

Industrial Relation and Labour Enactments

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Unit One- Industrial Legislation

- There has always been struggle, conflict and clashes between the employees(Labour) and the employer on the matters of (more) wages, allowances, other facilities etc.
- During the last fifty years with the increase in cost of living, the employee-employer conflicts also increased thereby resulting in strikes, lockouts, picketing and gheraos.
- Finally, the government which initially was a silent observer of such conflicts, had to intervene to minimize employee-employer disputes, for the welfare and economy of nation; and thus the government contributed to the personnel field by legislation.
- Since 1920's there has been growing stream of protective labour laws regulating wages, compensation, disputes and safety etc.

Importance and Necessity of Labour Legislation

- Improve industrial relations (employee-employer relations)
- Helps pay fair wages to workers
- Minimize the unrest among workers
- Gives compensation to workers, victims of accidents
- Reduces conflicts, strikes etc
- Procures job security for the workers
- Fixes hours of work, rest pauses etc.

Principles of Labour Legislation

- Labour Legislation based upon following principles:-
- Social Justice- Social justice implies proper distribution of business profits and benefits between employers and employees. Labour Laws, which base themselves on social justice are,
 - (a.) Factories Act

Principles of Labour Legislation

(b.) Minimum Wage Act

(c.) Workmen's Compensation Act

- Social equality
- National Economy
- International Uniformity and Solidarity

Types of Labour Laws

- ❖ Laws connected with working conditions in factories
 - (a.) Factories Act, 1948
 - (b.) Industrial Employment Act, 1946
 - (c.) The Mines Act, 1952
 - (d.) Indian Merchant Shipping Act, 1923
- ❖ Laws related to specific matters like wages, welfare etc.

Types of Labour Laws (Cont..)

- (a.) The payment of Wages Act, 1936
- (b.) The minimum Wages Act, 1948
- (c.) The Workmen Compensation Act, 1923
- (d.) The Employee state insurance Corporation Act, 1948
- (e.) The Employee provident fund Act, 1952
- ❖ The Laws related to workers associations
 - (a.) Trade Union Act, 1926
 - (b.) Industrial dispute Act

Types of Labour Laws(Cont..)

❖ Laws related to Social Insurance

(a.) The Maternity Benefit Act, 1961

(b.) The Workmen Compensation Act, 1923

(c.) Employees State Insurance Act, 1948

Impact of Industrial Revolution

- The Industrial Revolution is one of the most significant events in human history and had a profound effect on many nations throughout the world. While the Industrial Revolution first began in Britain in the 18th century, and took place throughout the centuries that followed, its impacts can still be seen in our lives today. For example, the Industrial Revolution led to many of the following: the growth of socialist movements and labor movements, feminist movements, urbanization, and our modern consumer society.

Impact of Industrial Revolution

- For example, child labour was a common feature of the Industrial Revolution with children as young as four working in dirty and dangerous conditions without protection from the government. As time passed, socialist ideologies emerged in response to this exploitation. Several prominent socialist ideologies that emerged at the time included: Marxism and utopia socialism. Marxism is best associated with Karl Marx and the system of ideas he established in his books 'The Communist Manifesto' and 'Das Kapital'.

Impact of Industrial Revolution

- One of the primary causes of the Industrial Revolution was the emergence of laissez-faire capitalism as an economic system. Laissez-faire capitalism is a highly individualistic ideology in which the government plays as little a role as possible in the economic decisions of a country. Historians often refer to the ideology of the Industrial Revolution as classical liberalism since it included the principles of laissez-faire capitalism while also promoting basic individual rights. This political and economic climate created a situation in which wealthy factory and mine owners were able to exploit working-class people. As a result, this led to horrible working conditions for the people of the Industrial Revolution.

Impact of Industrial Revolution

- The growth of these socialist movements was significant because of the impact they had on the world in the decades and centuries that followed. For example, throughout the 20th century socialist ideologies transformed classical liberal societies and laissez-faire capitalism to a more mixed economy based upon the principles of the welfare state and modern liberalism. As such, most modern democracies include elements from both sides of the economic spectrum.
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Impact of Industrial Revolution

- Textiles were the dominant industry of the Industrial Revolution in terms of employment, value of output and capital invested. The textile industry was also the first to use modern production methods.
- GDP per capita was broadly stable before the Industrial Revolution and the emergence of the modern capitalist economy, while the Industrial Revolution began an era of per-capita economic growth in capitalist economies. Economic historians are in agreement that the onset of the Industrial Revolution is the most important event in the history of humanity since the domestication of animals and plants.

Impact of industrial revolution

- The Fourth Industrial Revolution may indeed have the potential to robotize humanity and thus to deprive us of our heart and soul.
- But the creativity, empathy, stewardship inherent in them can also lift humanity into a new collective and moral consciousness based on a shared sense of destiny.
- However, India should ensure that access to the domestic market be leveraged also in other areas like transportation, manufacturing etc., without losing efficiency.

Origin and Growth of labour legislation in India

- Labour law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society.

Origin and Growth of labour legislation in India

- Labour legislation in India has a history of over 125 years. Beginning with the Apprentices Act, passed in 1850, to enable children brought up in orphanages to find employment when they come of age, several labour laws covering all aspects of industrial employment have been passed. The labour laws regulate not only the conditions of work of industrial establishments, but also industrial relations, payment of wages, registration of trade unions, certification of standing orders, etc.

Origin and Growth of labour legislation in India

- In addition, they provide social security measures for workers. They define legal rights and obligations of employees and employers and also provide guidelines for their relationship. In India, all laws emanate from the Constitution of India. Under the Constitution, labour is a concurrent subject, i.e., both the Central and State governments can enact labour legislation, with the clause that the State legislature cannot enact a law which is repugnant to the Central law.

Origin and Growth of labour legislation in India

In certain respects Indian labour law is much like the labour law of developed industrial societies. It has extensive legislation providing for minimum standards of employment, social security, occupational health and safety and so on. Its labour law legalises trade unions and their activities, and provides a framework for the settlement of industrial disputes. It legalizes industrial action in pursuit of collective interests. Yet, as we have seen, formally the labour law of India covers only a very small percentage of the Indian workforce, and even among that cohort the law's application in practice is lax to say the least.



UNIT TWO

THE INDUSTRIAL EMPLOYMENT (Standing Orders) Act, 1946

INTRODUCTION

In an earlier era, India didn't really have as many laws connected with suitable employment and labor practices, as it does now. As a result, workers did not have uniformity in their service conditions as enforced by the standing orders act. This led to a lot of disruptions, friction and productivity loss between these workers and their bosses – and this was seen mostly in the industrial undertakings involving heavy workloads and multiple employees.

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The Labour Committee 1944- 1946 was created and they immediately spotted the key cause of issues.

There was a lack of understanding, on part of the employees, about employment conditions.

This committee maintained that the workers had a right to know all terms and conditions related to their work and employment.

They even wanted a distinct central law that made it obligatory for employers to frame and approve employment conditions and get them enforceable by law.

MEANING

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification.

OBJECTIVES

- To require employers to define the conditions of work.
- To foster harmonious relation between employer and employee.
- To minimize industrial conflicts.
- To bring about uniformity in terms of conditions of employment.
- To provide statutory sanctity and importance to standing orders.

IMPORTANT TERMS

- Certifying officer: It means labor commissioner who is appointed by the appropriate government for the purpose of satisfying the S.O.
- Appellate authority: It refers to an authority appointed by the government for the purpose of seeing to an appeal provided by the employer or any of the workmen.
- Standing order: The rules pertaining to working of establishments to be submitted by the employer.

Industrial Establishment

- (i) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, or
- (ii) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948, or]
- (iii) a railway as defined in clause (4) of Section 2 of the Indian Railway Act, 1890, or
- (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;

SCOPE & APPLICABILITY OF ACT

- It extends to the whole of India.
- It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months.
- The appropriate government may exempt any establishments from any of the provisions of the Act.
- It applies to railways, factories, mines, quarries, oil fields, tramways, motor services, docks, plantations, workshops, civil constructions and maintenance works.

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- The act is applicable to all workmen employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical and clerical work.
- Even the apprentices is also included.
- The Act has 15 sections and a schedule.

ACT DO NOT APPLY TO CERTAIN INDUSTRIAL ESTABLISHMENTS

- any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) apply; or
- any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961) apply:

Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961), the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.

SUBMISSION OF DRAFT STANDING ORDER

- Within **six months** from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer **five copies of the draft standing orders** proposed by him for adoption in this industrial establishment.
- Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where Model standing orders have been prescribed shall be, so far as is practicable, in conformity with such model.
- The draft standing orders submitting under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.
- Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

MATTERS TO BE PROVIDED IN STANDING ORDER UNDER THIS ACT

- Classification of workmen, e.g. whether permanent, temporary, apprentices, probationers, or badlis.
- Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
- Shift working.
- Attendance and late coming.
- Conditions of procedure in applying for, and the authority which may grant, leave and holidays.
- Requirement to enter premises by certain gates, and liability to search.

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- Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
- Termination of employment, and the notice thereof to be given by employer and workmen.
- Suspension or dismissal for misconduct, and acts or omissions, which constitute misconduct.
- Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
- Any other matter, which may be prescribed.

CONDITION FOR CERTIFICATION OF STANDING ORDER

- Every matter to be set out as per Schedule and Rule 2A.
- The standing orders to be in conformity with the provisions of the Act.

PROCEDURE FOR CERTIFICATION OF STANDING ORDER.

- On the receipt of the draft standing order, the certifying officer shall forward a copy to be sent to trade union of the workmen functioning of the establishment.
- If no such union exists, three representatives of workmen in the establishment elected at a meeting is called for the purpose.
- A notice in the prescribed form will be given inviting objections, if any, to the draft standing orders within fifteen days of receipt of those orders.
- After giving to the parties an opportunity of being heard, the certifying officer shall decide whether or not any modification of the draft is necessary, and make an order in writing accordingly.

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- In doing so the certifying officer can adjudicate upon the fairness and reasonableness of the provisions in the drafts.
- The certifying officer shall thereupon certify the standing orders with or without modifications and forward the authenticated copies thereof to the employer and to the trade union or other prescribed representatives of the workmen within seven days from the date of his order.

DATE OF OPERATION OF STANDING ORDER

- Standing orders shall, unless an appeal is preferred under Section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5
- OR where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6.

APPEAL

- Any person, workmen, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer under sub-section (2) of Section 5 may, within twenty-one days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority.
- The appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions there to as it thinks necessary to render the standing orders certifiable under this Act.
- The appellate authority shall, within seven days of its order under sub-section (1) send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen,

MODIFICATIONS OF STANDING ORDER

- Standing order finally certified under the act shall not, except on agreement between the employers and the workmen or their trade union be liable to modification until the expiry of 6 months from the date on which the standing orders came into operation.
- Subject to the provision of Sub-section(1), an employer or workmen or trade union or other representative body of the workman may apply to the Certifying officer to have the standing orders modified, and such applications shall be accompanied by 5 copies of the modifications proposed to be made.

PAYMENT OF SUBSISTENCE ALLOWANCE

- Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-
 - (a) at the rate of fifty per cent of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and
 - (b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

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- If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labor Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labor Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

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- **Subsistence Allowance** – Where a workman is suspended by employer pending investigation or enquiry into complaints or charges of misconduct against him, the workman shall be paid subsistence allowance equal to 50% of wages for first 90 days of suspension and 75% of wages for remaining period till completion of disciplinary proceedings. [section 10A(1)]. -
- ‘Wages’ has same meaning as under section 2(rr) of Industrial Disputes Act. [section 2(i)].

POWERS OF CERTIFYING OFFICER

- Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of
 - ❑ receiving evidence
 - ❑ administering oaths
 - ❑ enforcing the attendance of witnesses, and
 - ❑ compelling the discovery and production of documents

Clerical or arithmetical mistakes in any order passed by a Certifying officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such officer or authority, as the case may be.

OFFENCES AND PENALTIES

- An employer who fails to submit draft standing orders as required by Section 3 or who modifies his standing orders otherwise than in accordance with Section 10, shall be punishable with fine which may extend to **five thousand rupees**, and in the case of a continuing offence with a further fine which may extend to **two hundred rupees** for every day after the first during which the offence continues.
- An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to **one hundred rupees**, and in the case of a continuing offence with a further fine which may extend to **twenty-five rupees** for every day after the first during which the offence continues.
- No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.



Apprentice Act

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APPRENTICESHIP ACT 1961

INTRODUCTION

- The National Apprenticeship Act was launched in the year 1959 at first on voluntary cause.
- The Apprentices Act 1961 was presented in the Parliament during 1961 and came into effect from 1st January 1963.
- The act was eventually amended in 1973 and 1986.
- In the starting, the Act was meant for the training of trade apprentices.
- The onus of administering the Apprentices Act, 1961 in relation to Trade Apprentices under Central Government and Departments lies with the Central Apprenticeship Adviser/Director of Apprenticeship Training in the DGE&T, Ministry of Labour and Employment with the help of six Regional Directorates of Apprenticeship Training (RDATs).

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- The main purpose of the Act is to provide practical training to technically qualified persons in various trades.
- The objective is promotion of new skilled manpower.
- The scheme is also extended to engineers and diploma holders.
- It extends to whole of India.
- **DEFINITION**
- An Act to provide for the regulation and control of training of apprentices and for matters connected therewith

DEFINITION

- **Apprentice-** sec(2(aa)) – ‘Apprentice’ means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.
- **Apprenticeship training-** sec(2 aaa) means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.
- **"Apprenticeship Adviser"** means the Central Apprenticeship Adviser appointed under sub-section (1) of Section 26 or the State Apprenticeship Adviser appointed under sub-section (2) of that section

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- **"Apprenticeship Council"** means the Central Apprenticeship Council or the State Apprenticeship Council established under subsection (1) of Section 24
- **"Employer"** means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment.

OBJECTIVES

- To provide for the regulation and control of training of apprentices and for matters connected therewith.
- To promote a conducive climate for training and imparting skills to youth
- To prepare the youth to meet the growing needs of fast expanding industries, trade and commerce to be gainfully employed therein.
- To resolve any grievances wrt the apprenticeship in a company or an institution.
- To ensure their training in accordance with the planned programme and monitor the progress thereof

SCHEME

- There are 38 Sections in generally and Schedule.
- This Schedule is in regards to the adjustments in the Workmen's Compensation Act, 1923 with reference to its application to students under the Apprentices Act, 1961.
- APPRENTICES
- An apprentice is someone who takes training in some company to master the competencies and crafts of a specific craft.

APPRENTICES

- The Apprenticeship Act explains apprentices to be the ones who receive apprenticeship or practical training under an apprenticeship scheme for a specified duration.
- **PRE-REQUISITES/QUALIFICATIONS REQUIRED**
- The main requisites for a person to receive an apprentice training are that he/she should have attained an age of 14 years and for the trades where safety issues are concerned to the apprentice should have attained 18 years.

PRE-REQUISITES/QUALIFICATIONS REQUIRED

- Other than the above-prescribed qualification, extra qualifications may be prescribed for special trades and special categories of apprentices.
- Applicability
- As per the Apprentices Act 1961, for the industries and trades which were informed by the Central Government in the Official Gazette, the act is applicable.

APPLICABILITY

- The date of application may follow those particular circulars. Almost all the industries fall under the purview of the act
- The Apprentice Act moreover may not be applicable to the special Apprenticeship programs of the government unless and until informed by the Central Government in the Official Gazette.
- For clearing the doubts, this act applies to those categories of apprenticeship where the practical education is necessary to the trade.
- ‘Internships’ are not covered under this act.

CONTRACT OF APPRENTICESHIP

- No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.
- The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).

TERMINATION OF CONTRACT

- The contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training.
- Either party to a contract of apprenticeship may make an application to the Apprenticeship Adviser for the termination of the contract, and when such application is made, shall send by post a copy thereto to the other party to the contract.
- After considering the contents of the application and the objections, if any, filed by the other party, the Apprenticeship Adviser may, by order in writing, terminate the contract, if he is satisfied that the parties to the contract or any of them have or has failed to carry out the terms and conditions of the contract and it is desirable in the interests of the parties or any of them to terminate the same.

DURATION OF APPRENTICESHIP TRAINING

The duration of apprenticeship training, which shall be clearly mentioned in the agreement of apprenticeship, will be as follows:-

- In the case of trade apprentices who, having undergone institutional training in a school or other institution recognized by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognized by that Council. The period of apprenticeship training shall be such as may be determined by that Council (6months -2 years)
- In the case of other trade apprentices, the period of apprenticeship training shall be such as may be prescribed
- In the case of graduate or technician apprentices, vocational apprentices the period of apprenticeship training shall be such as may be prescribed by the council.

DUTIES OF AN APPRENTICE

- An apprentice must master the selected trade with utmost attentiveness and awareness. He ought to strive exceptionally to qualify himself as a skilled person in the related trade for the period of apprenticeship.
- He has to attend all the practical and instructional sessions given by the employer or someone particular on his behalf on a normal basis.
- An apprentice must obey all lawful orders of the employer and other superiors in the organization.
- An apprentice should work for duration as specified by the employer which might be subject matter to the prescribed period of the training period.
- He should carry out all of the responsibilities which are mentioned in the apprenticeship agreement.
- The apprentice's behavior and the knowledge or skills will be assessed with the help of the person who set the guidelines and regulations that practice to corresponding employees in an establishment

RESPONSIBILITIES OF AN EMPLOYER

- An employing company is obligated to deliver a duplicate of every apprenticeship agreement that he enters into within 30 days from the date of entering to the Apprenticeship marketing consultant. Once a portal internet site is made with the aid of the imperative government for this reason, then the business enterprise would possibly send the info of contracts within seven days from the date of entering.
- He shall reserve training locations for apprentices who belong to Scheduled Castes, Scheduled Tribes, and other backwards categories. The size of places reserved for these classes must as per the provisions prescribed by the government, keeping in mind the population of every category in the country.

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- The apprentices ought to be furnished with sufficient training in lines with the provisions of the act and also by means of the terms of the apprenticeship agreement. For this purpose, an enterprise must make good enough preparations for the cause of providing practical schooling.
- The organization might be liable to compensate for any non-public accidents that an apprentice may suffer during the duration of apprenticeship. The compensation should be paid as per the provisions of the Workmen's Act 1923 as applicable.
- The organization is obligated to pay the prescribed minimum wages to every apprentice or the prescribed minimum wages

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- The provisions of the Manufacturing Unit's Act, 1948 and Mines Act, 1952 shall apply to apprentices running in factories and mines, respectively, insofar because the matters relating to fitness, safety and welfare of the apprentices is concerned.
- An employer cannot compel apprentice to work overtime until and unless he has a due permission from the concerned Apprenticeship Advisor, who shall not permit until he is contented that an apprentice should work time beyond the prescribed time in his own interest or public interest.
- An apprentice must be allowed by the organization to take leaves or vacations weekly as per the company's policy.

LEGAL ROLE OF APPRENTICES

- An apprentice is not a workman throughout the apprentice training program. Statutory benefits like Bonus, PF, ESI Act, Gratuity, Industrial Disputes Act and so forth aren't applicable to the apprentice trainee.
- However, provisions of Factories Act concerning fitness, safety and welfare are applicable to the trainee. Apprentice is also entitled to get compensation from the employer for any kind of injuries happens during the period of employment.
- An employer is not obliged to employ the apprentice after of completion of apprenticeship.

SETTLEMENT OF DISPUTES

- Any argument or dispute which could rise under the apprenticeship agreement shall be raised to the Apprenticeship Advisor for resolution.
- If any party to the apprenticeship agreement isn't pleased with the decision of the Apprenticeship Advisor, then it is can approach the Apprenticeship Council which shall employ a Committee for the purpose of listening to the plead of the parties for resolving the issue. The decision made by the council would be deemed as final.

CONDUCTING THE TEST AND GRANT OF CERTIFICATE AND CONCLUSION OF TRAINING

After successful completion of the apprenticeship training, every apprentice shall appear for an exam held by the National Council to evaluate his/her capabilities in related trade in which he/she has taken an apprenticeship training.

- As per the sub-section (1), every apprentice who clears the apprentice test shall be awarded a certificate of skillfulness in the trade by the National Council.
- The employer will evaluate the development of every Graduate or Technician apprentice, or Vocational apprentice periodically.
- After successful completion of the apprenticeship training, each graduate or technician apprentice or Vocational Apprentice will be awarded a proficiency certificate by the regional board.

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- On successful completion of the apprenticeship training, the apprentice shall serve the employer despite whatever mentioned in sub-section (1), where there is a clause in the contract/ agreement. The employer is responsible for offering a suitable job to the apprentice and the apprentice is bound to work for the employer in that ability for that duration and on the remuneration which is specified in the agreement/contract. The Apprenticeship Advisor should find the remuneration and duration reasonable; If not reasonable he may revise the duration and remuneration. The revised duration and remuneration shall be assumed to be the duration or remuneration accepted by both the employer and the apprentice.

HOURS OF WORK, LEAVE AND HOLIDAYS

- The weekly and daily hours of work of an apprentice while undergoing practical training in a workshop shall be such as may be prescribed. (42-48 hours per week)
- No apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.
- An apprentice shall be entitled to such leave as may be prescribed and to such holidays as are observed in the establishment in which he is undergoing training.
 - CL-12 days per year
 - ML-15 days per year
 - EL-10 days per year

AMENDMENT TO THE APPRENTICES ACT – SIGNIFICANT CHANGES

- To make sure that the Apprentice Act is implemented effectively, some changes were also made by the Apprentices (Amendment) Act, 2014 and it came into effect on 22 December 2014.
- To include agency workers and contractual workers the definition of ‘worker’ has been widened. That is applicable because the number of employees in a status quo is one of the constituents which might be considered even as determining the number of apprentices to be appointed within the company.
- The amendment to the apprentice Act has paved the way for the transformation of conventional methods of records to electronic records and information systems by launching a portal. The portal would allow certain activities like registering the apprenticeship contract, maintenance of records and filing the returns etc., which can be done online now.

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Due to the amendment in the apprentice act, there is a change in the procedure of checking the strength of apprentices to be employed.

- If anyone violates the Apprentice Act imprisonment is no more a penalty. Following the amendment, if anyone is not abiding the provisions of the Act payment of a fine is the only punishment.
- The main objective behind these changes seems to make sure that employers employ more and more apprentices, and to encourage the organizations abide by the provisions of the Apprentices Act.

WHY SHOULD EMPLOYERS ENCOURAGE APPRENTICESHIP

- By participating in apprenticeship schemes the organization or employer are getting skilled and trained employees, which serves as an investment in coming times.
- Employer's participation in apprenticeship programs aids the organization in attracting top talent.
- The employer can hire competent and well-qualified employees, who are capable enough of progressing to more responsible and challenging positions.
- By participating in apprenticeship programs the employer can make sure that the training standards are met and are revamped.
- The cost incurred on training is also minimized and employee turnover also lessened.

CONCLUSION

- The Apprenticeship Act helps in settlement of disputes between the employer and apprentice and the Apprenticeship Advisor is the judging authority.
- They should make an appeal before the committee formed by the council.
- The employer will be penalized if he is not abiding with the provision of the act.
- To protect the rights of the employer and safeguard the rights of apprentice the Apprentice Act, 1961 can be treated as an extensive law.
- The Apprentice act can be executed to safeguard the rights of the apprentice and succeed over the problems faced by the apprentice throughout the training period.

Maternity Benefit Act 1961

- Maternity Benefit Act 1961

INTRODUCTION

- The Maternity Benefit Act, 1961 is a legislation that protects the employment of women at the time of her maternity.
- It entitles women employees of 'maternity benefit' which is fully paid wages during the absence from work and to take care of her child.
- The Act is applicable to the establishments employing 10 or more employees.
- The Maternity Benefit Act, 1961 has been amended through the Maternity (Amendment) Bill 2017 which was passed in the Lok Sabha on March 09, 2017. Thereafter, the said Bill was passed in Rajya Sabha on August 11, 2016. Further, it received assent from the President of India on March 27, 2017.

OBJECTIVES

- It aims to regulate the employment of women in certain periods before and after childbirth
- To provide for maternity benefits including maternity leave ,wages , bonus , nursing breaks etc.
- To protect the dignity of motherhood and the dignity of a new person by providing for full and healthy maintenance of the women and her child at this important time when she is not working.

APPLICABILITY OF THIS ACT

The Act extends to the whole of India and is applicable to:

- Every factory, mine or plantation (including those belonging to Government) and
- An establishment engaged in the exhibition of equestrian, acrobatic and other performances, irrespective of the number of employees, and
- To every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding 12 months.
- The State Government may extend the Act to any other establishment or class or establishments; industrial, commercial, agricultural or otherwise.

WHAT IS MATERNITY BENEFIT?

- Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence.

However, the Act **does not apply** to any such **factory/other establishment** to which the provisions of the **Employees' State Insurance Act** are **applicable** for the time being.

PERIOD FOR WHICH BENEFIT ALLOWED

- The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks in all whether taken before or after childbirth. However she cannot take more than six weeks before her expected delivery.
- Prior to the amendment of 1989, a woman employee could not avail of the six weeks' leave preceding the date of her delivery; she was entitled to only six weeks leave following the day of her delivery.
- However, by the above amendment, the position has changed. Now, in case a woman employee does not avail of six weeks' leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period, i.e. preceding and following the day of her delivery does not exceed 12 weeks.

WHO IS ENTITLED TO MATERNITY BENEFIT

- Every woman employee, whether employed directly or through a contractor, who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.
- The qualifying period of 80 days shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration.
- For calculating the number of days on which a woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages shall also be counted.
- There is neither a wage ceiling for coverage under the Act nor there is any restriction as regards the type of work a woman is engaged in.

NOTICE FOR MATERNITY BENEFIT

A woman employee entitled to maternity benefit may give a notice in writing (in the prescribed form) to her employer, stating as follows:

- that her maternity benefit may be paid to her or to her nominee (to be specified in the notice);
- that she will not work in any establishment during the period for which she receives maternity benefit; and
- that she will be absent from work from such date (to be specified by her), which shall not be earlier than 6 weeks before the date of her expected delivery.
- The notice may be given during the pregnancy or as soon as possible, after the delivery.

RESTRICTION ON EMPLOYMENT OF PREGNANT WOMEN

- No employer should knowingly employ a woman during the period of 6 weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. Besides, no woman should work in any establishment during the said period of 6 weeks
- Further, the employer should not require a pregnant woman employee to do an arduous work involving long hours of standing or any work which is likely to interfere with her pregnancy or cause miscarriage or adversely affect her health, during the period of 1 month preceding the period of 6 weeks before the date of her expected delivery, and any period during the said period of 6 weeks for which she does not avail of the leave.

DISCHARGE OR DISMISSAL TO BE VOID

- When a pregnant woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of discharge or dismissal in such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her services.
- Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the Act except if it was on some other ground.

Other Benefits

LEAVE FOR MISCARRIAGE AND ILLNESS

- In case of miscarriage or medical termination of pregnancy, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.

LEAVE FOR TUBECTOMY OPERATION

- In case of tubectomy operation, a woman shall, on production of prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of operation.

LEAVE FOR ILLNESS

- Leave for a maximum period of one month with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation.

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DUTIES OF EMPLOYERS

Important obligations of employers under the Act are:

- To pay maternity benefit and/or medical bonus and allow maternity leave and nursing breaks to the woman employees, in accordance with the provisions of the Act.
- Not to engage pregnant women in contravention of section 4 and not to dismiss or discharge a pregnant woman employee during the period of maternity leave.

RIGHT OF EMPLOYEES

Important rights of an employee are:

- To make a complaint to the Inspector and claim the amount of maternity benefit improperly withheld by the employer.
- To appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority, within 60 days of the service of such order.

PENALTIES FOR CONTRAVENTION OF ACT BY EMPLOYER

- For failure to pay maternity benefit as provided for under the Act, the penalty is imprisonment up to one year and fine up to Rs. 5000. The minimum being 3 months and Rs. 2000 respectively.
- For dismissal or discharge of a woman as provided for under the Act, the penalty is imprisonment up to one year and fine up to Rs. 5000. The minimum being 3 months and Rs.2000 respectively.

KEY AMENDMENTS

Increased Paid Maternity Leave:

- The Maternity Benefit Amendment Act has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks. Under the MB Amendment Act, this benefit could be availed by women for a period extending up to 8 weeks before the expected delivery date and remaining 18 weeks can be availed post childbirth. For women who are expecting after having 2 children, the duration of paid maternity leave shall be 12 weeks (i.e., 6 weeks pre and 6 weeks post expected date of delivery).

Continued...

Maternity leave for adoptive and commissioning mothers:

- The MB Amendment Act extends certain benefits to adoptive mothers as well and provides that every woman who adopts a child shall be entitled to 12 weeks of maternity leave, from the date of adoption.

Work from Home option:

- The MB Amendment Act has also introduced an enabling provision relating to "work from home" for women, which may be exercised after the expiry of the 26 weeks' leave period. Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer.

Continued...

Crèche facility:

- The Maternity Benefit Amendment Act makes crèche facility mandatory for every establishment employing 50 or more employees. Women employees would be permitted to visit the crèche 4 times during the day.

Employee awareness:

- The Maternity Benefit Amendment Act makes it mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment.

Factories Act 1948

- Factories Act 1948

Factories Act 1948

- The factories Act regulates conditions of work(health & safety etc.) in factories, it safeguards the interest of workers and it is for the welfare of factory workers.
- This act is applicable to any factory-
- Factory- factory is a place, where 10 more then 10 employee working with electricity, on a single day in a year and manufacturing process is going on.
- or 20 or more then 20 employee working without electricity on a day in a year and manufacturing process is going on.

Factories Act-1948

- The factories act has a provision in respect of
- Employee health and safety
- Hours of work
- Sanitary conditions and wholesome work environments
- Employee welfare
- Leaves with wages etc.

Important Definition(s)

- Child- A person who has not completed his fifteenth year of age.
- Adult-A person who has completed his eighteenth year of age.
- Worker- A person employed directly or through any agency, whether for wages or not, in any manufacturing process or cleaning any part of machinery or premises used for any manufacturing process etc.
- Manufacturing Process- A process for making, altering , repairing, finishing, packing, washing, cleaning or otherwise treating a substance for its use, sale, transport, disposal etc;
Pumping oil, water or sewage or
Generating, transforming or transmitting power

Important definition(s)

- Power- Electrical energy or any other form of energy, which is mechanically transmitted and is not generated by human or animal agency
- Machinery- It includes

Prime movers- engine, motor etc.

Transmission machinery-shaft, wheel, drum, pulley, belt etc.

- ❖ Occupier of Factory- A person who has ultimate control over the affairs of factory and where the said affairs are entrusted to a managing agent, such agent will be considered as the occupier of the factory.

Approval, Licensing and Registration of Factories

- Before starting a factory
- Take permission from the state government or chief inspector for the site on which the factory is to be made
- Get the factory plans and specifications approved by the inspector of industries
- Pay the necessary fees and get the registration and licensing of the factory
- If on an application to chief inspector to use a particular site for a factory, nothing is heard within three months, the permission is deemed to have been granted.

Health Clause

- Cleanliness
- Disposal of wastes and effluents
- Ventilation and temperature
- Dust and fumes
- Artificial Humidification
- Overcrowding
- Lighting
- Drinking water
- Latrines and Urinals
- Spittoons

Safety Clause

- Encasing and fencing of machinery
- Work on or near machinery in motion
- Employment of young persons on dangerous machines
- Hoists and Lifts
- Lifting machine, chains, ropes and lifting tackles
- Pressure Plants
- Floors, stairs and means of access to different places
- Pits, Sumps, openings in floors etc.
- Excessive weights

Safety Clause

- Protection of eyes
- Precautions against dangerous fumes
- Explosive or inflammable dust, gas etc.
- Precaution incase of fire

Employee Welfare

- Washing facilities
- Facilities for sitting
- First aid appliances
- Canteens
- Shelters, rest rooms and Lunch rooms
- Creches
- Welfare officers

Working hours

- Weekly hours
- Weekly holidays
- Daily hours
- Intervals for rest
- Extra wages for over-time
- Restriction on double employment-(one factory: second factory)
- Register of adult workers
- Restrictions on employment of women

Working Hours(Cont..)

- Weekly Hours- An adult worker shall be required to work in the factory for not more than 48 hours in a week
- No adult worker should work on Sunday unless the factory manager substitutes Sunday by a holiday one or three days immediately before or after Sunday
- No adult worker should work more than nine hours on any day.
- No adult worker shall be required to work for more than 5 hours continuously. After 5 hours of work, employee is entitle to get rest, at least for half an hour.

Working Hours(Cont..)

Extra Wages for overtime

If a worker works for more than nine hours on any day or for more than 48 hours in any week, he is entitled to get his overtime wages at the rate of twice his ordinary rate of wage.

- No adult worker shall be allowed to work in a second factory on any day on which he has already been working in one factory.
- Factory Manager shall maintain a register of adult workers (stating their names, nature of work, group work etc.) make it available to the inspector at all times during work hours.

Working Hours(Cont..)

- Restriction on employment of Women
- No women shall be employed in any factory except between the hours of 7 PM to 6 AM
- In case of emergency, Factory manager may take special permission from competent authority
- Prohibition of Employment of Young Children
- No child under 14 years of age shall be allowed to work in a factory.
- A child who has even completed his 14 years of age shall not be allowed to work in a factory unless he carries while at work a token giving reference to certificate of fitness

Working Hours(Cont..)

- Certificate of fitness
- It is a certificate of fitness for working in a factory, which is given to young person by a certifying Doctor, after examining him (young person)
- Working hours of children
- No child shall be permitted to work
- For more than four and half hours on any day
- During the night (10 PM to 6 AM)
- Register of child workers indicating their particulars and nature of work shall be maintained by the factory manager and be made available to inspector at all times during hours of work

Annual Leave with wages

- A worker who has worked for 240 days or more during a calendar year shall be permitted during the subsequent calendar year, leave with wages for a number of days at the rate of
- One day for every 15 days of work performed by a child worker
- One day for every 20 days of work performed by an adult worker
- A worker interested to take leave shall apply 15days in advance.

Minimum Wages Act 1948

- Minimum Wages Act 1948

The Minimum Wages Act 1948

- Industrial establishment -- means any:
- Motor transport service carrying passengers or goods or both on hire
- Air and water transport service
- Mine or oil field
- Workshop etc
- Wages- wages include all remunerations (salary+allowances etc.) payable to an employee in respect of his employment.
- Wages also include over-time remuneration, bonus, gratuity, pension, provident fund contribution by the employer etc.

The Minimum Wages Act 1948

- Objective-
- To prevent exploitation of the employees, this act aims at fixing minimum wages which they must get
- Important aspects of the act-
- The act lays down for fixation of
- A minimum time rate of wages
- A minimum piece rate
- A guaranteed time rate
- An overtime rate, for different occupations, classes of work, for adults, children etc.
- The minimum wage may consist of a basic rate of wages and a cost of living allowance

The Minimum Wages Act 1948

- Cost of Living allowance shall be computed by competent authority such as the Director, Labour Bureau
- Wages shall ordinarily be paid in cash
- The act empowers the appropriate government to fix numbers of working hours in a day, a weekly holiday, and payment of overtime wages.
- The employer is required to maintain registers and office records in proper manner.

The Minimum Wages Act 1948

- Inspectors may be appointed to hear and decide claims arising due to payment of less than minimum wages.
- Penalties shall be imposed for violating the provisions of the act.
- **Fixation and revision of Minimum Wages**
- Appropriate Government shall fix the minimum rate of wages for persons employed
- Appropriate government shall review at interval not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates

Fixation and revision of Minimum Wages

- In fixing or revising rates of wages:
- Different minimum rates of wages be fixed for different scheduled employments, different classes of work and for adults, children and apprentices
- Minimum rates of wages may be fixed either by hour, by day, by month or by other longer wage period as may be prescribed.
- For fixing or revising minimum rates of wages, the appropriate government shall,
- (a.) either appoint committees and sub committees; and

Fixation and revision of Minimum Wages

- (b.) or publish its proposals for the information of persons likely to be affected and consider all representations received from those persons.
- The appropriate government shall appoint an advisory board for,
 - (a.) Coordinating the work of committees and sub-committees; and
 - (b.) advising it as regards fixing and revising minimum wage rates

Payment of Minimum Wages

- Generally minimum wages shall be payable in cash
- An employer shall not pay less than the minimum wage rate fixed by appropriate government
- The appropriate Government may be:-
 - (a.) fix number of working hours in a day
 - (b.) provide a day for rest in every period of seven days
 - (c.) provide payment for work on a day of rest at a rate not less than the over-time rate.
- These provisions shall apply to
- Employees engaged on urgent work, preparatory or complimentary work.

Payment of minimum wages(Cont..)

- Employees whose employment is essentially intermittent etc.
- If an Employee does two or more classes of work, each having a different minimum wage rate, he shall get payment in respect of time spent in each class or work.
- Maintenance of Records
- Every employer shall maintain registers and other records giving details of employee, nature of work performed by them, wages paid to them, receipt given by them etc

Inspectors and their Powers

- Appropriate government may appoint Inspectors for the purpose of this Act.
- The inspectors shall have the following powers:
 - (a.) To enter at all reasonable hours, any premises for examining registers, records of wages etc.
 - (b.) To examine any person
 - (c.) To seize relevant records in respect of an offence

Claims

- An employee, an official of registered trade union on behalf of the employee or an inspector can apply to the authority (Commissioner for Workmen Compensation, Labour Commissioner etc.) appointed by appropriate government to hear and decide claims:
 - (i) arising out of payment of less than minimum wage rate
 - (ii) in respect of wages at the over time rate
 - (iii) in respect of payment of remuneration for days of rest etc.

Claims (Cont..)

- Application for claim should be presented within six months from the date on which the claimed amount becomes payable
- After receiving the application, the authority shall hear both the employee(applicant) and the employer
- (a.) If employee's stand is found correct, for claims arising out of payment of less than minimum wages, the employee shall get the extra amount plus a compensation not exceeding 10 times the amount of such excess.

Claims (Cont..)

- (b.) In cases other than that of minimum wages, employee shall get the amount due towards him or her plus a compensation not more than Rs.10/-
- (c.) If employees application is found to be malicious or vexatious, he or she may be penalized to pay to the employer an amount up to Rs.50/-

The Payment of Bonus Act 1965

- The Payment of Bonus Act 1965

The Payment of Bonus Act 1965

- The practice of paying bonus in India appears to have originated during First World War when certain textile mills granted 10% of wages as war bonus to their workers in 1917. In certain cases of industrial disputes demand for payment of bonus was also included.
- A Tripartite Commission was set up by the Government of India to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government.

The Payment of Bonus Act 1965 (Cont..)

- The Government of India accepted the recommendations of the Commission subject to certain modifications. To implement these recommendations the Payment of Bonus Ordinance, 1965 was promulgated on 29.05.1965
- An Act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.
- Definitions-Accounting Year means
- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced.

Definitions

- (a) the year commencing on the 1st day of April; or
- (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced.
- “allocable surplus” means-
- in relation to an employer, being a company [(other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its Profits in Accordance

Definitions

- with the provisions of section 194 of that Act, sixty seven per cent of the available surplus in an accounting year
- (b) in any other case, sixty percent of such available surplus;
- “appropriate Government” means-
- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;
- “available surplus” means the available surplus computed under section 5;
- “gross profits” means the gross profits calculated under section 4;

Definitions

- “Income-tax Act” means the Income-tax Act, 1961 (43 of 1961);
- “salary or wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-
 - (i) any other allowance which the employee is for the time being entitled to;
 - (ii) the value of any house accommodation or supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

Definitions

- (iii) any traveling concession;
- (iv) any bonus (including incentive, production and attendance bonus);
- (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;
- (vii) any commission payable to the employee.

Computation of gross profits

- **The gross profits derived by an employer** from an establishment in respect of the accounting year shall—
- (a) in the case of a banking company, be calculated in the manner specified in the First Schedule;
- (b) in any other case, be calculated in the manner specified in the Second Schedule;
- **Computation of available surplus**
- The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6;
- [Provided that the available surplus in respect of the accounting year commencing on any day 1968 and in respect

Computation of available surplus

of every subsequent accounting year shall be the aggregate of –

- (a) the gross profits for that accounting year after deducting there from the sums referred to in section 6; and
- (b) an amount equal to the difference between –
 - (i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
 - (ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.]

Sums deductible from gross profits

- The following sums shall be deducted from the gross profits as prior charges, namely:-
 - (a) any amount by way of [development rebate or investment allowance or development allowance] which the employer is entitled to deduct from his income under the income-tax Act;
 - (b) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
 - (d) such further sums as are specified in respect of the employer in the [Third Schedule]
- **Calculation of direct tax payable by the employer** —[Any direct tax payable by the employer] for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:-

Calculation of direct tax payable by the employer

- (a) in calculating such tax no account shall be taken of –
- (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
- (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income-tax Act;
- (iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section,101 of that Act, as in force immediately before the commencement of the Finance Act, 1965 (10 of 1965);

Calculation of direct tax payable by the employer

- (b) where the employer is individual or a Hindu Undivided Family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;
- (c) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;
- (d) no account shall be taken of any rebate ¹[(other than development rebate or investment allowance or development allowance)] or credit or relief or deduction (not herein before mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

Eligibility for Bonus

- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.
- **Disqualification for Bonus**
- Not with standing anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for –
 - (a) fraud; or
 - (b) riotous or violent behaviour while on the premises of the establishment; or
 - (c) theft, misappropriation or sabotage of any property of the Organization

Payment of Minimum Bonus

- Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Payment of Maximum Bonus

- (1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting; year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent, of such salary or wage.
- (2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

Calculation of bonus with respect to certain employees

- Where the salary or wage of an employee exceeds [two thousand and five hundred rupees] per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wage were [two thousand and five hundred rupees] per mensem.]

Proportionate reduction in bonus in certain cases

- Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent, of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

Computation of number of working days

- For the purposes of section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which-
- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

Cont..

- (b) he has been on leave with salary or wage;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (d) the employee has been on maternity leave with salary or wage, during the accounting year.

Set on and set off of allocable surplus

- Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

Cont..

- Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount of sufficient amount carried forward and set on under subsection (1) which could be utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

Cont..

- Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.
- **Special provisions with respect to certain establishment**— Where an establishment newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act in accordance with the provisions of sub-section (1A), (1B) and (1C)
- (1A) In the first five accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the

Cont..

- accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this act in relation to that year, but with out applying the provisions of section 15
- (1B) For the sixth and seventh accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply subject other following modifications, namely:--
 - (i) for the sixth accounting year --set on or set off, as the case may be, shall be made in the manner illustrated in the 1[Fourth Schedule] taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;

Cont..

- (ii) for the seventh accounting year --set on or set off, as the case may be, shall be made in the manner illustrated in the 1[Fourth Schedule] taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting year.
- (1C) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply in relation to such establishment as they apply in relation to any other establishment.

Adjustment of customary or interim bonus against bonus payable under the Act

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

Deduction of certain amounts from bonus payable under the Act

- Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.
- **Time-limit for payment of bonus. –**
- Payable to an employee by way of bonus under this Act shall be paid in cash by his employer --(a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

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- (b) in any other case, within a period of eight months from the close of the accounting year;
- Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extended the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.
- **Application of Act to establishments in public sector in certain cases.-**
- If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both less than twenty percent of the gross income of the establishment in public

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sector for that year, then, the provision of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in Private Sector.

- **Recovery of bonus due from an employer.-** Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorized by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrears of land revenue.

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- Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer.
- Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.
- **Reference of disputes under the Act.-**
- Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industries dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation

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and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

- Where any dispute of the nature specified in section 22 between an employer , being a banking company, and its employees has been referred to the said authority under that section and during the course of proceedings the accounts of the banking company duly audited and produced before it, the said authority shall not permit any trade union or employees to question the correctness of such accounts , but the trade union or employees to question the correctness of such accounts, but the trade union or employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus under this act.

Maintenance of register, records, etc.

- *Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may prescribed.*
- **Inspectors.** – (1) The appropriate Government may, by notification on the Official Gazette, appoint such person as it think fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.
- (2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with –
 - (a) Require an employer to furnish such information as he may consider necessary;
 - (b) at any reasonable time and with such assistance, if any, as he thinks fit enter any establishment or any premises connected therewith and require any one found in charge

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- thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;
- (c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;
- (d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;
- (e) exercise such other powers as may prescribed.

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- (3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian penal Code (45 of 1860).
- (4) Any person required to produce any accounts, book, register or other documents or to give information by an Inspector under sub-section (1) shall be legally bound to do so.
- **Penalty.-**
- if any person- (a) contravenes any of the provision of this Act or any rule made there under, or
- (b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition,
- he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Offences by companies

- (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all; due diligence to prevent the commission of such offence.

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