

## **LABOUR LAWS IN INDIA**

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## **CHAPTER 1: INTRODUCTION**

The law relating to labour and employment in India is primarily known under the broad category of “Industrial Law”. Industrialization is considered to be one of the key engines to support the economic growth of any country. The commence of industry and its growth is not a venture of the employer alone; yet it involves the hard work and tough grind of each and every stakeholder of the industry including the labourers, supervisors, managers and entrepreneurs. With the initiation of the concept of welfare state in the early realm of independence of our country, various legislative efforts have made their first move in the direction of welfare, equitable rights, social justice, social equity and equitable participation of the labour as a stakeholder at parity. A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

Labour laws are the one dealing with employment laws in any organization – whether it is a manufacturing organization or trading organization or shops and establishment. The labour laws address the various administrative rulings (such as

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employment standing orders) and procedure to be followed, compliance to be made and it address the legal rights of, and restrictions on, working people and their organizations. By and large the labour law covers the industrial relations, certification of unions, labour management relations, collective bargaining and unfair labour practices and very importantly the workplace health and safety with good environmental conditions. Further the labour laws also focus on employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay and many other issues related to employer and employee and the various compliance requirements. The labour laws derive their origin, authority and strength from the provisions of the Constitution of India. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour law reforms are an ongoing and continuous process and the Government has been introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic economic environment. Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject certain matters being reserved for the Centre.

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**CHAPTER 2: LABOUR LAW IN STATE OF MAHARASHTRA**

| SR. No | NAME OF LABOUR LEGISLATION   | CENTRAL RULES  | STATE RULES   |
|--------|--|--|---|
| 1      | Apprentices Act , 1961   | Apprentices Rules, 1961  | Nil   |
| 2      | The Beedi and Cigar Workers (Conditions of Employment) Act, 1966                                       |  |   |
| 3      | Beedi Workers Welfare Fund Act, 1976   |  |   |
| 4      | The Beedi Workers Welfare Cess Act, 1976   | The Beedi Worker's Welfare Cess Rules, 1977  |   |
| 5      | The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996 |  |   |
| 6      | Bonded Labour System (Abolition) Act, 1976   |  |   |
| 7      | Contract Labour (Regulation & Abolition) Act , 1970  |  | <b><i>Maharashtra Contract Labour</i></b> (Regulation and Abolition) <b><i>Rules</i></b> , 1971 |
| 8      | The Child Labour (Prohibition And Regulation) Act, 1986  |  |   |
| 9      | Children (Pledging of Labour) Act, 1933  |  |   |
| 10     | The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981                     | The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984 |   |

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|    |  |  |                                   |
|----|--|--|-----------------------------------|
| 11 | The Cine Workers' Welfare Fund Act, 1981.  |  |                                   |
| 12 | The Cine Workers Welfare Cess Act, 1981  |  |                                   |
| 13 | The Dock Workers (Regulation of Employment) Act, 1948                                      |  |                                   |
| 14 | The Dock Workers (Safety, Health & Welfare) Act, 1986                                      |  |                                   |
| 15 | The Dock Workers (Regulation of Employment) (inapplicability to Major Ports) Act, 1997     |  |                                   |
| 16 | Employee State Insurance Act , 1948  | Employees' State Insurance Rules, 1950<br>Employees' State Insurance (General) Regulations, 1950 |                                   |
| 17 | Employee's Provident Fund and Miscellaneous Provisions Act , 1952                          | Employees' Deposit Linked Insurance Scheme , 1976  |                                   |
| 18 | Employment Exchanges (Compulsory Notification of Vacancies) Act , 1959                     | Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960                          |                                   |
| 19 | The Employment of Manual Scavengers and Construction of Dry latrines Prohibition Act, 1993 |  |                                   |
| 20 | Equal Remuneration Act , 1976  | Equal Remuneration Rules, 1976   |                                   |
| 21 | Factories Act, 1948  |  | Maharashtra Factories Rules, 1963 |
| 22 | The Fatal Accidents Act, 1855  |  |                                   |

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|    |   |  |  |
|----|---|--|--|
| 23 | Industrial Disputes Act, 1947   |  | <b><i>Industrial disputes (Bombay) rules, 1957</i></b>     |
| 24 |   |  | The Bombay Industrial Relations Act, 1946                  |
| 25 | Industrial Employment and Standing Orders Act , 1946  |  | Bombay Industrial Employment [Standing Orders] Rules, 1959 |
| 26 | The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979              | The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1983 |  |
| 27 | The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976                    |  |  |
| 28 | The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Cess Act, 1976                    |  |  |
| 29 | Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 |  |  |
| 30 |   |  | The Bombay Labour Welfare Fund Act, 1953                   |
| 31 | Maternity Benefit Act , 1961  |  | <b><i>Maharashtra Maternity Benefit Rules, 1965</i></b>    |
| 32 | Minimum Wages Act , 1948  |  | <b><i>Maharashtra Minimum Wages Rules 1963</i></b>         |
| 33 |   |  | The Bombay Labour Welfare Fund Act, 1953                   |
| 34 |   |  | <b><i>Maharashtra</i></b>                                  |

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|           |   |   |   |
|-----------|---|---|---|
|           |   |   | <b><i>Maternity Benefit Rules, 1965</i></b>   |
| <b>35</b> | The Mica Mines Labour Welfare Fund Act, 1946                    |   | <b><i>Maharashtra Minimum Wages Rules 1963</i></b>  |
| <b>36</b> | The Limestone & Dolomite Mines Labour Welfare Fund Act, 1972    |   | Maharashtra Workmen's Minimum House Rent Allowance Act, 1986,                               |
| <b>37</b> | The Motor Transport Workers Act, 1961                           |   |   |
| <b>38</b> | Payment of Bonus Act , 1965                                     | Payment of Bonus Rules, 1975                                      |   |
| <b>39</b> | Payment of Gratuity Act , 1972                                  |   | <b><i>Payment of Gratuity (Maharashtra) Rules, 1972</i></b>                                 |
| <b>40</b> | Payment of Wages Act , 1936                                     |   | <b><i>Maharashtra Payment of wages Rules, 1963</i></b>                                      |
| <b>41</b> |   |   | Bombay Shops & Establishment Act, 1948  |
| <b>42</b> | The Plantation Labour Act, 1951                                 |   |   |
| <b>43</b> | The Public Liability Insurance Act, 1991                        |   |   |
| <b>44</b> | The Sales Promotion Employees (Conditions of Service) Act, 1976 | The Sales Promotion Employees (Conditions of Service) Rules, 1976 |   |
| <b>45</b> | Trade Unions Act , 1926   |   | Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 |
| <b>46</b> |   |   | Maharashtra Recognition   |

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|    |  |   |   |
|----|--|---|---|
|    |  |   | of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 |
| 47 | The Unorganized Workers' Social Security Act, 2008   | The Unorganized Workers' Social Security Rules, 2008  |   |
| 48 | The War Injuries Ordinance Act, 1943   |   |   |
| 49 | The War Injuries (Compensation Insurance) Act, 1943  |   |   |
| 50 | The Weekly Holidays Act, 1942  |   | Repealed in Maharashtra by Mah. Act 26 of 1961                      |
| 51 | Workmen's Compensation Act, 1923   |   | Bombay Workmen's Compensation Rules, 1934                           |
| 52 | The Working Journalist (Fixation of Rates of Wages) Act, 1958  |   |   |
| 53 | The Working Journalists and other Newspaper Employees' Conditions of Service and Misc. Provisions) Act, 1955 | The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Rules, 1957 |   |
| 54 | Labour Courts (Practice and Procedure) Rules, 1975   |   |   |

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## **CHAPTER 3: FEW IMPORTANT ACTS UNDER LABOUR LAW**

### **3A. EMPLOYEES PROVIDENT FUND AND MISC. PROVISIONS ACT, 1952**

An Act to provide for the institution of provident funds, pension funds and deposit linked insurance fund for the employees in the factories and other establishments. The Act extends to the whole of India except the State of Jammu and Kashmir.

#### **Applicability**

All factories and establishments in which 20 or more are employed

#### **Schemes under the Act**

Three beneficial schemes-

1. Employees Provident Fund Scheme 1952
2. Employees Pension Scheme 1995
3. Employees Deposit Linked Insurance 1976

#### **Membership**

1. An employee at the time of joining the employment and getting wages up to Rs.6500/- is required to become a member.

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2. An employee is eligible for membership of fund from the very first date of joining a covered establishment.

### **Duties of employer**

Employer to furnish information about:

- a) Ownership and names of responsible persons of the establishment.
- b) Declaration and nomination.
- c) Joining and leaving of service by the members in form 5 and form 10 respectively.
- d) Form 12A with monthly challans of deposit.
- e) Form 9 for details of employees.
- f) Form 3A/6A at the end of the financial year.
- g) Any other information as may be required under Para 76 of the scheme

### **Benefits to employees**

- a) Provident Fund Benefits.
- b) Pension Benefits.
- c) Death Benefits.

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### **Provident Fund Benefits**

- Employer also contributes to Members' PF @ 3.67% (1.67% in case of sick industry -eg: beedi).
- EPFO guarantees the Employer contribution and Govt. gives a decent interest to PF accumulations.
- Member can withdraw from this accumulations to cater financial exigencies in life - No need to refund unless misused.

On resignation, the member can settle the account. i.e., the member gets his PF contribution, Employer Contribution and Interest.

### **Pension Benefits**

1. Pension to Member
2. Pension to Family (on death of member)

#### **3. Scheme Certificate:**

- This Certificate shows the service & family details of a member.
- This is issued if the member has not attained the age of 58 while leaving an establishment and he applies for this certificate.
- Member can surrender this certificate while joining another establishment and the service stated in the certificate is added with the

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service he is gaining from the new establishment.

- After attaining the age of 50 or above, the member can apply for Pension by surrendering this scheme certificate (if total service is at least 10 years).
- This is a better choice than Withdrawal Benefit, that if a member dies holding a valid scheme certificate, his family will get pension (Death when NOT in service).
- Withdrawal Benefit if not eligible for pension, member may withdraw the amount accumulated in his pension account.
- the calculation of this amount is based only on
  - (i) Last average salary and
  - (ii) Service (Not based on actual amount available in Pension Fund Account).
- No amount is taken from Member to give Pension to the Member. Employer and Govt. contribute to Pension fund @8.33% and @1.16% respectively.
- EPFO guarantees pension to members, even if the Employer has not contributed to Pension Fund.
- Pension calculation is similar to that of Govt. Employee.

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## **Death Benefits**

- Provident Fund Amount to Family (or to Nominee)
- Pension to Family (or to Parent / Nominee)
- Capital Return of Pension
- Insurance (EDLI) amount to Family (or to Nominee)
- No amount is taken from Member for this facility. Employer contributes for this.
- Nominee is basically determined as per the information submitted by the member at this office through FORM-2.

### **3B. INDUSTRIAL DISPUTES ACT, 1947**

#### **Introduction**

The Industrial Disputes Act, 1947 came into existence in April 1947. It was enacted to make provisions for investigation and settlement of industrial disputes and for providing certain safeguards to the workers. The Act contains 40 sections divided into 7 chapters. Chapter – I deals with the title, definitions, etc. Chapter – II contains the various authorities under the Act. These authorities include Conciliation Officers, Labour Courts and Tribunals. Chapter – III contains the main scheme of the Act such as reference of disputes to Labour Courts and Industrial Tribunals. Chapter – IV lays down the procedure, power and duties of the authorities constituted under the Act. Chapter – V contains provisions to prohibit strikes and lockouts, declaration of strikes and lockouts as illegal, and provisions relating to lay-off and retrenchment and closure. Chapter-VI contains provisions of various penalties under the Act. Chapter-VII contains miscellaneous provisions.

#### **Definition of Industry:**

Section 2(j) of the Industrial Disputes Act of 1947 defined industry as “any business, trade, undertaking, manufacture, calling of employers, and includes any

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calling, service, employment, handicraft, industrial occupation or avocation of workmen.” This definition is very broad. It fails to capture all organizations that may or may not come under an industry. For these types of organizations the definition of an industry has been constantly modified by the judgments given by various High Courts and Supreme Court. As per Industrial Disputes (Amendment) Act, 1982, Industry is any systematic activity carried on by cooperation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature

In the case of *Madras Gymkhana Club, Employees Union Vs Management of Madras Gymkhana Club (AIR, 1968 SC 554)*, it was observed that “if the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part takes in the different kinds of activity of employees mentioned in the second part. But the second standing alone cannot define industry. By the inclusive part of the definition the labour force employed in any industry is made an integral part of the industry for

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the purpose of industrial disputes although industry is ordinarily something which employers create or undertake”

In the case of workmen of *I. S. Institution Vs I.S. Institution (AIR, 1976 SC 145)* it was held that the “industry is ordinarily something which employers create or undertake”, which is gradually yielding place to the modern concept which regards industry as a joint venture undertaken by employers, and workmen, an enterprise which equally belongs to both. Here it is not necessary to view definition of industry under section 2(j) of the Industrial Dispute Act in two parts. The definition gives the meaning as a collective enterprise in which employers and employees working together are associated with the industry. It is to be mentioned here that the ‘industry’ does not consist of either employers alone or by employees alone.

In *Bangalore Water Supply Vs A. Rajappa (AIR, 1978 SC 548)* a seven Judges Bench of the Supreme Court exhaustively examined and considered the scope of ‘industry’ which includes the following:

a) Any capital that has been invested for the purpose of carrying on such activity:

or

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b) Such activity is carried on with a motive to make any game or profit, and includes:

- i. Any activity of the Dock Labour Board established under Section 5(a) of the Dock Workers (Regulation of Employment) Act, 1948:
- ii. Any activity relating to the promotion of sales or business or both carried on by an establishment.

**But does not include –**

- a) Any agriculture operation except where such “agriculture operation” is carried on in an integrated manner with any other activity (being any such activity is referring to in the foregoing provisions of this clause) and such other activity is the predominant one.
- b) Explanation-For the purpose of the sub-clause “agriculture operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantation Labour Act, 1951; or
- c) Hospitals or dispensaries; or
- d) Educational, scientific, research or training institutions; or
- e) Institutions owned or managed by organization wholly or substantially engaged in any charitable, social or philanthropic service; or
- f) Khadi or village industries; or

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- g) Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the department of the Central Government dealing with Defense Research, Atomic Energy and Space; or
- h) Any domestic service; or
- i) Any activity, being a profession practised by an individual or body of individual, if the number of persons employed by the individual or body of individual in relation to such profession is less than ten; or
- j) Any activity, being an activity carried on by a cooperative society or a club or any other like body of individuals, if the number of persons employed by the cooperative society, club or other like body of individuals also in relation to such activity is less than ten.

### **Definition of Industrial Disputes**

An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions. When an industrial dispute occurs, both the parties, that is the management and the

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workmen, try to pressurize each other. The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.

Section 2(k) of the Industrial Disputes Act defines industrial dispute as “any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;..” Normally workmen raise a claim which their employer refuses to honour. This claim is termed as an industrial dispute. A claim can also be raised by workers who have been fired or for some reasons have left the industry .But there also cases where individual disputes are treated as industrial disputes as in Western Co. VS Worker’s Union. According to this judgment, an individual dispute can be treated as an industrial dispute if and only if it is taken up by a large number of workers or a registered body of workers like Trade Unions.

The following are the important elements to constitute an industrial dispute

1. A dispute or difference between
  - a) employers and employees, or
  - b) employers and workmen, or
  - c) workmen and workmen;

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2. The dispute or difference should be connected with

- a) employment or non - employment, or
- b) terms of employment, or
- c) Conditions of labour of any person;

3. The dispute may be in relation to any workmen or workmen or any other person in whom they are interested as a body.

**Dispute relating to workmen employed by the contractor.**

In some cases, the workman may not be the direct employee of an organization but a workman employed to perform certain works or duties under a contractor. In this regard certain cases are mentioned. A few of them are given below. The leading case on this point is the *Standard Vacuum Refinery Company of India Vs Their workmen and another*. In this case the workmen under the contractor as said by the employers, contractor's men were not entitled to any privilege and there was no security of employment by which the workmen disputed raising an industrial dispute demanding the abolition of contract system. The Supreme Court held in this case that the dispute to be an industrial dispute because there was a real and substantial disputes between the workmen and the company on the question of contract labour for the work of the company.

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In the case of *Indian Bank Vs Management of Indian Bank (1985LLJ 6 (Mad))* it was observed that where privilege given to an office bearer of a trade union in the form of duty relief was withdrawn by the management which was granted to the privileged. It cannot be said that an industrial dispute as arisen there by and the legal status of the duty relief is only that of a concession and not a matter relating to conditions of service. In this case it was held that where the concession provided is withdrawn, the beneficiary cannot complain that a condition of service is affected and the management is not entitled to do so without raising an industrial dispute and having the matter adjudicated by the authority.

### **Objective of the Act**

The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

The Act also lays down:

- a) The provision for payment of compensation to the Workman on account of closure or lay off or retrenchment.
- b) The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments

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c) Unfair labour practices on part of an employer or a trade union or workers.

### **Applicability**

The Industrial Disputes Act extends to whole of India and applies to every industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed therein. Every person employed in an establishment for hire or reward including contract labour, apprentices and part time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act. This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity and drawing more than Rs. 1600/-p.m or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison.

### **Important provisions of the Act**

- Defines industry, industrial dispute, layoff, lockout, retrenchment, trade union, strike, wages, workman etc.
- Provides machinery for investigating and settling disputes through works committees, conciliation officers, boards of conciliation, courts of enquiry, labour courts, tribunals and voluntary arbitration.

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- Reference of dispute for adjudication.
- Awards of labour courts and tribunals.
- Payment of wages to workers pending proceedings in High Courts.
- Rights of appeal.
- Settlements in outside conciliation.
- Notice of change in employment conditions.
- Protection of workmen during pendency of proceedings
- Strike and lockout procedures.
- Lay-off compensation.
- Retrenchment compensation.
- Proceedings for retrenchment.
- Compensation to workmen in case of transfer of undertakings.
- Closure procedures.
- Reopening of closed undertakings.
- Unfair labour practices.
- Recovery of money due from employer.
- Penalties.
- Obligations and rights of employees.

**When to consult and refer a dispute:**

- When a dispute arises with the workers' union.
- When there is a plan to change employment conditions.
- When there is a strike.

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- When there is a lock-out.
- When there is retrenchment of workmen.
- When undertaking is being transferred
- On closure of an establishment.
- On re-opening establishment.

**OFFENCES/PENALTIES UNDER THE ACT:**

| SECTION               | OFFENCE   | PENALTY  |
|-----------------------|---|--|
| <b>Sec.25-Q</b>       | Lay-Off or Retrenchment without prior permission - Contravening the provisions of Section 25-M or 25-(N)                            | Workman entitled to all benefits as if they had not been laid off. Employer shall be punishable with imprisonment upto 1 month and / or fine uptoRs. 1000.   |
| <b>Sec.25-R(1)</b>    | Illegal Closure: - Closing down an undertaking without complying with the provisions of Section 25-O(1)                             | Workman entitled to all benefits as if there had not been any closure. Employer shall be punishable with imprisonment upto 6 month and / or fine uptoRs. 5000.   |
| <b>Sec.25-R(2)</b>    | Contravening an order refusing permission to close down the undertaking under Section 25- O or a direction given under Section 25-P | Workman entitled to all benefits as if there had not been any closure. Employer shall be punishable with imprisonment upto 1 year and / or fine uptoRs. 5000, with a further fine of upto 2000 Rs for each day of contravention after conviction |
| <b>Sec.25-T, 25-U</b> | Committing an Unfair Labour Practice.   | Imprisonment upto 6 months and / or fine uptoRs. 1000.   |

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|                   |  |  |
|-------------------|--|--|
| <b>Sec.26 (1)</b> | Illegal strikes by a workman - workman who commences, continues or otherwise acts in furtherance, of, a strike which is illegal under that Act                       | Imprisonment for 1 month and / or fine uptoRs. 50.   |
| <b>Sec.26 (2)</b> | Illegal lockout -employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act                                   | Imprisonment for 1 month and / or fine uptoRs. 1000  |
| <b>Sec.27</b>     | Instigation - Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under that Act | Imprisonment for 6 month and / or fine uptoRs. 1000.   |
| <b>Sec.28</b>     | Financial Assistance to a Strike - Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out          | Imprisonment for 6 month and / or fine uptoRs. 1000  |
| <b>Sec.29</b>     | Breach of settlement or award binding under the act  | Imprisonment for 6 month and / or fine + an additional fine of Rs. 200 per day if breach conviction. |
| <b>Sec.30</b>     | Disclosing confidential information in contravention of the provisions of Section 21   | Imprisonment for 6 months and/or fine Rs. 1000.  |
| <b>Sec.30-A</b>   | Closing down any undertaking without complying with the provisions of Section 25-FFA   | Imprisonment for 6 months and/or fine Rs. 5000.  |

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|                  |   |   |
|------------------|---|---|
| <b>Sec.31(1)</b> | Contravention of Section 33 - Service conditions remaining unchanged during pendency of proceedings | Imprisonment for 6 months and/or fine Rs. 1000. |
| <b>Sec.31(2)</b> | Contravening any other provision where specific penalty is not provided for.                        | Fine upto Rs. 100                               |

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### **3C. THE PAYMENT OF BONUS ACT, 1965:**

The payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year.

#### **Eligibility for Bonus**

1. Every employee receiving salary or wages upto Rs. 21,000/-p.m. and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.
2. 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.
3. However employees of L.I.C., Universities and Educational institutions,

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Hospitals, Chamber of Commerce, R.B.I., IFCI, U.T.I., IDBI, NABARD, SIDBI, Social Welfare institutions are not entitled to bonus under this Act.

### **Disqualification for Bonus**

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

- a) fraud; or
- b) riotous or violent behaviour while on the premises or the establishment; or
- c) theft, misappropriation or sabotage of any property of the establishment.

(Section 9)

This provision is based on the recommendations of the Bonus Commission which observed “after all bonus can only be shared by those workers who promote the stability and well-being of the industry and not by those who positively display disruptive tendencies. Bonus certainly carries with it obligation of good behaviour.”

If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place (***Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court, (1996) 2 LLJ 606***).

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## **Minimum and Maximum Bonus Payable**

### **Minimum Bonus**

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words one hundred rupees the words sixty rupees were substituted.

Section 10 of the Act is not violative of Articles 19 and 301 of the Constitution. Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 (State v. Sardar Singh Majithia (1979) Lab. I.C.).

### **Maximum Bonus**

(1) Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the

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employees under that Section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

(2) In computing the allocable surplus under this Section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that Section. (Section 11)

#### **Time Limit for Payment**

The bonus should be paid in cash within 8 months from the close of the accounting year or within one month from the date of enforcement of the award or coming into operation of a settlement following an industrial dispute regarding payment of bonus.

However if there is sufficient cause extension may be applied for.

#### **Computation of Number of Working Days**

For the purposes of Section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:

a) he has been laid off under an agreement or as permitted by standing orders

under the Industrial Employment (Standing Orders) Act, 1946 or under the

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Industrial Disputes Act, 1947 or under any other law applicable to the establishment;

- 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. (Section 14).

**Offences and Penalties:**

1. 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.
2. For failure to comply with the directions or requisitions made the penalty is imprisonment upto 6 months or fine up to Rs.1000, or both.
3. In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal officer responsible for the conduct of its business, as the case may be, shall be deemed to be guilty of that offence and punished accordingly, unless the person concerned proves that the offence was committed without his knowledge or that he exercised all due diligence.

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**IMPORTANT CASE LAWS:**

- **Project Manager, Ahmedabad Project, ONGC v. Sham**

**KumaSahegal(1995) 1 LLJ 863]**

An employee suspended but subsequently reinstated with full back wages cannot be treated to be ineligible for bonus for the period of suspension.

- **Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court, (1996) 2 LLJ 606).**

If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place.

**Reference :Section 9**

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

- a. fraud; or
- b. riotous or violent behaviour while on the premises or the establishment; or
- c. theft, misappropriation or sabotage of any property of the establishment.

### **3C. Payment of Gratuity Act, 1972**

#### **Applicability of the Act**

Application of the Act to an employed person depends on two factors. Firstly, he should be employed in an establishment to which the Act applies. Secondly, he should be an “employee” as defined in Section 2(e).

According to Section 1(3), the Act applies to:

- a) every factory, mine, oilfield, plantation, port and railway company;
- b) 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;
- c) such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf.

In exercise of the powers conferred by clause (c), the Central Government has specified Motor transport undertakings, Clubs, Chambers of Commerce and Industry, Inland Water Transport establishments, Solicitors offices, Local

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bodies, Educational Institutions, Societies, Trusts and Circus industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishments to which the Act shall apply. A shop or establishment to which the Act has become applicable once, continues to be governed by it, even if the number of persons employed therein at any time after it has become so applicable falls below ten. (Section 3A)

Gratuity is payable to an employee on termination of his employment after he has rendered continuous service for not less than five years:

1. on his superannuation
2. on his resignation
3. on his death or disablement due to employment injury or disease

The Working Journalists and Other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955, provides for payment of gratuity. As such, three years of continuous service is required for eligibility for Gratuity.

The payment of gratuity shall be forfeited:

1. to the extent of the damage or loss caused by the employee to the property of the employer

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2. where the service of the employee is terminated due to misconduct

According to Sec.2(e) "**employee**" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied,[and whether or not such person is employed in a managerial or administrative capacity, 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].

**According to Sec.2A**

1. **an employee shall be said to be in continuous service** for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to



any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act.

2. where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer -

a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

I. one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

II. two hundred and forty days, in any other case;

b) or the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than -

a. ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

b. one hundred and twenty days, in any other case;

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**Explanation:** For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which

- a. he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
  - b. he has been on leave with full wages, earned in the previous year;
  - c. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and
  - d. in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.
3. where an employee employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period.

**Responsibility of the Employer:**

1. Every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), 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 established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer:
2. The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed.
3. Where an employer fails to make any payment by way of premium to the insurance or by way of 'contribution to all approved gratuity fund, he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.
4. Whoever contravenes the provision above shall be punishable with fine which may extend to Rs 10,000/- and in the case of a continuing offence

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with a further fine which may extend to Rs 1000/- for each day during which the offence continues.



### **3E. THE WORKMEN'S COMPENSATION ACT, 1923**

The Workmen's Compensation Act, aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.

It provides for payment by certain classes of employers to their workmen compensation for injury by accident.

#### **Act does not apply where workman covered under ESI Act**

Since a workman is entitled to get compensation from Employees State Insurance Corporation, a workman covered under ESI Act is not entitled to get compensation under Workmen's Compensation Act, as per section 53 of ESI Act, 1948.

#### **Meaning of Workman (Sec.2 (n))**

"**Workman**" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is - (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently

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employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or (ia)

- a) a master, seaman or other member of the crew of a ship,
- b) a captain or other member of the crew of an aircraft,
- c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
- d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or
- e) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

The provisions of the Act have been extended to cooks employed in hotels, restaurants using power, liquefied petroleum gas or any other mechanical device in

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the process of cooking.

**Employees Entitled To Compensation:**

Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of employers business and who suffers an injury in any accident arising out of and in the course of his employment, shall be entitled for compensation under the Act.

**Employers Liability for Compensation (Accidents)**

The employer of any establishment covered under this Act, is required to compensate an employee:

- a. Who has suffered an accident arising out of and in the course of his employment, resulting into (i) death, (ii) permanent total disablement, (iii) permanent partial disablement, or (iv) temporary disablement whether total or partial, or
- b. Who has contracted an occupational disease.

**Employer Shall Not Be Liable:**

- a) In respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding **three days**.

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b) In respect of any injury not resulting in death, caused by an accident which is directly attributable to-

- I. the workmen having been at the time thereof under the influence or drugs, or
- II. the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- III. the wilful removal or disregard by the workmen of any safeguard or other device which he knew to have been provided for the purpose of securing the safety of workmen. The burden of proving intentional disobedience on the part of the employee shall lie upon the employer.
- IV. when the employee has contracted a disease which is not directly attributable to a specific injury caused by the accident or to the occupation; or
- V. when the employee has filed a suit for damages against the employer or any other person, in a Civil Court.

**Contracting Out:**

Any contract or agreement which makes the workman give up or reduce his right to compensation from the employer is null and void insofar as it aims at reducing or removing the liability of the employer to pay compensation under the Act.

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## **Definition of Disablement**

Disablement is the loss of the earning capacity resulting from injury caused to a workman by an accident.

- **Disablements can be classified as** (a) Total, and (b) Partial. It can further be classified into (i) Permanent, and (ii) Temporary, Disablement, whether permanent or temporary is said to be total when it incapacitates a worker for all work he was capable of doing at the time of the accident resulting in such disablement.
- **Total disablement** is considered to be permanent if a workman, as a result of an accident, suffers from the injury specified in Part I of Schedule I or suffers from such combination of injuries specified in Part II of Schedule I as would be the loss of earning capacity when totaled to one hundred per cent or more. Disablement is said to be permanent partial when it reduces for all times, the earning capacity of a workman in every employment, which he was capable of undertaking at the time of the accident. Every injury specified in Part II of Schedule I is deemed to result in permanent partial disablement.
- **Temporary disablement** reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident.

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**Accident Arising Out Of And In The Course Of Employment:**

An accident arising out of employment implies a casual connection between the injury and the accident and the work done in the course of employment. Employment should be the distinctive and the proximate cause of the injury. The three tests for determining whether an accident arose out of employment are:

1. At the time of injury workman must have been engaged in the business of the employer and must not be doing something for his personal benefit;
2. That accident occurred at the place where he was performing his duties; and
3. Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature condition of employment.

**DEFENCES OF THE EMPLOYER**

Prior to the passing of this Act, the employer was liable to pay compensation only if he was guilty of negligence. Even in case of proved negligence, the employer could get rid of his liability by using any of the following defenses:

1. **The Doctrine of Assumed Risks:** If the employee knew the nature of the risks he was undertaking when working in a factory, the employer had no liability for injuries. The court assumed in such case that the workman had

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voluntarily accepted the risks incidental to his work. The doctrine followed from the rule Volenti Non Fit Injuria, which means that one, who has volunteered to take a risk of injury, is not entitled to damages if injury actually occurs.

2. **The Doctrine of Common Employment:** Under this rule, when several Persons work together for a common purpose and one of them is injured by some act or omission of another, the employer is not liable to pay compensation for the injury.
3. **The Doctrine of Contributory Negligence:** Under this rule' a person is not entitled to damages for injury if he was himself guilty of negligence and such negligence contributed to the injury.

The three aforesaid defences and the rule no negligence no liability made It almost impossible for an employee to obtain relief in cases of accident. The Workmen's Compensation Act of 1923 radically changed the law. According to this Act, the employer is liable to pay compensation irrespective of negligence. The Act looks upon compensation as relief to the workman and not as damages payable by the employer for a wrongful act or tort. Hence contributory negligence by the employee does not disentitle him from relief. For the same reason, it is not possible for the employer to plead to the defence of common employment or assumed risks

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for the purpose of avoiding liability. Thus the Act makes it possible for the workman to get compensation for injuries, unimpeded by the legal obstacles set up by the law of Torts

Various judgments of Supreme Court and different High Courts have considered the concept of notional employment and said that if the employee dies due to accident while going to work place from residence or while returning from work place to residence, as an accident arising out of and during the course of employment and as such entitled for compensation in accordance with provisions of the Act.

### **Amount of compensation**

The amount of compensation payable will be as follows, namely:-

- a) where death results an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees, whichever is more;
- b) where permanent total an amount equal to disablement results from sixty the injury per cent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of sixty thousand rupees, whichever is more; For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of

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Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due. Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only;

- c) where permanent partial disablement results from the injury (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;
- d) Where temporary a half monthly payment of the sum disablement, whether equivalent to twenty-five per cent of total or partial, results monthly wages of the workman, to from the injury be paid in accordance with the provisions of sub-section (2).

1. Notwithstanding anything contained in sub-section (1), while fixing

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the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

2. The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day -

i. from the date of disablement where such disablement lasts for a period of twenty- eight days or more; or

ii. after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the

disablement or during a period of five years, whichever period is shorter : Provided that - (a) there shall be deducted from any lump

sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has

received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the

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first half-monthly payment, as the case may be; and (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident. Explanation: Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

3. On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.
4. If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of one thousand rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such

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expenditure.

### **General principles of the Act**

- There must be a casual connection between the injury and the accident and the work done in the course of employment;
- The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury;
- It is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and
- Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury it would be enough for the workman to succeed. But where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the workman by his own conduct exposed himself, which peril was not involved in the normal performance of the duties of his employment, then the employer will not be liable.

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### **Employer's fault is immaterial**

- The compensation is payable even when there was no fault of employer. In *New India Assurance Co. Ltd. v. Pennamna Kuriern-* (1995) 84 Comp. Cas.251 (Ker HC DB), claim of workmen for compensation under Motor Vehicle Act was rejected due to negligence of employee, but compensation was awarded under Workmen's Compensation Act on the principle of 'no fault'.

### **Compensation payable even if workman was careless**

Compensation is payable even if it is found that the employee did not take proper precautions. An employee is not entitled to get compensation only if (a) he was drunk or had taken drugs (b) he wilfully disobeyed orders in respect of safety (c) he wilfully removed safety guards of machines. However, compensation cannot be denied on the ground that workman was negligent or careless. – *Mar Themotheousv. Santosh Raj* 2001 LLR 164 (Ker HC DB).

### **Number of Workmen Employed Is Not Criteria**

In definition of 'workman' in schedule II, in most of the cases, number of workmen employed is not the criteria. In most of cases, employer will be liable even if just one workman is employed. The Act applies to a workshop even if it

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employs less than 20 workmen and is not a ‘factory’ under Factories Act. – ***Sunil Industries v. Ram Chander.***



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### **3F. THE SHOPS AND ESTABLISHMENT ACT**

The Shops and Establishment Act is a state legislation and each state has framed its own Act and Rules for the Act. The object of this Act is to provide statutory obligation and rights to employees and employers in the unauthorized sector of employment, i.e., shops and establishments. This Act is applicable to all persons employed in an establishment with or without wages, except the members of the employers' family.

**This Act lays down the following rules:**

1. Working hours per day and week.
2. Guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work.
3. Employment of children, young persons and women.
4. Rules for annual leave, maternity leave, sickness and casual leave, etc.
5. Rules for employment and termination of service.

Generally under this Act, registration of shop/establishment is necessary within thirty days of commencement of work but in some states like Delhi, registration has been kept in abeyance. Hence the rules regarding registration of shops and establishment vary from state to state. Fifteen days of notice is required to be

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served before the closing of the establishment and State government can exempt, either permanently or for specified period, any establishments from all or any provisions of this Act.

### **Bombay Shops & Establishment Act, 1948**

This act is a social piece of legislation of the State Government enacted to prevent sweat laborers of Un-organized sector and to regulate the condition of work and employment and therefore to secure maximum benefits to the employees working in different categories of establishment viz. Shops, Commercial Establishments, residential hotels, restaurants, eating houses, theatres and other places of public amusement or entertainments for the jurisdiction of Greater Mumbai by virtue of the statutory provisions of Section 43 of the said Act subject to the overall supervisions of the State Government through the Commissioner of Labour, Mumbai. The shops & Establishments Department is headed by the Chief Inspector, Shops & Establishments. The Chief Inspector, Shops & Establishments is assisted by Four Deputy Chief Inspectors.

### **Forms and Formalities**

- **Form 'A'**: This form is prescribed for registration of the establishments under Bombay Shops & Establishments Act, 1948. Registration is made

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under Sec 7(1)(4) of the said act.

- **Form 'B'**: This is prescribed for the periodical renewal of registration certificate say for one year or three years at a time. Renewal is made under Sec.7(2A) of the Bombay Shops and Establishments Act
- **Form 'E'**: This form is prescribed for making any subsequent change in the information already submitted in form 'A'.
- The Registration Certificate is generally valid up to the end of the calendar year for which it is granted under Sec.7(2A) it is required to get every Registration Certificate renewed for next calendar year fifteen days before the date of expiry of Registration Certificate in hand by submitting prescribed form 'B' along with prescribed renewal fees to the concerned Shop Inspector.
- As per Sec. 7(2B), the renewal of Registration Certificate can be made for 3calendar years at a time at the option of the employer by paying requisite for that period. In such cases the Registration Certificate will be valid up to the end of 3rd calendar year including and from the year to which it is granted or renewed as the case may be.
- If the renewal application is not made within the period prescribed but it is made within thirty days after the date of expiry of Registration Certificate or the renewed Registration

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Certificate as the case may be, then in such cases an additional fee as late fee equal to half of the fee payable for normal renewal of Registration Certificate is charged.

### **Documents required for registration**

- Memorandum of Articles of Association/Trust deed.
- Premises purchase Agreement.
- List of Directors/Managers.
- 1st Bank Account opening proof/Bank Account No. details.
- First Income Tax Assessment order/PAN
- BMC declaration
- Date of commencement of business

### **Compliance**

- During the course of enforcement the inspectors visit various establishments and detect breaches of the provisions of the Act and rules framed there under and launch prosecutions on defaulters accordingly.
- The major breaches of the provisions of the Act consist of non-registration, non-renewal, opening of establishment before prescribed hours, closing of establishments later than prescribed hours, exceeding total hours, continuous work without rest interval, spread over, not granting privilege leave, keeping

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establishment open on weekly closed day, calling employees for work on their weekly offs, employing female employees after prescribed hours, employing child labour, not providing Identity Cards to certain class of employees, not paying wages as per rates prescribed under Minimum Wages Act etc.

- The major breaches of the provisions of rule are in the nature of procedural lapses viz. Not maintaining prescribed register of employment, leave register, visit book, lime washing register, not providing leave book to the employees or not making suitable entries therein, not producing requisite record register, notices for inspection on demand, not displaying name board in Marathi in Devnagari Script etc.

### **Maintenance of Registers**

Generally the following Registers/ records/ notices etc. are to be kept by the different categories of work:

1. Register of Employment by employers of Shop or Commercial Establishment in prescribed form 'H' or 'J' as the case may be.
2. Register of leave in form 'M'.
3. Leave Book in form 'N'.

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4. Notice in form 'L' specifying the days of holidays.
5. Muster-Roll – Cum-Wage Register as laid down under Rule 27(1) of Maharashtra Minimum Wages Rules 1963.
6. Notify to the Sr. Inspector (Shops & Establishments) at the beginning of the every calendar year regarding list of closed day of the respective year.
7. The employer has to provide Identity Cards to the certain class of employees.
8. The Employer has to apply for permission to maintain computerized records.
9. The employer also has to obtain permission for ladies working beyond 8.30 p.m. under Sec 33 of the Act. (However as per the notification dated June 2002, Government has waived such conditions with respect to certain class of industries including CALL CENTRES.)

### **3E. THE PAYMENT OF WAGES ACT, 1936**

#### **Application of the Act:**

The Act will apply to persons employed in any factory or employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration, and to persons employed in an industrial or other establishment.

**"factory"** means a factory as defined in section 2(m) of the Factories Act, 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under section 85(1) thereof.

**"Industrial or other establishment"** means any-

- a) Tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- b) Air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- c) Dock, Wharf or Jetty;
- d) Inland vessel, mechanically propelled;

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- e) Mine, Quarry or Oil-field;
- f) Plantation;
- g) Workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;
- h) Establishment in which any work relating to the construction, development or maintenance of 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.

This Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed Rs 6500/- per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the Central Government may, after every five years, by notification in the Official Gazette, specify.

### **Meaning of wages**

"Wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which

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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-

- a) Any remuneration payable under **any award or settlement** between the parties or order of a court;
- b) Any remuneration to which the person employed is entitled in respect of **overtime work or holidays or any leave period**;
- c) Any **additional remuneration** payable under the terms of employment (whether called a bonus or by any other name);
- d) 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;
- e) 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

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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 traveling allowance or the value of any traveling 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 sum as gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

### **Responsibility for Payment of wages**

Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,-

- a) In factories, if a person has been named as the manager of the factory under clause (f) of sub- section (1) of section 7 of the Factories Act, 1948 (63 of 1948);
- b) In industrial or other establishments, if there is a person responsible to the

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employer for the supervision and control of the industrial or other establishments;

- c) Upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;
- d) In the case of contractor, a person designated by such contractor who is directly under his charge; and
- e) In any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

It shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.

### **Wage period for payment of wages**

1. The person responsible for payment of wages shall decide the wage period.  
But the period shall not exceed one month.
2. The wages of every person employed upon or in any railway, factory or

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industrial or other establishment upon or in which less than 1000 persons are employed, shall be paid before the expiry of the 7th day after the last day of the wage-period in respect of which the wages are payable.

3. Any other railway, factory or industrial or other establishment that is where more than 1000 people are employed, shall be paid before the expiry of the 10<sup>th</sup> day, after the last day of the wage-period in respect of which the wages are payable.
4. In the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the 7<sup>th</sup> day from the day of such completion.
5. Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the 2<sup>nd</sup> working day from the day on which his employment is terminated.

But where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the 2<sup>nd</sup> day from the day on which his employment is so terminated.

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### **Deductions from Wages allowable under the Act**

Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

1. Fines: The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to 3% of the wages payable to him in respect of that wage-period. No fine shall be imposed on any employed person who is under the age of fifteen years. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed. No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of 90 days from the day on which it was imposed.
2. Deductions for absence from duty;
3. Deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default.
4. Deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in

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force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;

5. Deductions for such amenities and services supplied by the employer as the State Government or any officer specified by it in this behalf may, by general or special order, authorize.

**Explanation:** The word "**services**" in [this clause] does not include the supply of tools and raw materials required for the purposes of employment;

1. Deductions for recovery of advances of whatever nature (including advances for traveling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages. Recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for traveling-expenses.
2. deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;

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3. deductions for recovery of loans granted for house-building or other purposes approved by the State Government and the interest due in respect thereof;]
4. Deductions of income-tax payable by the employed person; (h) Deductions required to be made by order of a court or other authority competent to make such order;
5. Deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or any recognized provident fund as defined or any provident fund approved in this behalf by the State Government, during the continuance of such approval;
6. deductions for payments to co-operative societies approved by the State Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office, and
7. deductions, made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation Act of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post

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Office Savings Bank in furtherance of any savings scheme of any such government.

8. deductions, made with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act, 1926 (16 of 1926), for the welfare of the employed persons or the members of their families, or both, and approved by the State Government or any officer specified by it in this behalf, during the continuance of such approval;
9. deductions, made with the written authorization of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926); (l) Deductions, for payment of insurance premium on Fidelity Guarantee Bonds;
10. Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes; (n) Deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carnage or in respect of sale of food in

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catering establishments or in respect of sale of commodities in grain shops or otherwise;

**11.** Deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;

**12.** Deductions, made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;]

**13.** Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

The total amount of deductions which may be made above in any wage-period from the wages of any employed person shall not exceed

- i.** in cases where such deductions are wholly or partly made for payments to co-operative societies under clause
- ii.** above, 75% of such wages, and
- iii.** in any other case, 50% of such wages: Where the total deductions authorized exceed 75% or, as the case may be, 50% of the wages, the excess may be recovered in such manner as may be prescribed.



### **Maintenance of registers and records**

It is the responsibility of the employer to maintain such registers and records giving particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages and such other particulars. Every record and register maintained shall be preserved for a period of 3 years after the date of last entry made therein.

### **Rights of employees**

Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, than following persons may apply to such authority:

1. Such person himself,
2. Any legal practitioner or
3. Any official of a registered trade union authorized in writing to act on his behalf, or
4. Any Inspector under this Act, or
5. Any other person acting with the permission of the authority appointed by the state government.

Every such application shall be presented within 12 months from the date on which

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the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Any application may be admitted after the said period of 12 months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

When any application made is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount:

1. Deducted, or
2. The payment of the delayed wages, together with the payment of such compensation as the authority may think fit. The amount of such compensation shall:
  - a. Not exceeding 10 times the amount deducted in the case where deduction has been wrongly made from the wages and;
  - b. Not exceeding Rs 3000/- but not less than Rs 1500/- in the case where

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there is delay in payment of wages.

Even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding Rs 2000/-.

A claim under this Act shall be disposed of as far as practicable within a period of 3 months from the date of registration of the claim by the authority.

Also no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

- a) A bona fide error or bona fide dispute as to the amount payable to the employed person; or
- b) The occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence.

If the authority hearing an application under this section is satisfied

- a) That the application was either malicious or vexatious, the authority may direct that a penalty not exceeding Rs 375/-to be paid to the employer or other person responsible for the payment of wages by the person presenting

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the application; or

- b)** That in any case in which compensation is directed to be paid under the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty not exceeding Rs 375/- to be paid to the State Government by the employer or other person responsible for the payment of wages.

A single application can also be made by the unpaid group of the employed persons. Employed persons can be said to belong to Unpaid Group:

- 1) If they are borne by the same establishment, and
- a)** If deductions have been made from their wages for the same wage period in contravention of the Act, or
  - b)** Their wages for the same wage period have remained unpaid after the day fixed by the Act.

An appeal can be made against an order dismissing either wholly or part of an application made. The appeal can be made within 30 days of the date on which the order or direction was made. The appeal has to be made before the court of small causes or the District Court.

## **Penalties**

1. Whoever being required under this Act to maintain any records or registers or to furnish any information or return

a) Fails to maintain such register or record; or

b) Willfully refuses or without lawful excuse neglects to furnish such information or return;

c) Willfully furnishes or causes to be furnished any information or return which he knows to be false; or

d) refuses to answer or willfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act, shall, for each such offence, be punishable with fine which shall not be less than Rs 1500/- one but which may extend to Rs 7500/-.

2. Whoever:

a) Willfully obstructs an Inspector in the discharge of his duties under this Act;

or

b) 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 in relation to any railway, factory or



industrial or other establishment; or

- c) Willfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or
- d) prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act;

shall be punishable with fine which shall not be less than Rs 1500/-one but which may extend to Rs 7500/-.

- 3. If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which shall not be less than Rs 3750/- but which may extend to Rs 22500/-.

- 4. If any person fails or willfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to Rs 750/- for each day for which

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such failure or neglect continues.

**Payment in case of death of the employed person whose wages are not disbursed**

Where the amount payable to an employed person as wages could not be paid on account of his death before payment or on account of his whereabouts not being known;

- a) Be paid to the person nominated by him in this behalf.
- b) Where no such nomination has been made or where for any reasons such amount cannot be paid to the person nominated, be deposited with the prescribed authority.

### **3F MINIMUM WAGES ACT, 1948**

#### **Employer's Checklist for Minimum Wages**

The employer must pay every employee wages as fixed by the Government.

- a. Wages must be paid in cash.
- b. For the fixation of minimum wages, the employment must have been in Schedule originally or added to the Schedule by a notification under Section 27 of the Act.
- c. The employer can take actual work on any day up to 9 hours in a 12 hours shift, but he must pay double the rate for any hour or part of an hour of actual work in excess of 9 hours or for more than 48 hours in any week.
- d. Once a minimum wage is fixed according to the provisions of the Act, the employer must pay to every employee engaged in a Scheduled employment, minimum wages notification for that class of employees.
- e. The employer should fix wage- period for the payment of wages at intervals not exceeding one month or such other larger period as may be prescribed.
- f. The employer should pay wages on a working day within seven days of the end of wage period or within 10 days if 1000 or more persons are employed in an establishment.

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- g.** The employer should pay the wages to a person discharged not later than the second working day after his discharge.
- h.** Every employer should maintain a register of wages at workplace specifying the following particulars for each wage period in respect of each employed person:
- a.** Minimum rate of wages payable;
  - b.** The number of days in which overtime was worked;
  - c.** The gross wages;
  - d.** The wages actually paid and the date of payment.
- i.** Every employer should get the signature or the thumb impression of every person employed on the wage book and the wage slips.
- j.** The employer should exhibit at main entrance to the establishment and its offices, a notice in respect of the following in English and local language:
- i.** Minimum rates of wages;
  - ii.** Abstracts of the Acts and rules made there under;
  - iii.** Name and address of the Labour Inspector/ Asst. Commissioner of Labour etc.

The minimum wages covers all workers in the sectors agricultural, industrial and small-scale sectors.

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This means:

- Farm labourers
- Landless labourers
- factory workers
- people working in cottage industries
- Construction workers etc.

The issue of fixation of minimum wages is of primary importance in a country like India where 300 million people are employed in the informal sector with no collective bargaining power. This is 93 percent of the workers. The enactment of the Minimum Wages Act in 1948 is a landmark in the labour history of India. The Act provides for fixation of minimum wages for notified scheduled employment.

As per Government of India, for all the States, the minimum wages have been fixed at about Rs 40 to 60 per day per person, average about Rs 50 per day for 25 days per month.

There are 45 scheduled employments in the Central sphere and 1232 in the state sphere for which minimum wages have been fixed. To protect the wages against inflation they were linked to rise in the Consumer Price Index.

The variable dearness allowance (VDA) came into being in 1991 and the  
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allowance is revised twice a year.

At present 22 states /Union Territories have these provisions. The states and Union Territories were further directed to ensure that minimum wages are not below Rs 45 per day for any scheduled employment.

### **Fixation of Minimum Wage Rate in India:**

Minimum rate of the wages fixed or revised consists of the following:

- A basic rate of wages and a special allowance, viz., cost of living allowance ;
- A basic rate of wages with or without cost of living allowance and cash value of concessions
- for supplies of essential commodities ;
- An all inclusive rate, i.e. basic rate, cost of living allowance and cash value of concessions.

The Government may fix the minimum rates of wages either by the hour, by the day, by the month or by such wage period as may be prescribed.

The minimum wage rate may be fixed at

- a) Time rate,
- b) Piece rate,

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- c) Guaranteed time rate and
- d) Overtime rate.

The Act provides that different minimum wage rate may be fixed for

- a) Different scheduled employments,
- b) Different works in the same employment,
- c) Adult, adolescent and children,
- d) Different locations or
- e) Male and Female.

Also, such minimum wage may be fixed by

- a) An hour,
- b) Day,
- c) Month, or
- d) Any other period as may be prescribed by the notified authority.

**Norms for fixing minimum wage:**

- Three consumption units per earner,
- Minimum food requirement of 2700 calories per average Indian adult,
- Cloth requirement of 72 yards per annum per family,

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- Rent corresponding to the minimum area provided under the government's Industrial Housing Scheme and
- Fuel, lighting and other miscellaneous items of expenditure to constitute 20 per cent of the total minimum wage
- Fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total Minimum Wages,
- Children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage etc. should further constitute 25% of the total minimum wage.

**Cost of Living Allowance:**

The minimum basic wages fixed are linked to consumer price index as a counter measure against inflation. The cost of living is set twice in a year. The Commissioner of Labour notifies the rate 1<sup>st</sup> of April and 1<sup>st</sup> of October. The rates are fixed on the basis of the average rise in the State industrial workers consumer price index numbers for half year ending December and June respectively.

**Variable Dearness Allowance:**

Dearness Allowance is payable to monthly, daily and piece rate earners. Every six

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months the respective State Governments issues the Cost of Living Index number for each and every scheduled employment.

**Offences and Penalties:**

Section 22 of the Act provides that any employer who 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 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. While 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. It is further stipulated under Section 22A of the Act that 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.

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## **CHAPTER 4 UNFAIR LABOUR PRACTICES**

According to Sec.2 (ra) of the Industrial Disputes Act, 1947, unfair labour practices refer to “any of the practices specified in the Fifth Schedule to the Industrial Disputes Act, 1947.

According to Section 25T of the Industrial Disputes Act, 1947 no employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice.

Fifth Schedule to the Industrial Disputes Act, 1947 provides a list as to what constitutes an unfair labour practices:

### **Unfair labour practices on the part of employers and trade union of employers**

1. To interfere with, restrain from or coerce workmen in the exercise of their rights to organize, from, join or assist a trade union, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, i.e.

- a) Threatening workmen with discharge or dismissal, if they join a trade union,
- b) Threatening a lock out or closure if a trade union is organized,

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- c) Granting wage increase to workmen at crucial periods of the union organisation, with a view to undermining the efforts of the trade union organization
2. To dominate, interfere with or contribute, support, financially or otherwise to any trade union, that is to say: -
- a) An employer taking an active interest in organizing a trade union of his workmen and
  - b) An employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members where such a trade union is not a recognized trade union.
3. To establish employer sponsored trade unions of workmen.
4. To encourage or discourage membership in any trade unions by discriminating against workman, that is to say:-
- a) Discharging or punishing a workman, because he urged other workmen to join or organize a trade union.
  - b) Discharging or dismissing a workman for taking part in strike (not being a strike which is deemed to be an illegal strike under this act).
  - c) Changing seniority rating of workmen because of trade union activities
  - d. Refusing to promote workmen to hire posts on account of their trade union activities
  - e. Giving unmerited promotions to certain

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workmen with a view to creating discord between other workmen or to undermine the strength of their trade union f. Discharging office bearers or active members of the trade union on account of their trade union activities.

**5. To discharge or dismiss workmen-**

- a) By way of victimization.
- b) Not in good faith but in the colorable exercise of the employer's right .
- c) By falsely implicating a workman in a criminal case on false evidence or concocted evidence.
- d) For patently false reasons.
- e) On untrue or trumped up allegations of absence without leave
- f) In utter disregard of the principles of natural justice.
- g) For misconduct of minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to disproportionate punishment.

**6. To abolish the work of a regular nature being done by workmen and to give such work to contractors as a measure of breaking a strike.**

**7. To transfer a workman malafide from one place to another under the guise**

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of following management policy.

8. To insist upon individual workman who are on a legal strike to sign a conduct bond as a precondition to allowing them to resume work
9. To show favoritism or partiality to one set of workers regardless of merit.
10. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for the years with the object of depriving them of the status and privileges of permanent workmen.
11. To discharge or discriminate against any workmen for filing charges or testifying against employer in any enquiry or proceeding relating to any industrial dispute.
12. To recruit workmen during a strike which is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognized trade unions.
16. Proposing or continuing a lock out deemed to be illegal under this act.

If the employer of any establishment commits any of these acts then he will be liable for an offence of unfair labour practice.

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**Unfair labour practices on the part of workmen and trade unions of workmen**

1. To advise or actively support or instigate any strike deemed to be illegal under the Industrial Disputes Act, 1947.
2. To coerce workmen in the exercise of their right to self-organization or to join a trade union or refrain from joining any trade union, that is to say-
  - a) For a trade union or its members to picketing in such a manner that non striking workmen are physically debarred from entering the work places
  - b) To indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognized union to refuse to bargain collectively in good faith with the employer.
  - I. To indulge in coercive activities against certification of bargaining representative.
  - II. To stage, encourage or instigate such forms of coercive actions and willful 'go slow', squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or the other staff.

- III.** To stage demonstrations at the residences of the employers or the managerial staff members.
- IV.** To incite or indulge in willful damage to employer's property connected with industry.
- V.** To indulge in the acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

**Punishment for committing unfair labour practice**

According to Section 25U of the Industrial Disputes Act, 1947, any person who commits any unfair labour practice will be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.



## **CHAPTER 5: LABOUR LAWS FOR WOMEN**

Women are known to work on farms, in road and housing construction, and of late, in factories manufacturing garments and electronic assembly plants. Skilled women workers also have been working in traditional village industries either as self employed or as paid workers. In hill areas, search for forest products including fuel wood engages a fairly large number of women. The majority of women work in the unorganized sector for low wages and at low levels of skills. The number of women workers during the last four decades has more than doubled from 40 million to 90 million. Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as labourers and cultivators.

### **Employment opportunities and wage disparity**

In India, as in many developing countries, gender inequality persists in terms of women participation in labour force, lower wages and salaries of women and access to resources. The percentage share of female population in total population in India is around 48%, while the work participation rate of females is only 26% as compared to 52% in males. About 24.9% of women in rural areas and about 14.8%

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of women in urban areas were in the workforce in India during 2004-05 (UNCTAD report). In urban areas, on an average wage/salary paid to females is only 75% of that paid to males, while in rural areas females are paid 58% of what is paid to the males. This wage disparity differs across sectors and education levels.

### **Applicability of Labour laws for women**

In addition to the Maternity Benefit Act, 1961 almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of occupational hazards concerning the safety of women at workplaces, in 1997 the Supreme Court of India in the case of Vishakha Vs. State of Rajasthan [(1997) 6 SCC 241] held that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for

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creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment (Standing Orders) Act, 1946.

The Factories Act, 1948 has the following provisions of interest to women (Sections 19, 22(2), 27, 42(1)(b), 48, 66, 79(1) and 114.):

- a) The Act prohibits women from being employed in cleaning; lubricating or adjusting certain machinery when it is in motion, if that would expose them to risk of injury. Women are also not allowed to work in the part of a factory where a cotton-opener is at work unless certain conditions are met.
- b) Suitable sanitation facilities must be provided.
- c) If more than 30 women are employed, the employer must provide a free crèche on the premises for children under six years of age. State governments may make rules governing these crèches, which may include requirements to provide clothes washing and changing facilities, child-feeding facilities and free milk and refreshments for the children.
- d) Women cannot be exempted from the requirement that the maximum working day for adults is 9 hours, and cannot work in factories between the hours of 6am and 7 pm (unless the factory falls within a specific exemption, but in any case, not between the hours or 10 pm and 5 am.). In relation to

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women, there must not be a change of shifts except after a weekly or other holiday. However, the State governments can change these requirements in the fish curing and canning industries.

- e) Periods of absence on maternity leave are included in calculating periods of service for the purposes of annual leave.

## **GUIDELINES TO PREVENT SEXUAL HARASSMENT OF WORKING WOMEN**

Sexual harassment is a serious criminal offense which can destroy human dignity and freedom. In an effort to promote the well being of all woman employees at the work place the following code of conduct has been prescribed

1. It shall be duty of the employer to prevent or deter the commission of any act of sexual harassment at the work place.
2. Sexual harassment will include such unwelcome sexually determined behavior by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as :-

- I. Eve-teasing
- II. Unsavoury remarks

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- III.** Jokes causing or likely to cause awkwardness or embarrassment
- IV.** Innuendos and taunts
- V.** Gender based insults or sexist remarks
- VI.** Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls) and the like
- VII.** Touching or brushing against any part of the body and the like
- VIII.** Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings.
- IX.** Forcible physical touch or molestation.
- X.** Physical confinement against one's will and any other act likely to violate one privacy and includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to person belonging to the other sex, only on the ground of sex. Explanation :-  
Where any comment, act or conduct is committed against any person and such person has a reasonable apprehension that,

- i.** It can be humiliating and may constitute a health and safety problem, or
- ii.** It is discriminatory, as for instance, when the woman has reasonable grounds

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to believe that her objection would disadvantage her in connection with her employment or study, including or promotion or advancement or when it creates a hostile environment, or

**iii.** It would result in adverse consequences if she does not consent to the conduct or raises any objection, it shall be deemed to be sexual harassment.

**3. Eve-Teasing:-** Eve-teasing will include any person willfully and indecently exposing his person in such a manner as to be seen by other employees or use indecent language or behave indecently or in a disorderly manner in the work place. It will also include any word, gesture or act intended to insult the modesty of a woman by making any sound or gesture or exhibit any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such women or intrudes upon the privacy of a woman employee.

**4. Sexual harassment of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her in a manner which prevents or impairs the employee's full utilization of employment benefits or opportunities. It also includes behaviour that covertly or overtly uses the power inherent in the status of the employer or**

the head of the institution or management to affect negatively an employee's work experience or career opportunities and/or to threaten, coerce or intimidate an employee to accept sexual advances or making employment decision affecting the individual or create an intimidating, hostile or offensive working environment.

5. It shall be the duty of the employer to prevent or deter the committing of any act of sexual harassment at the work place.
6. All employers should take appropriate steps to prevent sexual harassment of any nature. Express prohibition of sexual harassment should be notified at the work place and also published for the general information of the employees and evaluated in an appropriate manner periodically.
7. Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards women at the work place and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment in that organisation.
8. Women employees should not be treated as sex objects.
9. No male employee shall outrage or insult the modesty of a female employee at the work place.
10. No male employee shall make any type of sexual advances to woman

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colleagues or woman subordinates.

**11.** The head of the organisation shall constitute a Complaints Committee as specified in the Judgement of the Supreme Court, i.e., the Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels such Complaints Committee should involve a third party either a non- government organisation or other body who is familiar with the issue of sexual harassment.

**12.** Conducting enquiry by the Complaints Committee:-

- Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident.
- The complaint shall contain all the material and relevant details concerning the alleged sexual harassment including the names of the contravenor and the complaint shall be addressed to the Complaints Committee.
- If the complainant feels that she cannot disclose her identity for any particular reason the complainant shall address the complaint to the head of the organisation and hand over the same in person or in a sealed cover. Upon receipt of such complaint the head of the organisation shall retain the

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original complaint with himself and send to the Complaints Committee a gist of the complaint containing all material and relevant details other than the name of the complaint and other details which might disclose the identity of the complainant.

**13.**The Complaints Committee shall take immediate necessary action to cause an enquiry to be made discreetly or hold an enquiry, if necessary.

**14.**The Complaints Committee shall after examination of the complaint submit its recommendations to the head of the organisation recommending the penalty to be imposed.

**15.**The head of the organisation, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being heard to the person complained against submit the case with the Committee's recommendations to the management.

**16.**The Management of the Organisation shall confirm with or without modification the penalty recommended after duly following the prescribed procedure.

**17. Disciplinary Action:** Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

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**18. Worker's Initiative:** Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other appropriate fora and it should be affirmatively discussed in periodical employer-employee meetings.

**19. Third Party harassment:** Where sexual harassment occurs as a result of an act or omission by any third party or outsider the employer and the persons in charge shall take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

**20. Annual Report:** The Complaints Committee shall prepare an Annual Report giving a full account of its activities during the previous year and forward a copy thereof to the Head of the Organisation concerned who shall forward the same to the government department concerned with its comments.

Nothing contained in this code shall prejudice any right available to the employee or prevent any person from seeking any legal remedy under the National Commission for Women Act 1990, Protection of Human Rights Commission Act 1993 or under any other law for the time being in force.

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate

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authority. In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.



## **CHAPTER 6: LABOUR COURTS / INDUSTRIAL TRIBUNALS**

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

### **Labour Courts**

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

### **Appellate Labour Courts**

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

- a) When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to :

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

### **Court Fee**

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

### **Matters that fall within the jurisdiction of Industrial Tribunals**

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

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6. Shift working otherwise than in accordance with standing orders

7. Classification by grades

8. Rules of discipline

9. Retrenchment of workmen and closure of establishment

**Matters that fall within the jurisdiction of Labour Courts**

1. The propriety or legality of an order passed by an employer under the standing orders .
2. The application and interpretation of standing order
3. Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed.
4. Withdrawal of any customary concession or privilege
5. Illegality or otherwise of a strike or lock-out; and 6. All matters other than those being referred to Industrial Tribunals.

**Stages of adjudication in labour or industrial disputes**

The first is receiving a reference from the appropriate Government or filing of the labour dispute in the Labour Court. The next step is sending notice to the Management and after filing of the response by them, the matter is fixed for

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adjudication. The fourth step is recording the evidence of the parties and hearing the arguments.

### **The final conclusion of the dispute**

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

### **Execution of Awards**

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



## **CHAPTER 7: AUDIT UNDER LABOUR LEGISLATIONS**

### **INTRODUCTION:**

Audit under labour laws is a new concept, which is necessitated, in direct consequence of its non-compliance in large scale. Even after over six decades of attaining independence, India is still plagued with victimisation, non-compliance of labour legislations is still at large. An analysis of these practices reveals that many employers resort to short cut methods to avoid the compliance of labour legislations. There is no system in place for reporting non-compliance of labour legislations by an independent professional like Company Secretary. Workers in India report many cases relating to non-compliance of labour legislation by employers.

Labour Audit envisages a systematic scrutiny of records prescribed under labour legislations by an independent professional like Company Secretary in Whole Time Practice (hereinafter referred to as PCS), who shall report the compliance and non-compliance/extent of compliance and conditions of labour in the Indian industry/ Factory/ Other Commercial Establishments. The Report should ideally, be addressed to the appropriate government. The appropriate government may

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provide for filing fees for such report on the lines of filing fees charged by Registrar of Companies for the documents filed with them.

**SCOPE:**

1. The audit should cover all labour legislations applicable to an Industry/Factory or other commercial establishments. If a particular piece of labour legislation is not applicable to a specific employer, the same should distinctly be disclosed in the report of an Independent Professional like Company Secretary in Whole Time Practice.
2. The mode of disclosure has to be decided in consultation with the Ministry of Labour. An illustrative list of legislations, which may be covered under Labour Audit, is given in this lesson.

**METHODOLOGY FOR CONDUCTING THE AUDIT:**

1. At the commencement of audit, the Independent Professional like Company Secretary in Whole Time Practice should define the scope of his audit.
2. The scope will certainly differ from employer to employer. Accordingly, if the employer does not own a factory, the provisions of the Factories Act, 1948 will not be applicable. Similarly, certain factories in remote areas may

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not have the facilities of Employees State Insurance Corporation. In such cases, there is no need to ensure compliance of ESI Act.

3. As stated Independent Professional like Company Secretary in Whole Time Practice should identify various Central and State Acts and Rules that are applicable to an employer. Based on such identification, he should commence scrutinising the compliance of provisions of various Acts/Rules.
4. It will be in the fitness of things that the Report is drafted in the same manner as PCS do for Compliance Certificate under the proviso to Section 383A(1) of the Companies Act, 1956.

### **BENEFITS OF LABOUR AUDIT:**

#### **Benefits to Labour:**

1. Introduction of Labour Audit will boost the morale of the workers to a large extent.
2. It will increase their Social Security.
3. It will inculcate on workers a sense of belongingness towards their employer.
4. It will secure timely payment of wages, gratuity, bonus, overtime, compensation etc. of the workers.
5. Timely payment of entitlements will reduce absenteeism in the organisation.

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**Benefits to Employer:**

1. Increased productivity in view of lower absenteeism in the enterprise.  
Higher the productivity, higher will be the profit.
2. Status in the Society for the employer will increase, in view of the recognition that may be bestowed on them by the Government.
3. Strict compliance of all labour legislation will be ensured by each of the employers, which, in turn, will reduce or even eliminate penalties / damages / fines that may be imposed by the Government.
4. Co-operation of and understanding with the workers will improve labour relations. The congenial atmosphere is indispensable for good corporate governance.

**Benefits to Government:**

1. Reduction in the number of field staff for inspection of Industries/Factories/ Commercial Establishments as most of their work will be done by an Independent Professional like Company Secretary in Whole Time Practice.
2. Compulsory Labour Audit will ensure compliance of past defaults.
3. In case the Government seeks to introduce filing fees for Compliance Report under Labour Legislation, the revenue of the Appropriate Government will rise phenomenally.
4. India's image before the International

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**DISCLAIMER:**

The above information has been collected from the following sources:

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