b. Private enterprises
  - c. Factories
  - d. Banks except RBI and LIC
4. **On what grounds an employee will be disqualified from getting bonus?**
  - a. Fraud
  - b. Riotous or violent behaviour while on the premises
  - c. Theft, misappropriation or sabotage of any property of the establishment
  - d. All of the above
5. **Excess allocable surplus remain after paying the maximum bonus of 20% on the wage or salary of the employee, should be carried forward to the next following year for utilizing the payment of bonus in case of the shortage of the allocable surplus or losses occur. This is called as**
  - a. Set-On
  - b. Set-Off
  - c. Take-On
  - d. Set-Off

## SECTION 5.3 AUDITS OF ACCOUNTS

### 5.3.1 Audited accounts of banking companies not to be questioned

In case of the dispute (as per Section 22 of the Act), where one of the party is a banking company and it has rendered its account, to the authority which is duly audited, the trade union or the employee which is the other party has no authority to question the accuracy of the accounts. However, it can ask for information to verify the amount of bonus.

The trade union or the employee cannot ask for any information which the banking company is not obliged to give as per the banking regulations Act.

### 5.3.2 Audited of accounts of Employers, not being corporations or companies

In case of a dispute between an employee and the other party not being a corporation or company and if it has tendered an account which is duly audited by an auditor empowered to do so under the Companies Act, 2013 then Section 23 of the Act would be applicable.

If however the accounts are not audited and the said authority thinks that it is necessary to have an audited account for making a decision, then it can direct the employer to get the accounts audited by the specified time.

If the employer fails to get the accounts audited then, in that case, the authority itself can get the accounts audited by the auditor and the authority is also entitled to levy punishments in accordance with Section 28 of this Act. The expenses incurred by the authority, in this case, shall be recoverable from the employer and if the employer does not pay the expenses then it would be recovered as per Section 21 of the Act.

#### a) Maintenance of registers, records, etc

Every employer is responsible to maintain records and register in the manner as it is prescribed in the provisions of this Act.

#### b) Inspectors

The government by way of notification in the official gazette may appoint a person to be an inspector under the provision of this Act.

The inspector can enter any premises at a reasonable time and ask for an examination of the accounts. The employer is legally bound to furnish the information asked by the inspector.

**c) Penalty**

If any person contravenes a provision of this Act or fails to comply with any of the directions made under this Act, it would be punishable for imprisonment which shall extend up to 6 months or fine up to ₹ 1000 or both.

**d) Offences by companies**

If any offence is committed under the provisions of this Act and the offence is committed by the company, then everyone who is in charge of the company or responsible for the affairs of this company would be liable and could be proceeded against.

However, if the offence has been committed while taking all due diligence or the offence so committed was beyond the knowledge of the person, then such person shall not be punishable under this Act. However, if the offence so committed was in the knowledge of the director, manager, secretary or officer of the company then such person shall be liable and can be punished accordingly.

**e) Cognizance of offences**

No court shall take cognizance of the offence committed under this Act except there is a complaint by or under the authority of the government or by an officer of the government not below the rank of the regional labour commissioner or labour commissioner in the central and the state government respectively. Moreover, the court under which such complaints would be filed shall not be below the court of presidency magistrate or magistrate of the first class.

**f) Protection of action taken under the Act**

The government and the government officers are protected from any suit or any other legal proceedings against them for their actions done in good faith in pursuance of the provision of the given Act.

### 5.3.3 Special provisions with respect to payment of bonus linked with production or productivity

Under the given Act, the procedure for the computation of the bonus has been delineated, however, in certain circumstances; the payment of the bonus is linked with the productivity and production of the given employee. Such an arrangement will take place when there is any settlement or agreement between the employer and the employee in this regard.

#### **Act not to apply to certain classes of employees**

- ✓ Life Insurance Corporation,
- ✓ The Indian Red Cross Society or any other institution of a like nature,
- ✓ Universities and other educational institutions,
- ✓ Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit,
- ✓ Employees employed through contractors on building operations,
- ✓ Employees employed by the Reserve Bank of India,
- ✓ The Industrial Finance Corporation of India,
- ✓ Financial Corporations,
- ✓ the National Bank for Agriculture and Rural Development,
- ✓ the Unit Trust of India,
- ✓ the Industrial Development Bank of India,

#### **Let's Sum Up**

In case of a dispute between an employee and the other party not being a corporation or company and if it has tendered an account which is duly audited by an auditor empowered to do so under the Companies Act, 2013 then Section 23 of the Act would be applicable.

**Check Your Progress-QUIZ –3**

1. The act is not applicable to \_\_\_\_\_ except those operating in competition with similar other private undertakings

- a. Public enterprises b. Private enterprises c. Factories d. Banks except RBI and LIC

2. Which section in the act deals with the computation of available surplus?

- a. Section 3 b. Section 3A c. Section 5 d. Section 1

3. State true or false

i. Under section 32 of income tax act, any amount by way of depreciation admissible in accordance is deductible from the gross profit calculation.

- a. True b. False

4. Complete the formula used for calculating bonus for basic salary which is more than 3500.

Bonus = \_\_\_\_\_ \* (Bonus Months)\* 20%

- a. Basic salary b. Ex gratia c. 3500 d. 8400

5. As per the act what is the minimum number of days an employee must have worked in an establishment to be eligible for bonus?

- a. 240 working days b. 30 working days c. 120 working days d.365 working days

## SECTION 5.4 UNDER A DIFFERENT FORMULAS CALCULATING OF BONUS

### 5.4.1 under a Different Formula

It is provided that the employee and the employers can indulge in any agreement or settlement, for the purpose of bonus, with a different formula. If any law or rule which renders such agreement or settlement to be null and void, that law or rule would be inconsistent to that effect.

#### Effect of laws and agreement inconsistent with the Act

With regards to the Section 31A of the Act, the provisions of this Act shall apply even if there is an inconsistency with any other law in force at that time or with respect to any agreement or settlement.



**Saving**

The provisions of this Act would not be applicable to the Coal Mines, Provident Fund and Bonus.

## 5.4.2 Schemes of 1948, Power of Exemption

**Power of exemption**

If the central government finds it necessary in the public interest to prevent the application of a certain provision of this Act in certain establishment or class of establishment then it may, through the notification in the official gazette, specify the time for which the application of those provisions would be ceased for that particular establishment or class of establishment.

## 5.4.3 Power to make rules

The central government has the power to make rules with regard to the provisions of this Act. The government can make rules with respect to the accounting year, maintenance of records and registers, working of the inspectors under this act or any other matter which may be prescribed. The new rule shall be presented before each house of the parliament while it is in the session and if both the house have agreed that the rule shall be applicable or shall be applied will have the same effect accordingly. However, any modification or annulment made shall not be contrary to the rule previously made.

## 5.4.4 Application of certain laws not barred

Certain enactments like the Industrial Dispute Act, 1947 or any other statutory provision dedicated to the investigation and settlement of the dispute in the distribution of the be applicable in such cases. The applicability of the given legislation does not in any way bar the relevancy of other statutes.

## Let's Sum Up

Payment of Bonus (Amendment) Bill, 2015 to enhance the monthly bonus calculation ceiling to Rs 7,000 per month from existing Rs. 3,500 was approved by Union Cabinet here," a source said after the Cabinet meeting. The amendment bill will be made effective from April 1, 2015. Now the bill will be tabled in Parliament for approval.

## SECTION 5.5 TYPES OF BONUSES

### 5.5.1 Bonuses Meaning

A bonus is a financial compensation that is above and beyond the normal payment expectations of its recipient. Companies may award bonuses to both entry-level employees and to senior-level executives. While bonuses are traditionally given to exceptional workers, employers sometimes dole out bonuses company-wide to stave off jealousy among staffers.

#### 5.5.1 a) Incentive Bonus



Incentive bonuses include signing bonuses, referral bonuses, and retention bonuses. A signing bonus is a monetary offer that companies extend to top-talent candidates to entice them to accept a position—especially if they are being aggressively pursued by rival firms. In theory, paying an initial bonus payment will result in greater company profits down the line. Signing bonuses are routinely offered by professional sports teams attempting to lure top-tier athletes away from competitive clubs.

### 5.5.1.b) Holiday Bonus



Some companies hand out bonuses specifically during the December holidays season. Holiday bonuses can take various forms, such as cash, gift cards, or other types of gifts. They can be given to individual employees or to the entire company. Some companies give holiday bonuses to all of their employees, while others only give them to certain employees, such as those who have been with the company for a certain length of time.

### 5.5.1 c) Performance Bonus

Performance bonuses reward employees for exceptional work. They are customarily offered after the completion of projects or at the end of fiscal quarters or years. Performance bonuses may be doled out to individuals, teams, departments, or to

the company-wide staff. A reward bonus may be either a one-time offer or a periodic payment.

While reward bonuses are usually given in cash, they sometimes take the form of stock compensation, gift cards, time off, holiday turkeys, or simple verbal expressions of appreciation.

### 5.5.1 d) Bonus Inflation

While bonuses are traditionally issued to high-performing, profit-generating employees, some companies opt to issue bonuses to lower-performing employees as well, even though businesses that do this tend to grow more slowly and generate less money.

Some businesses resort to distributing across-the-board bonuses in an effort to quell jealousies and employee backlash. After all, it's easier for management to pay bonuses to everyone than to explain to inadequate performers why they were denied..

### 5.5.2 Special Considerations

#### **-Bonuses in Lieu of Pay**

Companies are increasingly replacing raises with bonuses—a trend that vexes many employees. While employers can keep wage increases low by pledging to fill pay gaps with bonuses, they are under no obligation to follow through. Because employers pay bonuses on a discretionary basis, they may keep their fixed costs low by withholding bonuses during slow years or recessionary periods. This approach is much more viable than increasing salaries annually, only to cut wages during a recession.

#### **-Dividends and Bonus Shares**

In addition to employees, shareholders may receive bonuses in the shape of dividends, which are carved from the profits realized by the company. In lieu of cash dividends, a company can issue bonus shares to investors. If the company is short on cash, the bonus shares of company stock provide a way for it to reward shareholders who expect a regular income from owning the company's stock. The shareholders may then sell the bonus shares to meet their cash needs or they can opt to hold onto the shares..

### 5.5.3 Special types of Bonus in certain cases

#### **Bonuses**

Companies give bonuses to employees for a variety of reasons, such as to:

#### **Encourage certain behavior:**

Bonuses can be used as an incentive to encourage employees to perform at their best or to achieve certain goals.

#### **Reward good performance:**

Bonuses can be given to recognize and reward employees for exceptional performance or for meeting certain performance targets.

#### **Show appreciation/Boost morale:**

Bonuses can be given as a way for companies to show appreciation to their employees and boost morale.

#### **Retain key employees:**

Companies may offer retention bonuses to key employees to encourage them to stay with the company, especially during times of economic uncertainty or organizational change.

#### **Attract top talent:**

Companies may offer signing bonuses to top-talent candidates as an incentive to accept a job offer, especially if they are being aggressively pursued by rival firms.

#### **Share company success:**

In addition to rewarding employees, companies may distribute bonuses to shareholders through a special dividend or a bonus issue, which is an offer of free additional shares of the company's stock.

### 5.5.4 Importance of a Bonus

- ✚ Anyone starting from an entry-level employee to a senior person may receive it as a reward to improve their morale, motivation, and productivity.
- ✚ Bonuses are complementary payments that come along with the regular payment or salary. It is given to an employee by an employer. A bonus may be given out for various purposes.

- ✚ Someone who is providing service for a company for a prolonged time may receive a bonus. Also, if someone performs extraordinarily well, they may receive a bonus amount as a reward.
- ✚ Apart from that, a fresher may also receive a bonus. It acts as a motivation for them to stay in the company for a longer span.

### Let's Sum Up

A discretionary bonus comes as a kind of bonus that is given to the particular employee with the sole discretion of the employer. It mostly comes in the form of variable pay as a total surprise. These bonuses are never expected by the employee receiving them and do not follow any employee benefits guidelines. There are also no eligibility criteria for receiving this kind of bonus. The details of this bonus, like the amount, requirements, and timing of handing this particular reward are kept hush until the benefactor is announced to the workforce.

**Check Your Progress-QUIZ –4**

1. The payment of bonus should be made within a period of \_\_\_\_\_ months from the close of the accounting year.
  - A. 2 months
  - B. 6 months
  - C. 8 months
  - D. None of the above
2. The contravention of the provisions of the Act or rules may attracts the punishment of
  - A. imprisonment upto 3 months, or fine up to Rs.500, or both
  - B. imprisonment upto 2 months, or fine up to Rs.1000, or both
  - C. imprisonment upto 6 months, or fine up to Rs.10000, or both
  - D. imprisonment upto 6 months, or fine up to Rs.1000, or both
3. The ceiling on wage or salary for calculation of Bonus under the Payment of Bonus Act 1965 is
  - A. Rs. 5,000
  - B. Rs. 7,000
  - C. Rs. 9,000
  - D. Rs. 6,500
4. Match the following particulars with their respective sections in the Act.
  1. Cognizance of offences ---- a. Section 28
  2. Inspectors ----- b. Section 2
  3. Penalty ----- c. section 30
  4. Definitions ----- d. section 27
  - A. 1-c, 2-d, 3-a, 4-b
  - B. 1-d, 2-c, 3-a, 4-b
  - C. 1-b, 2-a, 3-d, 4-c
  - D. 1-a, 2-d, 3-b, 4-c
5. Where the salary or wages of an employee exceeds 2500 rupees per month the bonus payable as per section 10 of the act shall be calculated on 2500 rupees per month only.
  - A. True
  - B. False

## SECTION 5.6 UNIT SUMMARY

The payment of bonus is dealt by “**Payment of Bonus Act, 1965**”, read with “**payment of Bonus Rules, 1975**”, (central rules), the main purpose of the enactment is to impose a legal obligation on the employer to provide for payment of bonus.

The Payment of Bonus Act applies to every factory and establishment employing not less than 20 persons on any day during the accounting year.

Bonus is considered as “reward” or any additional payment made to their monthly remuneration, given by the employer to the employee in any establishment. The basic objective to give the bonus is to share the profit earned by the organisation amongst the employees.

Any payment made in kind is perquisite, not a bonus. The Minimum bonus will be provided **8.33%** of the salary during the year, or **one hundred rupees** will be given in case of employees above 15 years and sixty rupees in case of employees below 15 years, whichever is higher. The maximum bonus is **20%** of salary during the accounting year.

The act prescribes for the minimum bonus, that is 8.33% of the employee’s Salary/wages, which is the least percent mandatorily to be paid by every establishment or organization covered by the act, (Section 10 of the Act); on the other hand, the maximum amount of bonus shall not exceed, 20% of the salary/wages of the employees (Section 11 of the Act).

The ceiling amount on which the bonus payable is calculated is **Rs. 7,000 per month** (amendment of 2015), earlier this amount was Rs 3,000. Therefore, if the employee receives **Gross Salary up to of Rs 21,000 per month**, the employee is eligible to receive bonus.

For bonus calculation only employee’s Salary/Wages and Dearness allowance is considered.

Therefore, if the Basic Salary and Dearness Allowance is less than Rs. 7,000 (calculation ceiling), the Bonus will be calculated on the actual amount, and in case the Basic Salary and Dearness Allowance, exceeds Rs. 7,000; bonus will be calculated on Rs 7000 only.



## SECTION 5.7 GLOSSARY

<b>Introduction to Payment of Bonus Act 1965</b>	Bonus is considered as “reward” or any additional payment made to their monthly remuneration, given by the employer to the employee in any establishment.
<b>Direct Taxes payable by the employer</b>	According to the Act, it is supposed to be between 8.33% to 20%. However, the percentage may vary from one accounting year to another, as it depends upon profits earned by the company.
<b>Audits of Accounts</b>	When the said authority finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, then, it may, by order, direct the employer to get his accounts audited.
<b>Under a Different formula calculating of bonus</b>	The direct taxes are calculated as per the present year’s income of the employer. In case the employer is an individual or part of the Hindu Undivided Family, then the income which will be considered for the taxes will be treated as the only income of the employer.
<b>Types of Bonuses</b>	A discretionary bonus comes as a kind of bonus that is given to the particular employee with the sole discretion of the employer. It mostly comes in the form of variable pay as a total surprise. These bonuses are never expected by the employee receiving them and do not follow any employee benefits guidelines

## SECTION 5.8 SELF ASSESSMENT

### Essay type questions

1. Define The payment of bonus Act. Insurance Act. Explain its objectives.
2. Briefly explain the history of payment of bonus act 1965.
3. What are the applications of bonus act?
4. Short note on gross profit. What are the methods of calculating?
5. Short note on surplus bonus. What are the methods of calculating?
6. What are the importance of Bonus?
7. Enumerate the Direct tax payable by the employer.
8. Explain the types of bonuses.
9. Discuss about the audit of accounts and its features.

## SECTION 5.9 CASE STUDY

**The Payment of Bonus Act, 1965 :** The Payment of Bonus Act, 1965 is an important piece of law that tries to guarantee equitable profit distribution and provide workers financial incentives. The Act specifies precise rules for who is eligible to receive incentives and who is not, promoting openness and equality in bonus payouts. The minimum length of service and salary requirement for workers to qualify for bonuses are set down in the Act. By establishing these standards, it assures that workers who have provided a particular amount of service and meet the required wages are entitled to a share in the establishment's earnings. On the other side, the Act also includes disqualification clauses to prohibit misuse and safeguard employers' interests. Employees may not be eligible to receive bonuses if they were fired for misbehaviour, resigned voluntarily or retired, engaged in deliberate misconduct that resulted in financial losses, or harmed the employer's interests via fraud or sabotage

## 5.10 ANSWERS FOR CHECK YOUR PROGRESS

Section 5.1	Payment of Bonus Act 1965
1.	b. 2nd September, 1965
2.	a. Tripartite commission

3.	a. 1961
4.	a.Full bench formula
5.	a.8.33%
Section 5.2	Direct Tax payable paid by the employer
1.	a.20 or more
2.	a.Section 32
3.	a.Public enterprises
4.	a.All of the above
5.	a.Set-On
Section 5.3	Audits of accounts in payments of bonus Act 1965
1.	a. Public enterprises
2.	c. Section 5
3.	a. True
4.	a.Basic salary
5.	b. 30 working days
Section 5.5	Types of Bonus in payments of bonus Act 1965
1.	a. 8 months
2.	a.imprisonment upto 6 months, or fine up to Rs.1000, or both
3.	a.Rs. 7,000
4.	a.1-c, 2-d, 3-a, 4-b
5.	a.True

## SECTION 5.11 REFERENCE 7 SUGGESTED READINGS

1. Payment of Gratuity Act, 1972 as amended by Payment of Gratuity (Amendment) Act, 2018
2. The Payment of Bonus Act, 1965 [Paperback] Lexis Paperback – 1 January 2021  
by Lexis (Author)

3. Concept of Bonus (A Commentary on Payment of Bonus Act, 1965) by S.B Rao Edition: 9th Revised Edition, 2022.

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