



Empowering Rural India

Vijay Institute of Management

(Approved by AICTE, New Delhi & Affiliated to Anna University)

MBA – TANCET Counselling Code 683

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B. Com

LABOUR LAWS

(UG Course Material for MK University - Madurai)

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UNIT-I

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Section 2(g) “Standing orders” means rules relating to matters set out in the Schedule; ‘Standing Orders’ means rules of conduct for workmen employed in industrial establishments.

THE SCHEDULE

MATTERS TO BE PROVIDED IN STANDING ORDER UNDER THIS ACT

1. Classification of workmen, e.g. whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. 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 there from.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions, which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter, which may be prescribed.

[Section 1(3)]. Applicability of the Act - The Act is applicable to all ‘industrial establishments’ employing 100 or more workmen.

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 provision of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

‘Industrial establishment’ means (i) an industrial establishment as defined in section 2(i) of Payment of Wages Act (ii) Factory as defined in section 2(m) of Factories Act (iii) Railway (iv) Establishment of contractor who employs workmen for fulfilling contract with owner of an industrial establishment. [Section 2(e)].

The term ‘industrial establishment’ includes factory, transport service, construction work, mines, plantation, workshop, building activity, transmission of power etc.

Section 14. Power to exempt

The appropriate Government may, by notification in the official Gazette, exempt conditionally or unconditionally, any industrial establishment or class of industrial establishment from all or any of the provisions of this Act.

“Wages” and “workman” have the meanings, respectively assigned to them in Sec. 2 of the Industrial Disputes Act, 1947 (14 of 1947).

Section 13B. Act not to apply to certain Industrial establishments

Act not to apply to certain Industrial establishments. Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil “Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply.]

Approval of Standing Orders - Every employer covered under the Act has to prepare ‘Standing Orders’, covering the matters required in the ‘Standing Orders’. Five copies of these should be sent to Certifying Officer for approval. [section 3(1)]. ‘Certifying Officer’ means Labour Commissioner and any officer appointed by Government to be ‘Certifying Officer’. [section 2(c)].

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The Certifying Officer will inform the Union and workmen and hear their objections. After that, he will certify the 'Standing Orders' for the industrial establishment. [section 5]. Till standing orders are certified, 'Model Standing Order' prepared by Government will automatically apply. [section 12A].

Standing order should be displayed in English and local language on special notice boards at or near entrance of the establishment. [section 9]. Modifications of Standing Order shall be done by following similar procedure. [section 10].

Once the 'Standing Orders' are certified, they supersede any term and condition of employment, contained in the appointment letter. If there is inconsistency between 'Standing Order' and 'Appointment Letter', the provisions of 'Standing Order' prevail.

Standing orders are binding on employer and employee. These are statutorily imposed conditions of service. However, they are not statutory provisions themselves (meaning that the 'Standing Orders' even when approved, do not become 'law' in the sense in which Rules and Notifications issued under delegated legislation become after they are published as prescribed.) -

Model Standing Orders - The Act has prescribed Model Standing Orders. These are automatically applicable till employer prepares his own 'Standing Orders' and these are approved by 'Certifying Officer'. [section 12A].

Disciplinary Action - The most important use of 'Standing Orders' is in case of disciplinary action. A workman can be punished only if the act committed by him is a 'misconduct' as defined under the 'Standing Orders'. The 'Model Standing Orders' contain such acts like insubordination, disobedience, fraud, dishonesty, damage to employer's property, taking bribe, habitual absence or habitual late attendance, riotous behaviour, habitual neglect of work, strike in contravention of rules etc. as misconducts. The 'Certified Standing Orders' may cover other acts as 'misconduct', if approved by 'Certifying Officer'.

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)].

1. **Short title, extent and application.**- (1) This act may be called the Industrial Employment (Standing Orders) Act, 1946.

(2) It extends to the whole of India

(3) 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: 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 to any industrial establishment employing such number of number of persons less than one hundred as may be specified in the notification. Nothing in this Act shall apply to-

Certification of standing orders.--(1) On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, if any, of the workmen or where there is no trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications there in which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

“Certifying Officer” means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act;

“standing orders” means rules relating to matters set out in the Schedule;

Conditions for certification of standing orders.—Standing orders shall be certifiable under this Act if—

- (a) Provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and
- (b) The standing orders are otherwise in conformity with the provisions of this Act, and it [shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Certification of standing orders.—

(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed, an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

Certifying Officers and appellate authorities to have powers of civil court.—

(1) 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, and shall be deemed to be a civil court within the meaning of [sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)].

(2) 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.

Procedure under the Industrial Employment (Standing Orders) Act, 1946 – for certification of standing orders

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The question “what is the procedure which employer has to follow for certification of standing orders under Industrial Employment (Standing Orders) Act, 1946?” is commonly asked question among most of individual and to answer this we need to take reference of section 3 to 6 of the Industrial Employment (Standing Orders) Act, 1946 which will be as follows:

- The employer has to prepare a draft of the standing orders which employer proposes to adopt for its industrial establishment. The draft must make provision for every applicable matter specified in the Schedule appended to the Industrial Employment (Standing Orders) Act, 1946. It must be in conformity with the provisions of the Industrial Employment (Standing Orders) Act, 1946 and as far as possible; it should be in conformity with the prescribed Model Standing Orders.
- Secondly, the employer has to submit the draft standing order prepared by them to the Certifying Officer for adoption in its Industrial Establishment which employer has to do within six months from the date on which the Industrial Employment (Standing Orders) Act, 1946 becomes applicable to said industrial establishment.
- Thirdly, after receiving the draft standing orders the Certifying Officer has to call and hear the employer and the workmen concerned and decide whether or not any changes are necessary in the draft to make it certifiable under the Industrial Employment (Standing Orders) Act, 1946.
- If the employer is aggrieved by the order of the Certifying Officer then said employer has to prefer an appeal to the Appellate Authority for the necessary relief. The order of the Appellate Authority will be final in that case.

SCHEDULE I: Model Standing Orders in Respect of Industrial Establishments not being Industrial Establishments in Coal Mines

1. These orders shall come into force on _____

Classification of workmen.

2. (a) Workmen shall be classified as,

- (a) Permanent,
- (b) Probationers,

- (c) Badlis,
 - (d) Temporary,
 - (e) Casual,
 - (f) Apprentices
- (a) A "permanent" workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal strike) or involuntary closure of the establishment.
- (b) A "probationer" is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his previous permanent post.
- (c) A "badly" is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.
- (d) A "temporary workman" is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.
- (e) A "casual" workman is a workman whose employment is of a casual nature.
- (f) An "apprentice" is a learner who is paid an allowance during the period of his training.

3. Tickets

- (1) Every workman shall be given a permanent ticket unless he is a probationer, badly, temporary worker or apprentice.
- (2) Every permanent workman shall be provided with a departmental ticket showing his number, and shall on, being required to do so, show it to any person authorized by the manager to inspect it.

- (3) Every workman shall be provided with the work card on which shall be entered the days on which he has worked in the establishment, and which shall be surrendered if he obtains permanent employment.
- (4) Every temporary workman shall be provided with a 'temporary' ticket which he shall surrender on his discharge.
- (5) Every casual worker shall be provided with a 'casual' card on which shall be entered the days on which he has worked in the establishment.
- (6) Every apprentice shall be provided with an 'apprentice' card, which shall be surrendered if he obtains permanent employment.

4. Publication of working time

The periods and hours of work for all classes of workers in each shift shall be exhibited in English and in the principal languages of workmen employed in the establishment on notice boards maintained at or near the main entrance of the establishment and at time-keeper's office, if any.

5. Publication of holidays and pay days

Notices specifying (a) the days observed by the establishment as holidays, and (b) pay days shall be posted on the said notice-boards.

6. Publication of wage rates

Notices specifying the rates of wages payable to all classes of workmen and for the classes of work shall be displayed on the said notice boards.

7. Shift working

More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, the workmen shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance; provided that no such notice shall be necessary if the closing of the shift is under

an agreement with the workmen affected. If as a result of the discontinuance of the shift working, any workmen are to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Disputes Act, 1947 (14 of 1947) and the rules made there under. If shift working is restarted, the workmen shall be given notice and re-employed in accordance with the provisions of the said Act and the said Rules.

7A. Notice of changes in shift working

Any notice of discontinuance or of restarting of a shift working required by Standing Order 7 shall be in [Form IVA] and shall be served in the following manner, namely:-

- The notice shall be displayed conspicuously by the employer on a notice board at the main entrance to the establishment.
- **PROVIDED** that where any registered trade union of workmen exists, a copy of the notice shall also be served by registered post on the secretary of such union.]

8. Attendance and late coming

All workmen shall be at work at the establishment at the time fixed. Workmen attending late will be liable to the deductions provided for in Payment of Wages Act, 1936.

9. Leave

- (1) Holidays with pay will be allowed as provided for in [Chapter VIII of the Factories Act, 1948], and other holidays in accordance with law, contract, custom and usage.
- (2) A workman who desires to obtain leave of absence shall apply to the [employer or any other officer of the industrial establishment specified in this behalf by the employer], who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons there for shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof, he shall apply to

the [employer or the officer specified in this behalf by the employer] who shall send a written reply either granting or refusing extension of leave to the workman if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him

- (3) If, the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a) returns within 8 days of the expiry of the leave and (b) explains to the satisfaction of the [employer or the officer specified in this behalf by the employer] his inability to return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be kept on the badly list.

10. Casual leave

A workman may be granted casual leave of absence with or without pay not exceeding 10 days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but when this is not possible the head of the department shall, as soon as may be practicable, be informed in writing of the absence from and of the probable duration of such absence.

11. Payment of wages

- (1) Any wages, due to the workmen but not paid on the usual pay day on account of their being unclaimed, shall be paid by the employer on an unclaimed wage pay day in each week, which shall be notified on the notice-boards as aforesaid.
- (2) All workmen will be paid wages on a working day before the expiry of the seventh or the tenth day after the last day of the wage period in respect of which the wages are payable, according as the total number of workmen employed in the establishment does not or does exceed one thousand.

12. Stoppage of work

- (1) The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery or stoppage of power supply, epidemics, civil commotion or other cause beyond his control, stop

any section or sections of the establishment, wholly or partially for any period or periods without notice.

- (2) In the event of such stoppage during working hours, the workmen affected shall be notified by notices put upon the notice board in the department concerned, [and at the office of the employer and at the time keeper's office if any], as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The workmen shall not ordinarily be required to remain for more than two hours after the commencement of the stoppage. If the period of detention does not exceed one hour the workmen so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workmen so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the stoppage. In the case of piece-rate workers, the average daily earning for the previous month shall be taken to be the daily wage. No other compensation will be admissible in case of such stoppage. Whenever practicable reasonable notice shall be given of resumption of normal work.
- (3) In case where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be. When, however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof.
- (4) The employer may in the event of a strike affecting either wholly or partially any section or department of the establishment close down either wholly or partially such section or department and any other section or department affected by such closing down. The fact of such closure shall be notified by notices put on the notice board in the section or department concerned and in the time keeper's office, if any, as soon as practicable. The workmen concerned shall also be notified by a general notice, prior to resumption of work, as to when work will be resumed.

13. Termination of employment

- (1) For terminating employment of a permanent workman, notice in writing shall be given either by the employer or the workman-one month's notice in the case of monthly rated workmen and two weeks' notice in the case of other workmen; one month's or two week's pay, as the case may be, may be paid in lieu of notice.

- (2) No temporary workman whether monthly-rated, weekly-rated or piece-rated and no probationer or badly shall be entitled to any notice or pay in lieu thereof if his services are terminated, but the services of a temporary workman shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in Paragraph 14.
- (3) Where the employment of any workman is terminated, the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

14. Disciplinary action for misconduct

- (1) A workman may be fined up to two per cent of his wages in a month for the following acts and omissions.
- (2) A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.
- (3) The following acts and omissions shall be treated as misconduct,-
 - (a) Willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior,
 - (b) Theft, fraud or dishonesty in connection with the employer's business or property,
 - (c) Willful damage to or loss of employer's goods or property,
 - (d) Taking or giving bribes or any illegal gratification,
 - (e) Habitual absence without leave or absence without leave for more than 10 days,
 - (f) Habitual late attendance,
 - (g) Habitual breach of any law applicable to the establishment,

- (h) Riotous or disorderly behavior during working hours at the establishment or any act subversive of discipline,
- (i) Habitual negligence or neglect of work,
- (j) Frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month,
- (k) Striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.

(4) (a) Where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from a date of suspension.

(b) A workman who is placed under suspension shall be paid subsistence allowance in accordance with the provisions of section 10A of the Act.]

(ba) In the inquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a member.

(bb) The proceedings of the inquiry shall be recorded in Hindi or in English or the language of the State where the industrial establishment is located, whichever is preferred by the workman.

(bc) The proceedings of the inquiry shall be completed within a period of three months:

PROVIDED that the period of three months may, for reasons to be recorded in writing, be extended by such further period as may be deemed necessary by the inquiry officer.

(c) If on the conclusion of the inquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual

increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly:

PROVIDED that when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period, and the subsistence allowance already paid to him shall not be recovered:

PROVIDED FURTHER that where the period between the date on which the workman was suspended from duty pending the inquiry or investigation or trial and the date on which an order of suspension was passed under this clause exceeds four days, the workman shall be deemed to have been suspended only for four days or for such shorter period as is specified in the said order of suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period:

PROVIDED ALSO that where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period:

PROVIDED ALSO that in the case of a workman to whom the provisions of clause (2) of article 311 of the Constitution apply, the provisions of that article shall be complied with.

- (d) If on the conclusion of the inquiry, or as the case may be, of the criminal proceedings, the workman has been found to be not guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period.
- (e) The payment of subsistence allowance under this standing order shall be subject to the workman concerned not taking up any employment during the period of suspension.]
- (5) In awarding punishment under this standing order, the [authority imposing the punishment] shall take into account any gravity of the misconduct, the previous record, if any, of the

workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the [authority imposing the punishment] shall be supplied to the workman concerned.

- (6) (a) A workman aggrieved by an order imposing punishment, may within twenty-one days from the date of receipt of the order, appeal to the appellate authority.
- (b) The employer shall, for the purposes of clause (a), specify the appellate authority.
- (c) The appellate authority, after giving an opportunity to the workman of being heard, shall pass such order as he thinks proper on the appeal within fifteen days of its receipt and communicate the same to the workman in writing.]

15. Complaints

All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent shall be submitted to the manager or other person specified in this behalf with the right of appeal to the employer.

16. Certificate on termination of service

Every permanent workman shall be entitled to a service certificate at the time of his dismissal, discharge or retirement from service.

17. Liability of employer

The employer of the establishment shall personally be held responsible for the proper and faithful observance of the standing orders.

17A. (1) Any person desiring to prefer an appeal in pursuance of sub-section (1) of section 6 of the Act shall draw up a memorandum of appeal setting out the ground of appeal and forward it in quintuplicate to the appellate authority accompanied by a certified copy of the standing orders, amendments, or modifications, as the case may be.

(2) The appellate authority shall after giving the appellant an opportunity of being heard, confirm the standing orders, amendments or modifications as certified by the certifying officer unless

it considers that there are reasons for giving the other parties to the proceedings a hearing before a final decision is made in the appeal.

- (3) Where the appellate authority does not confirm the standing orders, amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given-
- (a) Where the appeal is filed by the employer or a workman, to trade unions of the workman of the industrial establishments, and where there are no such trade unions to the representatives of workman elected under clause (b) or rule 6, or as the case may be to the employer;
 - (b) Where the appeal is filed by a trade union to the employer and all other trade unions of the workmen of the industrial establishment;
 - (c) Where the appeal is filed by the representatives of the workmen, to the employer and any other workman whom the appellate authority joins as a party to the appeal.
- (4) The appellant shall furnish each of the respondents with a copy of the memorandum of appeal.
- (5) The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal,
- (6) On the date fixed under sub-rule (3) for the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or consider being relevant.

18. Exhibition of standing orders

A copy of these orders in English and in Hindi shall be posted on a notice board maintained at or near the main entrance to the establishment and shall be kept in a legible condition.

SCHEDULE IB: Model Standing Orders on Additional items Applicable to all Industries

1. Service record

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Matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age.

(i) *Service card*: Every industrial establishment shall maintain a service card in respect of each workman in the form appended to these orders, wherein particulars of that workman shall be recorded with the knowledge of that workman and duly attested by an officer authorized in this behalf together with date.

(ii) *Certification of service* : (a) Every workman shall be entitled to a service certificate, specifying the nature of work (designation) and the period of employment (indicating the days, months, years) at the time of discharge, termination, retirement or resignation from service;

(b) The existing entries in Para 16 of Schedule I and Para 20 of Schedule IA shall be omitted.

(iii) *Residential address of workman* : A workman shall notify the employer immediately on engagement the details of his residential address and thereafter promptly communicate to his employer any change of his residential address. In case, the workman has not communicated to his employer the change in his residential address, his last known address shall be treated by the employer as his residential address for sending any communication.

(iv) *Record of age* :

(a) Every workman shall indicate his exact date of birth to the employer or the officer authorized by him in this behalf, at the time of entering service of the establishment. The employer or the officer authorized by him in this behalf may before the date of birth of a workman is entered in his service card, require him to supply,-

(i) his matriculation or school leaving certificate granted by the Board of Secondary Education or similar educational authority; or

(ii) a certified copy of his date of birth as recorded in the registers of a municipality, local authority or Panchayat or Registrar of Births;

(iii) in the absence of either of the aforesaid two categories of certificates, the employer or the officer authorized by him in this behalf may require the workman to supply, a certificate from a government medical officer not below the rank of an Assistant Surgeon, indicating the probable age of the workman provided the cost of obtaining such certificate is borne by the employer;

(iv) where it is not practicable to obtain a certificate from a government medical officer, an affidavit sworn, either by the workman or his parents, or by a near relative, who is in a position to know about the workman's actual or approximate date of birth, before a First Class Magistrate or Oath Commissioner, as evidence in support of the date of birth given by him.

(b) The date of birth of a workman, once entered in the service card of the establishment shall be the sole evidence of his age in relation to all matters pertaining to his service including fixation of the date of his retirement from the service of the establishment. All formalities regarding recording of the date of birth shall be finalized within three months of the appointment of a workman.

(c) Cases where date of birth of any workman had already been decided on the date these rules come into force shall not be reopened under these provisions.

Note: Where the exact date of birth is not available and the year of birth is only established then the 1st July of the said year shall be taken as the date of birth.

2. Confirmation

The employer shall in accordance with the terms and conditions stipulated in the letter of appointment, confirm the eligible workman and issue a letter of confirmation to him. Whenever a workman is confirmed, an entry with regard to the confirmation shall also be made in his service card within a period of thirty days from the date of such confirmation.

3. Age of retirement

The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which

is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of 58 years of age by the workman.

4. Transfer

A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer:

PROVIDED that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer:

PROVIDED FURTHER that a workman is transferred from one job to another, which he is capable of doing, and provided also that where the transfer involves moving from one State to another such transfer shall take place, either with the consent of the workman or where there is a specific provision to that effect in the letter of appointment, and provided also that

- (i) Reasonable notice is given to such workman, and
- (ii) Reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid traveling allowance including the transport charges and fifty per cent thereof to meet incidental charges.

5. Medical aid in case of accidents

Where a workman meets with an accident in the course, of or arising out of his employment, the employer shall, at the employer's expenses, make satisfactory arrangements for immediate and necessary medical aid to the injured workman and shall arrange for his further treatment, if considered necessary by the doctor attending on him. Wherever the workman is entitled for treatment and benefits under the Employees' State Insurance Act, 1948, or the Workmen's Compensation Act, 1923, the employer shall arrange for the treatment and compensation accordingly.

6. Medical examination

Wherever the recruitment rules specify medical examination of a workman on his first appointment, the employer shall, at the employer's expense make arrangements for the medical examination by a registered medical practitioner.

7. Secrecy

No workman shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property of an industrial establishment out of the work premises except with the written permission of his immediate superior, nor shall he in any way pass or cause to be passed or disclose or cause to be disclosed any information or matter concerning the manufacturing process, trade secrets and confidential documents of the establishment to any unauthorized person, company or corporation without the written permission of the employer.

8. Exclusive service

A workman shall not at any time work against the interest of the industrial establishment in which he is employed and shall not take any employment in addition to his job in the establishment, which may adversely affect the interest of his employer:

SCHEDULE IA : Model Standing Orders for Industrial Establishments in Coal Mines

1. These orders shall come into force on _____

2. Definition

In these orders, unless the context otherwise requires-

(a) "attendance" means presence of the workman concerned at the place or places where by the terms of his employment he is required to report for work and getting his attendance marked;

(b) the expression "employer" and "workman" shall have the meanings assigned to them in section 2(d) and (i) respectively of the Industrial Employment (Standing Orders) Act, 1946;

(c) "manager" means the manager of the mine and includes an acting manager for the time being appointed in accordance with provisions of the Mines Act, 1952;

(d) words importing masculine gender shall be taken to include females;

(e) words in the singular shall include the plural and vice versa.

3. Classification of workmen

(a) "Workmen" shall be classified as-

- (i) permanent;
- (ii) probationers;
- (iii) badlis or substitute;
- (iv) temporary;
- (v) apprentices; and
- (vi) casual.

(b) A "permanent" workman is one who is appointed for an unlimited period or who has satisfactorily put in three months' continuous service in a permanent post as a probationer;

(c) A "probationer" is one who is provisionally employed to fill a vacancy in a permanent post and has not completed three months' service in that post unless the probationary period is extended. If a permanent workman is employed as a probationer in a new post, he may, at any time, during the probationary period not exceeding three months, be reverted to his old permanent post unless the probationary period is extended.

(d) A "badly" or substitute is one who is appointed in the post of a permanent workman or a probationer who is temporarily absent; but he would cease to be a "badly" on completion of a continuous period of service of one year (190 attendances in the case of below ground workman and 240 attendance in the case of any other workman) in the same post or other post or posts in the same category or earlier if the post is vacated by the permanent workman or probationer. A "badly" working in place of a probationer would be deemed to be permanent after completion of the probationary period.

(e) A "temporary" workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period. The period within which it is likely to be finished should also be specified but it may be extended from time to time, if necessary.

(f) An "apprentice" is a learner who is either paid an allowance or not paid any allowance during the period of his training, which shall inter alia be specified in his term of contract.

(g) A "casual" workman is a workman who has been engaged for work which is of an essentially casual nature.

4. Every workman shall be given a ticket appropriate to his classification at the time of his appointment and shall, on being required to do so, show it to the person authorized by the employer in that behalf. The said ticket shall carry the signature or thumb-impression of the workman concerned. If the workman loses his ticket, the manager shall provide him with another ticket on a payment of 25 paise.

5. Display of notices

(a) The period and hours of work for all classes of workmen in each shift shall be exhibited in English and in the language understood by the majority of workmen employed in the establishment on notice-boards maintained at or near the main entrance of the establishment and at the time-keeper's office, if any.

(b) Notices, specifying (a) the days observed by the establishment as holidays and (b) pay days shall be posted on the said notice-boards, (c) notice specifying the rates of wages and scales of allowances payable to all classes of workmen and for all classes of work shall be displayed on the said notice boards.

6. Payment of wages

(a) Wages shall be paid direct to the individual workmen on any working day between the hours 6.00 a.m. and 6.00 p.m. at the office of the mine. The manager or any other responsible persons authorized by him shall witness and attest the payment and note the date of payment in the wage register. Payment of wages to a contractor's workman shall be made at a place to be specified by the manager and it shall be witnessed by a nominee of the employer deputed for this purpose in writing.

(b) Any wages due to a workman but not paid on the usual pay day on account of their being unclaimed shall be paid by the employer on such unclaimed wage pay day in each week as may be notified to the workmen. If the workman so desires, the unpaid wages and other dues payable to him shall be remitted to his address by money order after deducting there from the money order commission charges. All claims for the unpaid wages shall be presented to the employer within a period of twelve months from the date on which the wages became due.

(c) Overtime shall be worked and wages thereof paid in accordance with the provisions of the Mines Act, 1952, as amended by the Mines (Amendment) Act, 1959 and as may be prescribed from time to time. For work on weekly rest day, the workman shall be paid as laid down in any agreement or award or, as the case may be, as per usage or custom.

7. Shift working

More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, a workman shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance, provided that no such notice shall be necessary if the closing of the shift under an agreement with the workman is effected. If as a result of the discontinuance of the shift working, any workmen are to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Disputes Act, 1947 (14 of 1947), and the rules made thereunder. If shift working is restarted, the workmen shall be given notice and re-employed in accordance with the provisions of the said Act and the said rules.

8. Attendance

All workmen shall be at work at the mine at the time fixed and notified to them

9. Absence from place of work

Any workman, who after going underground or after coming to his work in the department in which he is employed, is found absent from his proper place of work during working hours without permission from the appropriate authority or without any sufficient reason shall be liable to be treated as absent for the period of his absence.

10. Festival holidays' and leave

(a) There shall be seven paid festival holidays or as laid down in an agreement or an award in force. Out of these seven days the Republic Day, Independence Day and Mahatma Gandhi's Birthday shall be allowed without option and the rest of the days shall be fixed by agreement or local custom. Whenever a workman has to work on any of these holidays, he shall, at his option be entitled to either thrice the wages for the day or twice the wages for the day on which he works and in addition to avail himself of a substituted holiday with wages on any other day or as laid down in an agreement or an award in force.

(b)(i) The workmen shall be entitled to leave with wages in accordance with provisions contained in Chapter VII of the Mines Act, 1952.

(ii) Normally a workman will not be refused the leave applied for by him. But the employer may refuse, revoke or curtail the leave applied for by the workman, if the exigencies of work so demand. Wages in lieu of leave shall be paid to a workman, where he has been refused the leave asked for and in cases where he cannot accumulate the leave any further. If a workman is refused leave in a particular year in the interest of work, it would be open to him next year either to avail of leave on two occasions, with the usual railway concessions or in case he avails of leave on only one occasion, the railway fare for the unavailed trip would be paid to him in the shape of National Savings/ National Defense Certificates.

(c) Quarantine leave shall be granted to a workman, who is prevented from attending to his duty because of his coming into contact, through no fault of his own, with a person suffering from a contagious disease. The leave shall be granted for such period as is covered by a certificate from the medical officer of the mine. Payment for the period of quarantine leave shall be at the rate of 50 per cent of the wages (basic plus dearness allowance) payable to a workman. Quarantine leave cannot be claimed, if a workman has refused to accept during the previous three months prophylactic treatment for the disease in question.

(d) A workman who desires to obtain leave of absence shall apply to the manager not less than fifteen days before the commencement of the leave, except where leave is required in unforeseen circumstances, and the manager shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, orders shall be given on the same day. If the leave asked for is granted, a leave-pass shall be given to the workman. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefore shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof, he shall apply to the manager, who shall send a written reply either granting or refusing extension of leave to the workman. Sanction/refusal of leave should be communicated to the workman in writing invariably.

(e) If a workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose lien on his appointment unless he-

(a) Returns within ten days of expiry of his leave, and

(b) Explains to the satisfaction of the manager his inability to return on the expiry of his leave.

In case, the workman loses as aforesaid, his lien on the appointment, he shall be entitled to be kept on the "badly list".

(f) A workman may be granted casual leave of absence with pay not exceeding five days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but where this is not possible, the head of the department shall, as soon as may be practicable, be informed in writing of such absence and of the probable duration thereof.

(g) Notwithstanding anything mentioned above, any workman who overstays his sanctioned leave or remains absent without reasonable cause will render himself liable for disciplinary action.

11. Railway travel facilities

(a) When a workman proceeds on leave and is qualified for free railway fare, the employer shall give him the cost equivalent to his ticket (including bus fare) and for boat to his home.

(b) Every workman who has completed a period of twelve months' continuous service, would qualify for railway fare or bus fare or both for going home on leave and returning to the mine on the expiry of the leave. The twelve months' service shall be deemed to have been completed if, during the twelve months preceding the date on which he applies for leave, he has worked for not less than two hundred and forty days.

(c) If on the expiry of the leave, a workman returns he shall then receive a cash payment equivalent to the return fare. If on his return the mine is unable to have him back, he shall be paid return fare at once.

(d) If the journey home is by bus or partly by bus and partly by train the cost of the journey shall be adjusted accordingly.

(e) The workman shall be entitled to railway fare by mail or express train wherever under the Railway Rules tickets are available for such travel.

(f) The class by which a workman is entitled to travel shall be:-

(i) If his basic wage is Rs. 165 or less per month III Class;

(ii) If his basic wages is above Rs. 165 and up to Rs. 265 per month II Class;

(iii) If his basic wage is above Rs. 265 per month I Class;

12. Termination of services

(a) For terminating the services of permanent workman having less than one year of continuous service, notice of one month in writing with reasons or wages in lieu thereof shall be given by the employer:

PROVIDED that no such notice shall be required to be given when the services of the workman are terminated on account of misconduct established in accordance with the Standing Orders.

(b) Subject to the provisions of the Industrial Disputes Act, 1947 no notice of termination of employment shall be necessary in the case of temporary and badly workmen:

PROVIDED that a temporary workman, who has completed three months' continuous service, shall be given two weeks' notice of the intention to terminate his employment if such termination is not in accordance with the terms of the contract of his employment:

PROVIDED FURTHER that when the services of a temporary workman, who has not completed three months' continuous service, are terminated before the completion of the term of employment given to him, he shall be informed of the reasons in writing. When the services of a badly workman are terminated before the return to work of the permanent incumbent or the expiry of his (Badlis) term of employment, he shall be informed of the reasons for such termination in writing.

(c) No workman shall leave the service of an employer unless notice in writing is given at the scale indicated below-

(i) For monthly paid workmen One month

(ii) For weekly paid workmen Two weeks:

PROVIDED that it will be for the employer to relax this condition and the workman may pay cash in lieu of such notice.

(d) For purposes of Standing Orders 13(a), (b) and (c) the terms 'service' and 'wages' shall have the same meanings as assigned to these in section 25(B)(1) and 2(rr) respectively of the Industrial Disputes Act, 1947.

13. Stoppage of work and re-opening

(a) Subject to the provisions of Chapter VA of the Industrial Disputes Act, 1947, the employer may, at any time, in the event of underground trouble, fire, catastrophe, breakdown of machinery, stoppage of power supply, epidemic, civil commotion or any other cause beyond the control of the employer, stop any section or sections of the mine wholly or partly for any period or periods.

(b) In the event of such stoppage during working hours, the workmen affected shall be notified by notice put up on the notice board in the departments concerned and of the office as soon as practicable as to when work will be resumed and whether they are to remain or leave their place of work. The workmen will not ordinarily be required to remain for more than two hours after the commencement of the stoppage. Whenever workmen are laid off on account of failure of plant or a temporary curtailment of production or other causes they shall be paid compensation in accordance with the provisions of the Industrial Disputes Act, 1947. Where no such compensation is admissible, they shall be granted leave with or without wages, as the case may be, at the option of the workman concerned, leave with wages being granted to the extent of any leave due to them. When workmen are to be laid off for an indefinitely long period, their services may be terminated subject to the provisions of the Industrial Disputes Act, 1947. If normal work is resumed two weeks' notice thereof shall be given by the pasting of notices at or near the mine office and the workmen discharged earlier by the employer shall, if they present themselves for work, have preference for re-employment.

(c) The employer may in the event of a strike affecting either wholly or partially any section of the mine close down either wholly or partially such section of the mine and any other section affected by such closure. The fact of such closure shall be notified by notices put up on notice board in the manager's office. Prior to resumption of work, the workmen concerned will be notified by a general notice indicating as to when work will be resumed. A copy of such notice shall be sent to the registered trade union or unions functioning in the establishment.

15. Method of filling vacancies

In the matter of filling up of permanent vacancies, badly and temporary workmen and probationers would be given preference in order of their seniority.

16. [Omitted by the Industrial Employment (Standing Orders) Central (Amendment) Rules, 1984.]

17. Disciplinary action for misconduct

(i) A workman may be suspended by the employer pending investigation or departmental enquiry and shall be paid subsistence allowance in accordance with the provisions of section 10A of the Act. The employer shall normally complete the enquiry within 10 days. The payment of subsistence allowance shall be subject to the workman not taking any employment elsewhere during the period of suspension.

The following shall denote misconduct:

(a) Theft, fraud, or dishonesty in connection with the employer's business or property.

- (b) Taking or giving of bribes or an illegal gratification whatsoever in connection with the employer's business or in his own interests.
- (c) Willful insubordination or disobedience, whether along or in conjunction with another or others, or of any lawful or reasonable order of a superior. The order of the superior should normally be in writing.
- (d) Habitual late attendance and habitual absence without leave or without sufficient cause.
- (e) Drunkenness, fighting or riotous, disorderly or indecent behavior while on duty at the place of work.
- (f) Habitual neglect of work.
- (g) Habitual indiscipline.
- (h) Smoking underground or within the mine area in places, where it is prohibited.
- (i) Causing willful damage to work in progress or to property of the employer.
- (j) Sleeping on duty.
- (k) Malingering or slowing down work.
- (l) Acceptance of gift from subordinate employees.
- (m) Conviction in any court of law for any criminal offence involving moral turpitude.
- (n) Continuous absence without permission and without satisfactory cause for more than ten days.
- (o) Giving false information regarding one's name, age, father's name, qualification or previous service at the time of the employment.
- (p) Leaving work without permission or sufficient reason.
- (q) Any breach of the Mines Act, 1952, or any other Act or any rules, regulations or bye-laws there under, or of any standing orders.
- (r) Threatening, abusing, or assaulting any superior or co-worker.

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- (s) Habitual money lending.
- (t) Preaching of or inciting to violence.
- (u) Abatement of or attempt at abatement of any of the above acts of misconduct.
- (v) Going on illegal strike either singly or with other workers without giving 14 days' previous notice.
- (w) Disclosing to any unauthorized person of any confidential information in regard to the working or process of the establishment which may come into the possession of the workman in the course of his work.
- (x) Refusal to accept any charge sheet or order or notice communicated in writing.
- (y) Failure or refusal to wear or use any protective equipment given by the employers.

(ii) No order of punishment under Standing Order No. 17(i) shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. A departmental enquiry shall be instituted before dealing with the charges. During the period of enquiry, the workman concerned may be suspended. The workman may take the assistance of a co-worker to help him in the enquiry, if he so desires. The records of the departmental enquiry shall be kept in writing. The approval of the owner, agent or the chief mining engineer of the employer or a person holding similar position shall be obtained before imposing the punishment of dismissal. A copy of the enquiry proceedings shall be given to the workman concerned on the conclusion of the enquiry, on request by the workman.

(iii) If a workman is not found guilty of the charges framed against him, he shall be deemed to be on duty during the full period of his suspension and he shall be entitled to receive the same wages as he would have received if he had not been suspended.

(iv) In awarding punishment under this Standing Order, the authority awarding punishment shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the authority awarding punishment shall be supplied to the workman concerned.

18. Time limit for making complaints, appeals, etc.

All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his servant shall be submitted within 7 days of such cause of complaint to the manager of the mine, with the right of appeal to the employer. Any appeal to

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the employer shall be made within 3 days of the decision of the manager. The employer shall normally give his decision within 3 days of the receipt of the appeal.

19. Liability of manager of the mine

The manager of the mine shall personally be held responsible for the proper enforcement of these standing orders provided that where a manager is overruled by his superior, the latter shall be held responsible for the decision taken.

20. Service certificate

Every workman who was employed continuously for a period of more than three months shall be entitled to a service certificate at the time of his leaving the service of employer.

21. Entry and exit

All workmen shall enter and leave the premises of the establishment through authorized gates and shall be liable for search while going in or coming out of the premises. In case of women workmen search will only be made by women.

22. Exhibition and supply of Standing Orders

A copy of these orders in English and in the regional languages of the local area in which the mine is situated shall be posted at the manager's office and in such other place of the mine as the employer may decide and it shall be kept in a legible condition. A copy of the Standing Orders shall be supplied to a workman on application, on payment of a reasonable price. A trade union in the establishment will, however, be entitled to the free supply of a copy of the Standing Orders, provided the union is one which is recognized by the employer.



UNIT-II PAYMENT OF WAGES ACT, 1936

OBJECT OF THE ACT

The Payment of Wages Act regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated. The Act guarantees payment of wages on time and without any deductions except those authorised under the Act. The Act provides for

the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be imposed by him and also sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims. The Act does not apply to persons whose wage is Rs. 10,000 or more per month. The Act also provides to the effect that a worker cannot contract out of any right conferred upon him under the Act.

DEFINITIONS

"employed person" [sec 2 (i)] includes the legal representative of a deceased employed person;

"employer"[sec 2 (ia)] includes the legal representative of a deceased employer;

"industrial or other establishment"[sec 2 (i1)] means any -

- tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- Dock wharf or jetty;
- inland vessel mechanically propelled;
- mine quarry or oil-field;
- plantation;
- workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;
- establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation

irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;

- any other establishment or class of establishments which the Central Government or a State Government may have regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

"wages" [sec 2 (iv)] means all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes -

- any remuneration payable under any award or settlement between the parties or order of a court;
- any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;
- any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include -

1. any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

2. the value of any house-accommodation or of the supply of light water medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
3. any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
4. any travelling allowance or the value of any travelling concession;
5. any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
6. any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

RESPONSIBILITY FOR PAYMENT OF WAGES [SECTION 3].

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid.

- In the case of the factory, manager of that factory shall be liable to pay the wages to employees employed by him.
- In the case of industrial or other establishments, persons responsibility of supervision shall be liable for the payment of the wage to employees employed by him.
- In the case of railways, a person nominated by the railway administration for specified area shall be liable for the payment of the wage to the employees.
- In the case of contractor, a person designated by such contractor who is directly under his charge shall be liable for the payment of the wage to the employees. If he fails to pay wages to employees, person who employed the employees shall be liable for the payment of the wages.

[Sec 5 (3)]

With the consultation of the central government, state government having power and can change the person responsible for the payment of the wages in Railways, or person responsible to daily-rated workers in the Public Works Department of the Central Government or the State Government.

FIXATION OF WAGE-PERIODS. [SECTION 4]

Every person responsible for the payment of wages under section 3 shall fix periods in respect of which such wages shall be payable. No wage-period shall exceed one month. That means wage can be paid on daily, weekly, fortnightly (for every 15 days) and monthly only. Wage period for payment of wages to employees by employer should not exceed 30days i.e. one month according to this act.

But wages cannot be paid for quarterly, half yearly or once in a year.

TIME OF PAYMENT OF WAGES. [SECTION 5]

- In railway factory or industrial or other establishment, if there are less than 1000 employees, wages of employees should be paid before the expiry of the 7th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 7 days i.e. before 7th date if wage is paid on 1st in previous month)
- In other railway factory or industrial or other establishment, if there are more than 1000 employees, wages of employees should be paid before the expiry of the 10th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 10 days i.e. before 10th date if wage is paid on 1st in previous month)
- For employees of port area, mines, wharf or jetty, wages of employees should be paid before the expiry of the 7h day after the last day of the wage period.

[Sec 5 (2)]

If the employee is terminated or removed for the employment by the employer the wage of that employee should be paid within 2 days from the day on which he was removed or terminated.

Illustration: if the employee was terminated or removed from the employment by the employer on 10th of this month, his wage should be paid within 2 days from the day on which he was removed or terminated, i.e. his/her wage should be paid by 12th date of this month and this date should not exceed.

[Sec 5 (4)]

Except the payment of wage of the terminated employee, all the wages of the employees should be paid by their employer on the working day only.

6. WAGES TO BE PAID IN CURRENT COIN OR CURRENCY NOTES –

All the wages of the employees must be paid in form of currently using currency notes or coins or in both forms. Currently using currency notes are 1000/-, 500/-, 100/-, 50/-, 20/-, 10/-, 5/- and currently using coins are 10/-, 5/-, 2/-, 1/-.

7. DEDUCTIONS WHICH MAY BE MADE FROM WAGES.

At the time of payment of the wage to employees, employer should make deductions according to this act only. Employer should not make deductions as he like. Every amount paid by the employee to his employer is called as deductions.

The following are not called as the deduction

- Stoppage of the increment of employee.
- Stoppage of the promotion of the employee.
- Stoppage of the incentive lack of performance by employee.
- Demotion of the employee
- Suspension of the employee

Deductions [Sec 7 (2)]

Deduction made by the employer should be made in accordance with this act only. The following are said to be the deductions and which are acceptable according to this act.

- Fines,
- Deductions for absence from duty,
- Deductions for damage to or loss of goods made by the employee due to his negligence,
- Deductions for house-accommodation supplied by the employer or by government or any housing board,
- Deductions for such amenities and services supplied by the employer as the State Government or any officer,
- Deductions for recovery of advances connected with the excess payments or advance payments of wages,
- Deductions for recovery of loans made from welfare labour fund,
- Deductions for recovery of loans granted for house-building or other purposes,
- Deductions of income-tax payable by the employed person,
- Deductions by order of a court,
- Deduction for payment of provident fund,
- Deductions for payments to co-operative societies approved by the State Government,
- Deductions for payments to a scheme of insurance maintained by the Indian Post Office
- Deductions made if any payment of any premium on his life insurance policy to the Life Insurance Corporation with the acceptance of employee,
- Deduction made if any contribution made as fund to trade union with the acceptance of employee,
- Deductions, for payment of insurance premia on Fidelity Guarantee Bonds with the acceptance of employee,

- Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employee of fake currency,
- Deductions for recovery of losses sustained by a railway administration on account of failure by the employee in collections of fares and charges,
- Deduction made if any contribution to the Prime Minister's National Relief Fund with the acceptance of employee,
- Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees with the acceptance of employee.

LIMIT FOR DEDUCTIONS [SEC 7 (3)]

The total amount of deductions from wages of employees should not exceed 50%, but only in case of payments to co-operative societies, deduction from wages of employee can be made up to 75%.

FINES. [Sec 8]

Fine should be imposed by the employer on employee with the approval of the state government or prescribed authority. Employer should follow the rules mentioned below for and before imposing of fine on the employee.

- Notice board of fines on employee should be displayed in the work premises and it should contain activities that should not be made by employee.
- Fine should not be imposed on the employee until he gives the explanation and cause for the act or omission he made.
- Total amount of fine should not exceed 3% of his wage.
- Fine should not be imposed on any employee who is under the age of 15 years.
- Fine should be imposed for one time only on the wage of the employee for the act or omission he made.
- Fines should not be recovered in the way of installments from the employee.
- Fine should be recovered within 60 days from the date on which fine were imposed.

- Fine should be imposed on day act or omission made by the employee.
- All fines collected from the employee should be credited to common fund and utilize for the benefit of the employees.

DEDUCTIONS FOR ABSENCE FROM DUTY. [Sec 9]

- Deductions can be made by the employer for the absence of duty by the employee for one day or for any period.
- The amount deducted for absence from the duty should not exceed a sum which bears the same relationship to the wage payable in respect of the wage-period as this period of absence does to such wage-period. (Example: if the salary of an employee is 6000/- per month and he was absent for duty for one month. Deduction from the salary for absence of duty should not exceed 6000/-)
- Employee present for the work place and refuses to work without proper reason shall be deemed to be absent from duty.
- If 10 or more persons together absent for the duty without any notice and without reasonable cause, employer can make 8 day of wages as deduction from their wage.

DEDUCTIONS FOR DAMAGE OR LOSS. [Sec 10]

Employer should give an opportunity to the employee to explain the reason and cause for the damage or loss happened and deductions made by employer from the employee wage should not exceed the value or amount of damage or loss made by the employee.

[Sec 10 (2)] All such deduction and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

DEDUCTIONS FOR SERVICES RENDERED. [Sec 11]

House-accommodation amenity or service provided by the employer should be accepted by the employee, than only the employer can make deduction from the wage of the employee. Deduction should not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied.

DEDUCTIONS FOR RECOVERY OF ADVANCES. [Sec 12]

In case of advance paid to the employees by the employer before employment began, such advance should be recovered by the employer from the first payment of the wages /salary to the employee. But employer should not recover the advance given for the travelling expense for the employee.

DEDUCTIONS FOR RECOVERY OF LOANS. [Sec 12A]

Deductions for recovery of loans granted for house-building or other purposes shall be subject to any rules made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.

DEDUCTIONS FOR PAYMENTS TO CO-OPERATIVE SOCIETIES AND INSURANCE SCHEMES. [Sec 13]

Deductions for payments to co-operative societies or deductions for payments to scheme of insurance maintained by the Indian Post Office or with employee acceptance deductions made for payment of any premium on his life insurance policy to the Life Insurance Corporation shall be subject to such conditions as the State Government may impose.

MAINTENANCE OF REGISTERS AND RECORDS. [Sec 13A]

Every employer should maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from

their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

Every register and record required to be maintained and preserved for a period of three years after the date of the last entry made therein. It means for every transaction made within employer and employee should have 3 years of record.

UNIT-III

MINIMUM WAGES ACT, 1948

1. Short title and extents

- (1) This Act may be called the Minimum Wages Act 1948.
- (2) It extends to the whole of India.

OBJECT AND SCOPE OF THE ACT

The main aim of the enactment is to make provisions for statutory fixation of minimum rates of wages in scheduled employment wherein labour is not organised and sweated labour is most prevalent.

An underdeveloped country like India faces the problem of unemployment in a very large scale.

Workers may offer to work even on starvation wages. Employers may be ready to offer them the work at starvation wages.

What the Act purports to achieve is to prevent the exploitation of labour and for that purpose, authorises the appropriate Government to take steps to prescribe the minimum rates of wages in certain employment.

For this purpose, the capacity of employer shall not be considered.

The State assumes that every employer must pay the minimum wages to the labour engaged by him.

The Act contemplates the minimum wage rates must ensure not merely the mere physical needs of a worker which would keep them just above starvation level, but must ensure for him not only his and his family's subsistence, but also to preserve his efficiency as a worker. It should therefore provide something above the bare subsistence level.

Minimum wage is fixed on ethical ground and not on economic ground. It does not consider either the value of work done by a worker or the capacity of the employer to pay. It is a bedrock minimum which must be paid to a worker in any case, and if a particular industry is unable to pay even the minimum wage, it has no right to run, it must shut down.

The act gives statutory recognition to the notion that an employee must get at least a minimum wage in certain employment where labour is unorganized and is likely to be exploited. It is a clear direction against the exploitation of the ignorant members of the society by the capitalist class

Definitions

Wages [sec 2(h)] Wages means all remuneration capable of being expressed in terms of money, which would, if terms of contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance. But wages does not include the following: (i) the value of: (a) any house accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate government; (ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) Any traveling allowance or the value of any traveling concession; (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (v) any gratuity payable on discharge. o The term wages includes payment of remuneration in respect of days of rest. It also includes bonus paid not ex-gratia payment.

The term 'employee', does not include any member of the Armed Forces of the union. o The following have been held to be included in employee as used in the Act- (a) An out-worker who prepare goods at his residence and then supplies to the employer. (b) Chowkidar who guards the

factory and an accountant who is concerned with accounts and a compounder working in a tea plantation. (c) A dismissed employee for the purpose of claiming relief under the Act.

2. Interpretation

In this Act unless there is anything repugnant in the subject or context –

- (a) "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year;
- (aa) "adult" means a person who has completed his eighteenth year of age;
- (b) "appropriate government" means –
 - (i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration] or in relation to a mine oilfield or major port or any corporation established by a Central Act the Central Government and
 - (ii) in relation to any other scheduled employment the State Government;
- (bb) "child" means a person who has not completed his fourteenth year of age;
- (c) "competent authority" means the authority appointed by the appropriate government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;
- (d) "cost of living index number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employee in such employment;
- (e) "employer" means any person who employs whether directly or through another person or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act and includes except in sub-section (3) of section 26 –

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person named under clause (f) of sub-section (1) of section 7 of the Factories Act 1948 (63 of 1948) as manager of the factory;

(ii) in any scheduled employment under the control of any government in India in respect of which minimum rates of wages have been fixed under this Act the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the persons appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "schedule employment" means an employment specified in the Schedule or any process or branch of work forming part of such employment;

(h) "wages" means all remuneration capable of being expressed in terms of money which would if the terms of the contract of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include –

(i) the value of –

(a) any house accommodation supply of light water medical attendance or

(b) any other amenity or any service excluded by general or special order of the appropriate government;

(ii) any contribution paid by the employer to any person fund or provident fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling concession;

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

(v) any gratuity payable on discharge;

(i) "employee" means any person who is employed for hire or reward to do any work skilled or unskilled manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up cleaned washed altered ornamented finished repaired adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government; but does not include any member of the Armed Forces of the Union.

3. Fixing of minimum rates of wages

(1) The appropriate government shall in the manner hereinafter provided –

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Party by notification under section 27 :

Provided that the appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under

this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates if necessary :

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(1A) Notwithstanding anything contained in sub-section (1) the appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment but if at any time the appropriate government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more it shall fix minimum rates of wages payable to employees in such employment as soon as may be after such finding.

(2) The appropriate government may fix –

(a) a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");

(b) a minimum rates of wages for piece work (hereinafter referred to as "a minimum piece rate");

(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");

(d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employees (hereinafter referred to as "overtime rate").

(2A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act 1947 (14 of 1947) or before any like authority under any other law for the time being in force or an award made by any Tribunal National Tribunal or such authority is in operation and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award then notwithstanding anything contained in this Act the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or as the case may be where the notification is issued during the period of operation of an award during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.

(3) In fixing or revising minimum rates of wages under this section –

(a) different minimum rates of wages may be fixed for –

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employment;
- (iii) adults adolescents children and apprentices;
- (iv) different localities;

(b) minimum rates of wages may be fixed by any one or more of the following wage periods; namely :

- (i) by the hour
- (ii) by the day

(iii) by the month or

(iv) by such other larger wage-period as may be prescribed

and where such rates are fixed by the day or by the month the manner of calculating wages for a month or for a day as the case may be may be indicated :

Provided that where any wage-periods have been fixed under section 4 of the Payment of Wages Act 1936 (4 of 1936) minimum wages shall be fixed in accordance therewith.

5. Procedure for fixing and revising minimum wages

(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed the appropriate government shall either –

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

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

(2) After considering the advice of the committee or committee appointed under clause (a) of sub-section (1) or as the case may be all representations received by it before the date specified in the notification under clause (b) of that sub-section the appropriate government shall by notification in the Official Gazette fix or as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue :

Provided that where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also.

7. Advisory Board

For the purpose of co-coordinating work of committees and sub-committees appointed under section 5 and advising the appropriate government generally in the matter of fixing and revising minimum rates of wages the appropriate government shall appoint an Advisory Board.

8. Central Advisory Board

(1) For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-coordinating the work of the Advisory Boards the Central Government shall appoint a Central Advisory Board.

(2) The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments who shall be equal in number and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

9. Composition of committees etc.

Each of the committees sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate government representing employers and employees in the scheduled employments who shall be equal in number and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate government.

1. Wages in kind

(1) Minimum wages payable under this Act shall be paid in cash.

(2) Where it has been the custom to pay wages wholly or partly in kind the appropriate government being of the opinion that it is necessary in the circumstances of the case may by notification in the Official Gazette authorize the payment of minimum wages either wholly or partly in kind.

(3) If appropriate government is of the opinion that provision should be made for the supply of essential commodities at concession rates the appropriate government may by notification in the Official Gazette authorize the provision of such supplies at concessional rates.

(4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates authorized under sub-sections (2) and (3) shall be estimated in the prescribed manner.

14. Overtime

(1) Where an employee whose minimum rate of wages is fixed under this Act by the hour by the day or by such a longer wage-period as may be prescribed works on any day in excess of the number of hours constituting a normal working day the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

(2) Nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act 1948 (63 of 1948) in any case where those provisions are applicable.

Comment: "Overtime under Section 14 is payable to those employees who are getting a minimum rate of wage as prescribed under the Minimum Wages Act, 1948. These are the only employees to whom overtime under Section 14 would become payable. In the present case the respondents cannot be described as employees who are getting a minimum rate of wages fixed under the Minimum Wages Act, 1948.

13. Fixing hours for normal working day etc.

(1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act the appropriate government may –

(a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;

(c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

(2) The provisions of sub-section (1) shall in relation to the following classes of employees apply only to such extent and subject to such conditions as may be prescribed :-

- (a) employees engaged on urgent work or in any emergency which could not have been foreseen or prevented;
- (b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- (c) employees whose employment is essentially intermittent;
- (d) employees engaged in any work which for technical reasons has to be completed before the duty is over;
- (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub-section (2) employment of an employee is essentially intermittent when it is declared to be so by the appropriate government on the ground that the daily hours of duty of the employee or if there be no daily hours of duty as such for the employee the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Inspectors

(1) The appropriate government may by notification in the Official Gazette appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and define the local limits within which they shall exercise their functions.

(2) Subject to any rules made in this behalf an Inspector may within the local limits for which he is appointed –

- (a) enter at all reasonable hours with such assistants (if any) being persons in the service of the government or any local or other public authority as he thinks fit any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act

for the purpose of examining any register record of wages or notices required to be kept or exhibited by or under this Act or rules made there under and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who he has reasonable cause to believe is an employee employed therein or an employee to whom work is given out therein;

(c) require any person giving out-work and any out-workers to give any information which is in his power to give with respect to the names and addresses of the persons to for and from whom the work is given out or received and with respect to the payments to be made for the work;

(d) seize or take copies of such register record or wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer; and

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

(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 document or thing or to give any information by an Inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).

Penalties for certain offences

Any employer who

(a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or

(b) contravenes any rule or order made under section 13;

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both :

Provided that in imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

22A. General provision for punishment of other offences

Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

22B. Cognizance of offences

(1) No court shall take cognizance of a complaint against any person for an offence –

(a) under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part and the appropriate government or an officer authorized by it in this behalf has sanctioned the making of the complaint;

(b) under clause (b) of section 22 or under section 22A except on a complaint made by or with the sanction of an Inspector.

(2) No court shall take cognizance of an offence –

(a) under clause (a) or clause (b) of section 22 unless complaint thereof is made within one month of the grant of sanction under this section;

(b) under section 22A unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

22C. Offences by companies

(1) If the person committing any 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 the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

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

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

Explanation : For the purposes of this section –

(a) "company" means any body corporate and includes a firm or other association of individuals and

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

25. Contracting out

Any contract or agreement whether made before or after the commencement of this Act whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

UNIT-IV

THE PAYMENT OF BONUS ACT, 1965

The Payment of Bonus Act, 1965 is the principal act for the payment of bonus to the employees which was formed with an objective for rewarding employees for their good work for the organization. It is a step forward to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour with the employees.

OBJECTIVE

- To improve statutory liability to pay bonus [reward for good work] in case of profits or losses.
- To prescribe formula for calculating bonus
- To prescribe Minimum & Maximum percentage bonus
- To provide of set off/set on mechanism
- To provide redressal mechanism

Calculation of bonus with respect to certain employees. [Sec 12](2015 amendment)

Where the salary or wage of an employee exceeds Rs.7,000/- per mensem (month), the bonus payable to such employee under Sec.10, or as the case may be, under Sec.11, shall be calculated as if his salary or wage were Rs.7,000/- per mensem.

2. DEFINITIONS.

Section

(1) "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;

(ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;

(iii) in any other case-

(a) the year commencing on the 1st day of April; or

(b) if the accounts of an establishment maintained by the employer thereof are closed and 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

(4) "allocable surplus" means-

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

(b) in any other case, 60% of such available surplus;

(11) "corporation" means anybody corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society;

(12) "direct tax" means-

(a) any tax chargeable under-

(i) the Income-tax Act;

(ii) the Super Profits Tax Act, 1963 (14 of 1963);

(iii) the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(iv) the agricultural income-tax law; and

(b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act;

Section 2 (13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding 21,000/- rupees per month in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied; (2007 amendment)

[Employees eligible for bonus: The Act mandates payment of bonus to employees' whose salary or wage is up to Rs 21,000 per month.]

For calculation purposes Rs.7,000 per month maximum will be taken even if an employee is drawing up to Rs.7,000 per month. (Sec. 12)

(15) "**establishment in private sector**" means any establishment other than an establishment in public sector;

(16) "**establishment in public sector**" means an establishment owned, controlled or managed by-

(a) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(b) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together) by-

- (i) the Government; or
- (ii) the Reserve Bank of India; or
- (iii) a corporation owned by the Government or the Reserve Bank of India;

PAYMENT OF BONUS ACT NOT TO APPLY TO CERTAIN CLASSES OF EMPLOYEES. [SECTION 32]

- Life Insurance Corporation ,

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- 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 society 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,

Eligibility for bonus. [Sec 8] (2007 amendment)

An employee will be entitled only when he has worked for 30 working days in that year.

Calculation of bonus with respect to certain employees. [Sec 12] (2015 amendment)

Where the salary or wage of an employee exceeds Rs.7,000/- per mensem, the bonus payable to such employee under Sec.10, or as the case may be, under Sec.11, shall be calculated as if his salary or wage were Rs.7,000/- per mensem.

The Government has decided to enhance the eligibility limit for payment of bonus 3500/- per month.

DISQUALIFICATION FOR BONUS. [SEC 9]

An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for

- Fraud; or (b) Riotous or violent behaviour while on the premises of the establishment; or
- Theft, misappropriation or sabotage of any property of the establishment.

PAYMENT OF MINIMUM BONUS. [SEC 10]

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- Bonus should be paid along with the salary
- Every year, every employer shall be bound to pay bonus to every employee.
- a minimum bonus which shall be 8.33% cent of the salary or wage earned by the employee during the accounting year or 100/- rupees, whichever is higher.
- Bonus shall be payable in case of profits or losses in the accounting year.

PAYMENT OF MAXIMUM BONUS [SEC 11]

In case the allocable surplus amount [Section 2(4)] exceeds the minimum bonus (8.33%) payable amount to employees, the employer is bound to pay extra percentage of bonus.

But maximum of 20% of bonus is payable to the every employee on the wage or salary earned during the year.

Proportionate, reduction in bonus in certain cases [Sec 13]

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. [SEC 14]

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
- (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.

CALCULATIONS FOR BONUS PAYMENT

Computation of gross profits [Sec 4].

There are few differences in computation of gross profits in case of banking company and other than banking companies. For accurate computation of the gross profits in case of banking companies refer to First schedule and for other companies but not banking companies refer to Second schedule. But over view for computation of gross profits is mentioned below

Net profit (P&L a/c) +Add following items

- Income tax
- provision for: Bonus to employees, Depreciation, Direct taxes,
- Bonus paid to employees in respect of previous accounting years
- The amount, if any, paid to, or provided for payment to, an approved gratuity fund
- The amount actually paid to employees on their retirement or on termination of their employment for any reason
- Donations
- annuity due
- Capital expenditure (other than capital expenditure on scientific research
- capital losses
- capital losses (other than losses on sale) of Capital assets on which depreciation has been allowed for income-tax or agricultural income-tax).
- Losses of, or expenditure relating to, any business situated outside India.

Deduct

- (a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax).
- (b) Profits of, and receipts relating to, any business situated outside India.
- (c) Income of foreign concerns from investments outside India.
- (d) Expenditure or losses (if any) debited directly to reserves, other than -

i. Capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax) ;

ii. Losses of any business situated outside India.

(e) In the case of foreign concerns proportionate administrative (over head) expenses of Head Office allocable to Indian business.

(f) Refund of any direct tax paid for previous accounting years and excess provision, if any, of previous accounting years relating to bonus, depreciation, taxation or development rebate or development allowance, if written back.

Computation of Available surplus [Section 5]

Available surplus = gross profit [derived as per First Schedule or Second Schedule of this act] – (minus) Depreciation, investment allowance or development allowance [Section 6] - (minus) direct taxes payable [Section 7] - (minus) further sums as are specified in respect of the employer in the Third Schedule of this act consist of dividend payable (preference shares), reserves and % of paid up equity share capital [investment].

Allocable surplus [sec 2 (4)]

Allocable surplus= 67% of the available surplus (other than banking companies) or 60% of the available surplus (banking companies and companies linked with abroad)

Payment of bonus calculated on the allocable surplus which is derived by the above calculation.

SET-ON AND SET-OFF OF ALLOCABLE SURPLUS [SEC 15]

Set-On (In case of huge profits,)

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 to be utilized for the purpose

of payment of bonus in case of the shortage of the allocable surplus or losses occur. This is called as Set-On

Set-Off (in case of losses occur)

When there are no profits (available surplus or allocable surplus) or the amount falls short or deficiency for payment of minimum bonus to employees 8.33%, such deficiency amount should be adjusted to the current accounting year from the Set-On amount which was carried forward in case of excess allocable surplus in the previous year. This is called as Set-Off.

Special provisions [Sec 16]

- In case of new establishments up to 5 years, employees' bonus is payable only in case of profits only but not in losses by the management or employer.
- Condition that the Profits are remaining amounts after deducting expenses, depreciation and taxes.

Deduction of certain amounts from bonus payable. [sec 18]

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. [Sec 19]

- Bonus should be paid within a period of 8 months from the close of the accounting year.
- Maximum extended period for payment of bonus is 2 years, but with the permission of the government only

Recovery of bonus due from an employer [Sec 21]

- If any amount is due to employee as bonus from his employer, he can write and apply to the government for the recovery of the bonus from the employer.

- application shall be made within one year from the date on which the money became due to the employee from the employer

Reference of dispute under this Act. [Sec 22]

Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Dispute Act, 1947. All disputes shall be referred to the Labour courts or the industrial tribunals

Maintenance of registers, records, etc. [Section 26]

Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may be prescribed.

INSPECTORS. [SEC 27]

The Government may, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors for the purpose of this Act and may define the limits within which they shall exercise jurisdiction.

Powers;

Inspector can any reasonable time can enter in the premises and inspect or examine the records, accounts, books, registers and any other documents.

Employer is having duty to furnish any information asked by the inspector.

Offences and Penalties [Sec 28 & 29]

For contravention of the provisions of the Act or rules the penalty is imprisonment upto 6 months or fine up to Rs.1000, or both.

In case of offences by companies, 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: 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.

INSPECTORS

Inspectors. [Sec 14]

The state government may appoint an inspector for purpose of this act. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860 [Sec 14(5)]. The inspector of this act is having powers mentioned below

- Inspector can make enquiry and examination whether the employers are properly obeying the rules mentioned under this act.
- Inspector with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act.
- Inspector can supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment.
- Seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer.

Facilities to be afforded to Inspectors. [Sec 14A]

Every employer shall afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.

CLAIMS ARISING OUT OF DEDUCTIONS FROM WAGES OR DELAY IN PAYMENT OF WAGES AND PENALTY FOR MALICIOUS OR VEXATIOUS CLAIMS. [Sec 15] (2005 amendments)

To hear and decide all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid, including all matters, incidental to such claims, there will be an officer mentioned below appointed by the appropriate government.

- any Commissioner for Workmen's Compensation; or
- any officer of the Central Government exercising functions as –
 - Regional Labour Commissioner; or
 - Assistant Labour Commissioner with at least two years' experience; or
- any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
- a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

Appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

[Sec 15(2)]

If any employer does opposite to the provisions of this act, any unreasonable deduction has been made from the wages of an employed person, or any payment of wages has been delayed, in such case any lawyer or any Inspector under this Act or official of a registered trade union authorized to write an application to the authority appointed by government for direction of payment of wages according to this act. Every such application shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made. Time of making an application can be accepted if there is reasonable cause.

[Sec 15(3)]

After receiving of the application the authority shall give an opportunity to hear the applicant and the employer or other person responsible for the payment of wages and conducts the enquiry if necessary. It is found that there is mistake with employer; authority shall order the employer for payment of the wage or refund to the employee of the amount deducted unreasonably or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit. There will not be any compensation payable by employer if there is a reasonable and genuine cause in delay in the payment of wages.

POWERS OF AUTHORITIES APPOINTED. [Section 18]

Taking evidence and of enforcing the attendance of witnesses and compelling the production of documents.

SINGLE APPLICATION IN RESPECT OF CLAIMS FROM UNPAID GROUP [SECTION 16]

There is no necessity of many applications if there are many employees whose wages has not been paid. Such all employees can make one application to the authority for payment of wages according to this act.

APPEAL. [Section 17]

In the following situation the parties who ever dissatisfied can appeal to the district court

- If the application dismissed by above authorities
- Employer imposed with compensation exceeding 300/- rupees by the authorities.
- If the amount exceeding 25/- rupees withheld by the employer to single unpaid employee. 50/- in case of many unpaid employees

PENALTY FOR OFFENCES UNDER THE ACT. [Section 20] (2005 amendments)

Reasons

penalty

- Delay in payment of wages
- Un reasonable deductions
- Excess deduction for absence of duty
- Excess deduction for damage or loss to employer
- Excess deduction for house-accommodation amenity or service

Punishable with fine which shall not be less than 1000/- rupees but which may extend to 7500/- rupees.

- If Wage period exceed one month.
- Failure in payments of wages on a working day.
- Wages not paid in form of current coin or currency notes or in both.
- Failure to maintain record for collected fines from employee.
- Improper usage of fine collected from employees.
- Failure of employee to display notice containing such abstracts of this Act and of the rules made.

Punishable with fine which may extend 3000/- rupees

- Whoever obstructs an Inspector in the discharge of his duties under this Act
- Whoever willfully refuses to produce on the demand of an Inspector any register or other document.
- Whoever refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act

Punishable with fine which shall not be less than 1000/- rupees but which may extend to 7500/- rupees

Whoever repeats the same offence committed before.

Imprisonment for a term which shall not be less than one month but which may extend to 6 months and fine which shall not be less than 3750/- rupees but which may extend 20500/-rupees.

PAYMENT OF UNDISBURSED WAGES IN CASE OF DEATH OF EMPLOYED PERSON.

[Sec 25A]

- Paid by the employer to the person nominated by the employee.
- Wage deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those wages.
- Where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

UNIT –V

PAYMENT OF GRATUITY ACT 1972

The main purpose and concept of gratuity is to help the workman after the retirement, whether the retirement is a result of the rules of superannuation or physical disability or impairment of the vital part of the body. Gratuity is the amount which is not connected with any consideration and has to be considered as something given freely for the service the employee has rendered to the organization for more than 5 years.

DEFINITIONS [Sec 2]

(a) "appropriate Government" means, -

(i) in relation to an establishment -

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government;

(b) "**Completed year of service**" means continuous service for one year;

(e) "**employee**" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment, to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

(c) "Continuous service" means continuous service as defined in section 2A;

(q) "Retirement" means termination of the service of an employee otherwise than on superannuation;

(r) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment;

(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

APPLICABILITY

- Every factory (as defined in Factories Act), mine, oilfield, plantation, port and railway.
- Every shop or establishment to which Shops & Establishment Act of a State applies in which 10 or more persons are employed at any time during the year end.
- Any establishment employing 10 or more persons as may be notified by the Central Government.
- Once Act applies, it continues to apply even if employment strength falls below 10.

In *Regional Provident fund Commissioner v. The Regional Labour Commissioner and others* (1985 II labour Law Journal 63), an upper divisional clerk working in the establishment of regional Provident fund Commissioner resigned his job in March 1982 after rendering service for more than nine years, and claimed that the tea under this act. The High Court of Karnataka held that the said establishment falls within the definition of an establishment under The Payment of Gratuity Act, 1972 and the employee was entitled to gratuity, notwithstanding the fact that he resign the job. Woo Woo

In *Arasuri Ambajimata Mandir devasthan Trust v. Jaitabhai Patel, Shramjivi general Works union* (1983 (3) Supp. labour law general 1129), it was held at the though the post in Temple trust is

controlled by state government., It is not a post under State government. So as to fall under the exclusion under section 2 (e) and hence it falls under the definition of employee and is entitled to gratuity under the act. *which means though the temple is not mentioned in the section (e) of the act, court held that it is applicable under this act.*

2A. CONTINUOUS SERVICE. –

An employee shall be said to be in continuous service even his/her service in interrupted by way

- sickness,
- accident,
- leave,
- absence from duty without leave,
- leave with full wage,
- temporary disablement,
- laid-off period,
- maternity leave for 12 weeks (in case of female)

whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

In case of period of one year

Employee will be treated as he in continuous service, if he is employed by employer for the period of

- 190 days employment under the ground in mines, or in establishment which works less than 6 days in a week.
- 240 days in case of other any establishments (factories, companies, etc.)

In case of period of 6 months

Employee will be treated as he in continuous service, if he is employed by employer for the period of

- 95 days employment under the ground in mines, or in establishment which works less than 6 days in a week.
- 120 days in case of other any establishments (factories, companies, etc.)

In case of seasonal establishments

An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than 75% of the numbers of days on which the establishment was in operation during the 1 year or 6 months.

Seasonal Establishments in which, although work is carried on throughout the year, the number of employees is regularly subject to seasonal fluctuations for reasons associated with the weather, their sales or their location. For example, hotels and restaurants in health spas and holiday resorts, gravel and sand pits and stone quarries are deemed to be seasonal establishments.

3. CONTROLLING AUTHORITY. –

The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

4. PAYMENT OF GRATUITY.-

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5years, -

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease :

Provided that the completion of continuous service of 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Calculation of gratuity [Sec 4 (2)]

$$\text{Gratuity} = \frac{\text{Monthly salary} \times 15 \times \text{Number of years of service}}{26}$$

- Monthly salary= last month drawn salary by the employee.
- 26 = total number of working days in a month.
- 15 = number of days in half of the month.

[Sec 4(3)] The maximum amount of gratuity payable to an employee shall not exceed 3, 50,000/- rupees.

(According to the latest 2010 amendment the maximum gratuity payable amount was increased to rupees 10,00,000/-)

Deduction of gratuity

[Sec 4(6) (a)]

Whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

Gratuity of employee wholly or partially lose in case of

[Sec 4(6) (b)]

- If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Payment of gratuity is not applicable to employee who has been dismissed from the service for the reason of indiscipline or misconduct.

COMPULSORY INSURANCE. [Sec 4A]

- every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, should obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India or any other prescribed insurer.
- Employer who had already established an approved gratuity fund in respect of his employees shall be exempted from above rule.
- Employer who abstained insurance from LIC or other from payment of gratuity shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner. no employer shall be registered under the provisions of this section unless he has taken an insurance.
- Every employer must pay the premium to the insurance company insurance for his liability for payment towards the gratuity or contribution to approved gratuity fund. If employer fails to make any payment he shall be liable to pay the amount of gratuity due (including interest, if any, for delayed payments)

PENALTIES

[Sec 4A (6)]

Whoever employer fails in payment of insurance or contribution towards the approved gratuity fund shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

POWER TO EXEMPT. [Sec 5]

The government is having the power to exempt the any establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favorable than the benefits conferred under this Act.

NOMINATION. [Sec 6]

- Every employer who completed one year of service can choose one or more nominees for payment of gratuity.
- On the employee choice gratuity payable to him can be distributed amongst the nominees.
- If employee has family members before making nomination, Nominees should be from his family members only.
- If employee has no family members before making nomination, Nominees can be any other person who he likes.
- Nominees as the other persons become in valid if the employee acquires family members in the future time.
- Employee can make changes in nominees.
- Change of name of nominees should be intimated to employer by employee.

DETERMINATION OF THE AMOUNT OF GRATUITY. [Sec 7]

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Any person who is eligible for payment of gratuity should write an application to his employer within certain time.

- When gratuity becomes payable and if no application received from employee, employer should give notice of payment of gratuity to the employer and also to the controlling authority specifying the amount of gratuity so determined.
- The employer should arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable.
- If the amount of gratuity payable is not paid by the employer within the 30 days , the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government.
- Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.
- If there is any dispute in payment of the gratuity, employer should deposit the gratuity payable amount with controlling authority until the dispute is settled by him.
- Once the dispute is settled by the controlling authority, the deposited amount with him will be paid to employee.
- Any person in dispute is not satisfied with decision order made by the controlling authority, within 60 day from the date of order by controlling authority, appeal to the appropriate Government or the appellate authority.
- For admitting the appeal by the employer to the appellate authority, employer should deposit the amount equal to the amount of gratuity with the appellate authority.

INSPECTORS. [Sec 7A]

- The appropriate Government may, by notification, appoint as many Inspectors, as it deems fit, for the purposes of this Act.
- The appropriate Government may, by general or special order, define the area to which the authority of an Inspector so appointed will extend.
- Where two or more Inspectors are appointed for the same area, appropriate Government also provide, by such order, for the distribution or allocation of work to be performed by them under this Act.
- Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860.

POWERS OF INSPECTORS. [Sec 7B]

- Inspector has power to order employer to furnish the information needed.
- Inspectors can enter and inspect at all reasonable hours with his assistants who are government servants, any premises or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment for the purpose of examining any register, record or notice or other document required to be kept or exhibited in relation to the payment of gratuity to the employees.
- Inspector can examine the employer or employee concern to the gratuity matters.
- In case any offence is committed by employer under this act, inspector can seize all register, record, notice or other document as he may consider relevant in respect of that offence.
- Inspector has the power to search and seize with the warrant under criminal code procedure.

RECOVERY OF GRATUITY. [Sec 8]

If the amount of gratuity is not paid to the employee by the employer in prescribed time to the employee, employee can make application to the controlling authority.

PENALTIES [Sec 9]

Employer who avoids the payment of the gratuity to the employees, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 10,000/- rupees or with both.

- If any person makes false statements or false representations, they shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 10,000/- rupees or with both.
- Employer who disobeys the rules and regulation of the act, shall be punishable with imprisonment for a term which shall not be less than 3 months but which may extend to one year, or with fine which shall not be less than 10,000/- rupees but which may extend to 20,000/- rupees, or with both :

COGNIZANCE OF OFFENCES. [Sec 11]

Unless the complaint to court is made by the controlling authority under the authorization of the government regarding the nonpayment of gratuity and recovery of gratuity, court will not any judicial action against the employer.

Complaint should be made by controlling authority to magistrate (court) within 15 days from the date of the authorization by government to the controlling authority.

Maternity Benefit Act, 1961

Object

The Maternity Benefit Act, 1961, protects the employment of women during the time of maternity and entitles them to a full paid absence from work to take care for the child. The amendments in 2016 seeks to increase maternity leave period to 26 weeks in all establishments, including private sector.

Woman with two or more children entitled to only 12 weeks of leave.

Maternity Benefit (Amendment) Act, 2016

The amendment extends the period of maternity leave from 12 to 26 weeks. However, this increase in maternity leave does not apply to women with two or more surviving children. Such women will be entitled to 12 weeks of leave.

The government has stated that the amendment extend the period of maternity leave to 26 weeks to ensure maternal care to the child during early childhood. It has also noted that such early care is essential for the growth and development of the child.¹³ This objective could be defeated if sufficient maternity leave is not given in the case of a third born child. Currently under the 1961 Act, the minimum maternity leave of 12 weeks applies in all cases, regardless of the number of previous children.

The amendment 2016 also provides 12-weeks leave for commissioning and adopting mothers and makes it mandatory to provide creche facility for establishment where the number of workers is 50 and above.

[Section 2](h)

"maternity benefit" means the payment referred to in sub-section (1) of section 5;

[Section 1]. Short title, extent and commencement

- (1) This Act may be called the Maternity Benefit Act, 1961.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as may be notified in this behalf in the Official Gazette-

[(a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government; and]
(b) in relation to other establishments in a State, by the State Government.

Application of Act

(1) It applies, in the first instance-

(a) to every establishment being a factory, mine or plantation including any such establishment belonging to government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

PROVIDED that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

(2) shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply for the time being.

Unorganised women workers not covered under the Act

The 1961 Act covers women workers employed in factories, mines, plantations, shops and establishments with 10 or more employees, and any other establishments. This constitutes about 18 lakh women workers.¹³ Note that about 90% of working women are in the unorganised sector and are not covered by the 1961 Act.^{14,15} In 2015, the Law Commission of India recommended that the provisions of the 1961 Act should cover all women, including women working in the unorganised sector.

Women workers in the unorganised sector include agricultural labourers, seasonal workers, domestic workers or construction workers. They often work in unstructured conditions, and may have multiple employers. Due to such employment conditions, they may not be able to prove eligibility under the 1961 Act such as continuous employment for a period of 80 days in the one year prior to the date of delivery.

3. Definitions In this Act, unless the context otherwise requires-

(a) "**Appropriate government**" means, in relation to an establishment being a mine, 7[or an establishment where in persons are employed for the exhibition of equestrian, acrobatic and other performances], the Central Government and in relation to any other establishment, the State Government;

(b) "**child**" includes a still-born child;

(ba) "**Commissioning mother**" means a biological mother who uses her egg to create an embryo implanted in any other woman;

(c) "**Delivery**" means the birth of a child;

(d) "**Employer**" means-

(i) in relation to an establishment which is under the control of the government a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iii) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;

(e) "**establishment**" means-

(i) a factory;

- (ii) a mine;
- (iii) a plantation;
- (iv) An establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performance;
- (v) a shop or establishment; or
- (vi) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable

(f) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(g) "inspector" means an Inspector appointed under section 14;

(h) "maternity benefit" means the payment referred to in sub-section (1) of section 5;

(ha) "medical termination of pregnancy" means the termination of pregnancy permissible under the provisions of Medical Termination of Pregnancy Act, 1971;]

(i) "mine" means a mine as defined in clause (j) of section (2) of the Mines Act, 1952 (35 of 1952);

(j) "miscarriage" means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860);

(k) "plantation" means a plantation as defined in clause (f) of section 2 of the Plantations Labor Act, 1951 (69 of 1951);

(l) **"prescribed"** means prescribed by rule made under this Act;

(m) **"State Government"**, in relation to a Union territory, means the Administrator thereof;

(n) **"wages"** means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes-

(1) Such cash allowances (including dearness allowance and house rent allowances) as a woman is for the time being entitled to,

(2) Incentive bonus, and

(3) the money value of the concessional supply of food grains and other articles but does not include-

(i) any bonus other than incentive bonus;

(ii) over-time earnings and any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service;

(v) **"woman"** means a woman employed, whether directly or through any agency, for wages in any establishment.

4. Employment of, or work by women prohibited during certain periods

(1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, [miscarriage or medical termination of pregnancy].

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery [miscarriage or medical termination of pregnancy].

(3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the fetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be-

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

5. Right to payment of maternity benefits

(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Explanation: For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, [the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest].

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than [eighty days] in the twelve months immediately preceding the date of her expected delivery:

PROVIDED that the qualifying period of [eighty days] aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation : For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, [the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages] during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Maternity Benefit (Amendment) Act, 2016

The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery.

Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery;

PROVIDED FURTHER that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

PROVIDED ALSO that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.]

Maternity Benefit (Amendment) Act, 2016

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

5B. Payment of maternity benefit in certain cases

Every woman-

(a) Who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply;

(b) Whose wages (excluding remuneration for over-time work) for a month exceed the amount specified in sub-clause (b) of clause (9) of section 2 of that Act; and

(c) Who fulfils the conditions specified in sub-section (2) of section 5, shall be entitled to the payment of maternity benefit under this Act.

6. Notice of claim for maternity benefit and payment thereof

(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be

absent from work, not being a date earlier than six weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child. (6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

7. Payment of maternity benefit in case of death of a woman

If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.

8. Payment of medical bonus

Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus, of Rs. 1000/- , if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

The Central Government may from time to time, by notification in the Official Gazette, increase the amount of medical bonus subject to the maximum of Rs. 20,000/-.

9. Leave for miscarriage, etc.

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

9A. Leave with wages for tubectomy operation

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

10. Leave for illness arising out of pregnancy, delivery, premature birth of child, [miscarriage, medical termination of pregnancy or tubectomy operation]

A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, [miscarriage, medical termination of pregnancy or tubectomy operation] shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

11. Nursing breaks

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

Maternity Benefit (Amendment) Act, 2016.) 11A.

(1) Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities:

Provided that the employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

(2) Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

12. Dismissal during absence of pregnancy

(1) When a 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 to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus:

PROVIDED that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or

dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.]

(c) Nothing contained in this sub-section shall effect the provisions contained in sub-section (1).

13. No deduction of wages in certain cases

No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of-

(a) the nature of work assigned to her by virtue of the provisions contained in sub-section (3) of section 4; or

(b) breaks for nursing the child allowed to her under the provisions of section 11.

14. Appointment of Inspectors

The appropriate government may, by notification in the Official Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their functions under this Act.

15. Powers and duties of Inspectors

An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely:-

(a) enter at all reasonable times with such assistants, if any, being person in the service of the government or any local or other public authority, as he thinks fit, any premises or place where women are employed or work is given to them in an establishment, for the purposes of examining any register, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;

(b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment;

PROVIDED that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;

(c) require the employer to give information regarding the names and addresses of women employed, payments made to them and applications or notices received from them under this Act; and

(d) take copies of any registers and records or notices or any portions thereof.

16. Inspectors to be public servants

Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

17. Power of Inspector to direct payments to be made

(1) Any woman claiming that-

(a) maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld;

(b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Act, may make a complaint to the Inspector.

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in sub-section make an inquiry or cause an inquiry to be made and if satisfied that-

(a) Payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders;

(b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case.

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.

(5) Any amount payable under this section shall be recoverable by the Collector on a certificate issued for that amount by the Inspector as an arrear of land revenue.

18. Forfeiture of maternity benefit

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period.

19. Abstract of Act and rules there under to be exhibited

An abstract of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

20. Registers, etc.

Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

21. Penalty for contravention of Act by employer

(1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

PROVIDED that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employer contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

PROVIDED that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

22. Penalty for obstructing Inspector

Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made there under or conceals or prevents any person from appearing before or being examined by an Inspector shall be punishable with imprisonment which may extend to [one year], or with fine which may extend to five thousand rupees, or with both.

23. Cognizance of offences

(1) Any aggrieved woman, an office-bearer of a trade union registered under the Trade Unions Act, 1926 (16 of 1926) of which such woman is a member or a voluntary organization registered under the Societies Registration Act, 1860 (21 of 1860) or an Inspector, may file a complaint regarding the commission of an offence under this Act in any court of competent jurisdiction and

no such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed.

(2) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

24. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made there under.

25. Power of Central Government to give directions

The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act and the State Government shall comply with such directions.

26. Power to exempt establishments

If the appropriate government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefits which are not less favorable than those provided in this Act, it is necessary so to do, it may, by notification in the Official Gazette, exempt, subject to such conditions and restrictions, if any, as may be specified in the notification, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made there under.

27. Effect of laws and agreements inconsistent with this Act

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith

contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

PROVIDED that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favorable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favorable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favorable to her than those to which she would be entitled under this Act.

28. Power to make rules

(1) The appropriate government may, subject to the condition of previous publication and by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the preparation and maintenance of registers, records and muster-rolls;
- (b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;
- (c) the method of payment of maternity benefit and other benefits under this Act insofar as provision has not been made therefore in this Act;
- (d) the form of notices under section 6;
- (e) the nature of proof required under the provisions of this Act;
- (f) the duration of nursing breaks referred to in section 11;

(g) acts which may constitute gross misconduct for purposes of section 12;

(h) the authority to which an appeal under clause (b) of sub-section (2) of section 12 shall lie; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

(i) the authority to which an appeal shall lie against the decision of the Inspector under section (17); the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

(j) the form and manner in which complaints may be made to Inspectors under sub-section (1) of section 17 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (2) of that section;

(k) any other matter which is to be, or may be prescribed.

(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions, aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

29. Amendment of Act 69 of 1951

In section 32 of the Plantations Labor Act, 1951-

(a) in sub-section (1), the letter and brackets "(a)" before the words "in the case of sickness", the word "and" after the words "sickness allowances" and clause (b) shall be omitted;

(b) in sub-section (2), the words "or maternity" shall be omitted.

Vijay Institute of Management

MBA – TANCET Counselling Code 683

