CHAPTER – V

WOMEN’S RIGHTS AND LABOUR STATUTES

Labour laws apply to that area of activity where workers are working under a contract of employment. As the workers are being subject to exploitation and discrimination and their human rights being violated so the need arose for enactment of the labour laws for their protection and security. Working women form a major thick peace of society. Amongst labourers, the conditions of working women is particularly vulnerable. They belong to the weaker section of the society. They need equal treatment and special protection under the law. This special treatment to women workers is due to the peculiar and psychological reasons, such as their physical build up, poor health due to repeated pregnancies, home drudgery and due to nature of occupation in which they are engaged. To protect this vulnerable group, many legislative provisions have been provided in almost all labour statutes which address problems of women labourers in their employment situation. The Second National Commission on labour, 2002 has also justified the protective discriminatory legislation in favour of women by recommending that all such legislations are necessary for women workers.

Early measures for their protection were simple in character and were designed only to regulate the hours of work and employment. The establishment of the International Labour Organisation in 1919 influenced considerably the activities of the State in this field. Consequently, such laws were passed which not only regulated the hours of work but also contained provisions of health, safety and welfare of women workers and guarantees equality before law and equal treatment to women workers. Most of these laws have been inspired by the Conventions and Recommendations adopted by the International Labour Organisation.

Besides, measures adopted by the Government for the implementation of these ILO Conventions, various other provisions have been made in the labour legislations for the protection and welfare of women workers. These labour

These legislations relate to regulation of employment in dangerous occupations/employments, prohibition of night work, restriction on carriage of heavy loads, wages, health, gratuity, maternity relief, equal pay for equal work, social security, provision of crèches and other welfare facilities etc.

Thus, in the present chapter, an humble attempt has been made to discuss the Women’s Rights which are provided in the Indian labour laws. For the sake of convenience the rights contained in the labour laws has been divided in the following heads (1) Measures in regard to health, safety and welfare for women (2) Social security measures for women (3) Wage protection for women.

1. Measures in regard to health safety and welfare for women

The efficient working process needs sound health of the women engage therein, safety of the workers from accidents causing partial or total disablement and sudden misfortunes affecting the victims and their dependents. Unless the workers are physically and mentally healthy they cannot perform their duties effectively. Smooth and proper working cannot be possible by the workers unless body, mind and life of workers is secured. The basic aim of the welfare services in an industry is to improve the living and working conditions of workers and
promoting the physical, psychological and general well being of the working population.

It is quite natural that if the facilities are provided to the women workers they may be carefree and mentally satisfied and so they would in a position to work in the factory without worry, mental disturbance and in high spirit. Thus, it is necessary to adopt measure to maintain their health and to provide safety and welfare to the women workers and to regulate their working conditions. There are various labour laws which deals with health, safety and welfare to women workers which are as follows:

A. *The Factories Act, 1948*

The Factories Act is a welfare legislation enacted with an intention to regulate working conditions in the factories and to provide health, safety and welfare measures.\(^1\) Besides, the Act envisages to regulate the working hours leave holidays, overtimes, employment of children, women and young persons etc.\(^2\) The Act was drastically amended in 1987 whereby safeguards against use and handling of hazardous Substances and procedures for setting up hazardous industries were laid down.

**Special provisions relating to women**

1. **Latrine and Urinal Facilities**

Separate conservancy facilities are provided to women workers in Factories Act, 1948.\(^3\) The Factories Act, 1948 makes it obligatory for every factory to maintain an adequate number of latrines and urinals of the prescribed type separately for men and women workers. Such facilities are to be conveniently situated and accessible to workers at all times while they are in factory. Every latrines is required to be under cover and so partitioned off as to secure privacy and have a proper door and fastenings. Sweepers are required to be employed to keep latrines, urinals and washing places clean. Standard of construction and the scale of the latrine accommodation to be provided for men and women workers are contained in the rules framed by the concerned state government.\(^4\)

2. **Prohibition of work in Hazardous Occupations**

The Factories Act, 1948 prohibits employment of women in dangerous occupations. Section 22(2) of the Factories Act, 1948 provides that no women
shall be allowed to clean, lubricate or adjust any part of a prime mover or of any
transmission machinery while the prime mover or transmission machinery is in
motion, or to clean, lubricate or adjust any part of any machine if the cleaning,
lubrication or adjustment thereof would expose the women to risk of injury from
any moving part either of that machine or of any adjacent machinery.

In an English case *Pearson v. Belgium Co. Ltd.*, the question was whether
stationary parts of a machine can be cleaned by woman if the machine as a whole
is in motion. It was held by the Court that if the machinery as a whole is in motion
even stationary parts of the machine cannot be cleaned by woman. But in *Richard
Thomas and Baldwins Ltd. v. Cummings*, the Court observed that there would be
no breach of statutory duty if an injury occurs while the machinery is unfenced, if
the power is cut off and the machinery is under repairs and the parts are not in
motion but are moved by hand for purposes of repairs.

The Factories also prohibit the employment of women in pressing cotton
where a cotton opener is at work. There is a proviso that if the feed end of a
cotton opener is in a room separated from the delivery end by a partition to the
roof or to such height as the inspector may in any particular case specify in
writing, women may be employed on the side of the partition where the feed end is
situated. In *B.N. Gamadia v. Emperor*, the Bombay High Court observed that the
provisions of the Section are not complied with if there is a door made in a
partition between the two portions of the room and if it can be opened by a woman
employed although the door is shut, yet it is not locked nor other effective means
are taken to prevent its being opened by a woman. This shows that both legislature
and judiciary have shown concern about the security of women workers and every
precaution is being taken to protect them against the risks of employment.

Again Section 87 of the Factories Act, 1948 empowers the State
Government to prohibit employment of women in dangerous operations.
According to this Section where the State Government is of the opinion that any
manufacturing process or operation carried on in any factory exposes any persons
employed in it to a serious risk of bodily injury, poisoning or disease, it may make
rules applicable to any factory or class or description of factories in which
manufacturing process or operation is carried on specifying the manufacturing
process, or operation and declaring it to be dangerous and prohibiting or restricting the employment of women in the manufacturing process or operation.

3. **Washing and Bathing Facilities**

Separate facilities washing and bathing are provided for women workers under the Factories Act. According to Section 42 (1)(b) of the Act, separate and adequately screened washing facilities shall be provided for the use of male and female workers. Such facilities shall be conveniently accessible and shall be kept clean. However, the State Government is empowered to prescribe standards of adequate and suitable facilities for washing.

4. **Crèches**

A crèche is a nursery. It is a place where babies of working mothers are taken care of while the mothers are at work. Section 48 of the Factories Act, 1948 provides that in every factory wherein more than 30 women workers are ordinarily employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such women. Such rooms shall provide adequate accommodation, and shall be adequately lighted and ventilated. Such rooms shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants. The State Government is authorised to make rules:

1. Prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided to be used as crèches,

2. Requiring the provision in factories of additional factories for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing,

3. Requiring the provision in any factory of free milk or refreshment or both for such children.

4. Requiring that facilities shall be given in any factory of free milk or refreshment or both for such children.

5. Requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.
The State Governments have been given wide powers to make rules for the benefit and welfare of children of working mothers and to provide facilities to mothers in this regard.

5. **Hours of Work**

Under the Factories Act, 1948, the daily hours of work of adult workers have been fixed at 9.\(^{14}\) Though the Act permits men under certain circumstances to work for more than 9 hours on any day it does not permit women to work beyond this limit.\(^{15}\) Also in case of women workers there shall be no change of shifts except after a weekly holiday or any other holiday.

The maximum permissible hours of work for men and women are 48 per week in factories.\(^{16}\) The daily spread over of working hours has been limited to 10½ hours in factories. The Act provides that no adult worker whether man or woman employed in factories shall be allowed to work for more than 5 hours at a stretch without a rest pause of at least half an hour.

6. **Maximum Permissible Load**

To safeguard women against the dangers arising out of lifting to heavy weight, the Factories Act authorise the appropriate Governments to fix the maximum load that may be lifted by women. Rules framed by all the State Governments (Except U.P.) have fixed the following maximum weights for women employed in factories.

- Adult females : 65 lbs
- Adolescent females : 55 lbs
- Female children : 30 lbs

However, under the U.P. Factories Rules the following weights have been fixed:

<table>
<thead>
<tr>
<th>Category</th>
<th>For intermittent work</th>
<th>For continuous work</th>
</tr>
</thead>
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<td>Adult females</td>
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<td>44 lbs</td>
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<tr>
<td>Adolescent females</td>
<td>50 lbs</td>
<td>38 lbs</td>
</tr>
<tr>
<td>Female children</td>
<td>30 lbs</td>
<td>20 lbs</td>
</tr>
</tbody>
</table>
7. **Prohibition of Night work**

The Factories Act, 1948 prohibit the employment of women during night hours. It is under special circumstances and in certain industries that this restriction may be relaxed.

According to Section 66(1)(b) of the Factories Act 1948, no woman shall be required or allowed to work in any factory between the hours of 6 a.m. and 7 p.m. However, the State Government may by notification in the official gazette, in respect of any factory or group or class or description of factories, vary the limits pertaining to night duties but no such variation shall authorise the employment of any woman between the hours of 10 p.m. and 5 p.m.\(^{17}\) Section 66(2) further empowers the State Government to make rules providing for exemption from the restriction set out in Sub-Section (1) of the Section 66 concerning restrictions on employment of women to such an extent and Subject to such conditions as it may prescribe of women working in fish curing or fish canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to or deterioration in any raw material. However, such rules made by the Government shall remain in force for not more than three years at a time.\(^{18}\)

In *Triveni K.S. and Others v. Union of India and others*,\(^{19}\) the Constitutionality of Section 66 (1) (b) was challenged being discriminatory on the basis of sex. The High Court held that women should not be employed during night for their own safety and welfare was a philosophy of a bygone age out of tune with modern claims of equality, especially between sexes. With regard to exception given to fish currying and canning industry, it was observed that it looked an absurd argument that women would be safe in such industries but not safe in the textile industry. Consequently Section 66(1)(b) of the Act was struck down an unConstitutional by the High Court and declared that the same safeguard as provided women in fish industry should be given to women workers in others industries during night time.

However, the Division Bench of Kerala High Court in *Leela v. State of Kerala*\(^{20}\) took a contrary view and held that the contention of the petitioners that the said Section violates Articles 14, 15 and 16 of Constitution as it discriminates
against them on grounds only of sex as not tenable and as such said Section providing special protection to women did not suffer from the vice of discrimination.

However, the Union Government has decided to amend the provision to provide for women working in late night shift in I.T. industries, call centres etc. But flexible work timings for women should not be allowed unless adequate safeguards in factory as regards to occupational safety and health, equal opportunity for women workers, adequate protection for dignity, honour, and safety and their transportation from the factory premises to the nearest point of their residence are made.

Things came full circle in August 2005 when Parliament passed an amendment to the Factories Act, 1948 allowing women to work the night shift in factories. The reversal of the ban on night work for women perhaps reflects the course that the struggle for women’s rights has charted. Early impulses that attempted to shield or save women from, for instance, unsafe or “dishonourable” occupations, have given way to claims that demand freedoms and opportunities of all manner, consistent with full citizenship and human rights. That being said, there is an entire system of support structures and redress mechanism that must swing into motion to enable women to enjoy those rights, given that we live in a society still diven by inequalities.

**General Provisions**

1. **To provide health measures**

   The occupier of factory is obliged to undertake following measures for ensuring good health and physical fitness of workers whether male or female:

   (a) **Cleanliness and disposal of wastes and effluents**

   The occupier is required to keep the factory premises clean and free from waste and effuvia he shall make arrangements for sweeping and removing dirt and refuse daily, cleaning with disinfectant, effective treatment and disposal of wastes and effluents and maintaining proper drainage.

   (b) **Ventilation, temperature and humidity**

   The factory premises should be adequately ventilated by circulation of fresh air and comfortable temperature should be maintained in every workroom.
Besides, artificially increased humidity should be controlled by use of purified water.

(c) Prevent dust and fumes

Accumulation and inhalation of dust and fumes or other impurity of such a nature is likely to be injurious to health of workers should be prevented by use of exhaust fans and other safeguards.

(d) Avoid overcrowding

The workplace should not be overcrowded by workers and minimum space of 14.2 cubic meters per worker in a new factory and 9.9 cubic meters per workers in an existing factory should be provided.

(e) Lighting and drinking water

Sufficient and suitable natural and artificial lights, wholesome drinking water at suitable points and during hot season, cool water in factories employing 250 or more workers, should also be provided.

2. To undertake safety measures

Every factory must take appropriate safety measures as provided under the Act.

(a) Fencing of all dangerous and moving parts of the machinery while in motion or use; providing sufficient space for workers to operate self-acting machines, encasing and guarding of all machinery installed in the factory and every set of screw, bolt, spindle, wheel or pinion so as to prevent danger, taking necessary steps to ensure that the maximum safe working peripheral speed of every revolving machine, etc. and the maximum safe working pressure of any pressure plant or machinery, is not accepted.

(b) Providing suitable striking gear or other such device for the movement of driving belts of any transmission machinery and proper locking of device which can shift inadvertently from “off” to “on” position. All hoists, lifts and other lifting devices for raising or lowering persons or goods shall be of good construction, sound material, adequate strength and free from all defects. The safe working load of each device shall be clearly marked thereon and never exceeded.
(c) Keeping floors, stairs, steps, etc. free from obstructions and slippery substances and provided with substantial handrails, wherever necessary; providing safe means of access to every place of work, fencing all places from where persons are likely to fall and covering of all dangerous pits, sumps, openings in floors, etc.\(^\text{30}\)

(d) Taking necessary precautions and providing screens or goggles for production of eyes, precautions to prevent exposure to dangerous fumes, gases or dust, and measures to prevent accumulation of explosive or inflammable dust, fumes, gases or vapours.

(e) Providing safe means of escape in case of fire, necessary fire-fighting equipments and training workers about use of such equipments.\(^\text{31}\)

3. **Welfare Amenities**\(^\text{32}\)

Every factory provides adequate and suitable facilities for:

(a) Sitting arrangements for employees who are required to work in standing position in order that they may take short rests in the course of their work.

(b) First aid boxes or cupboards equipped with the prescribed contents (at least one box for every 150 workers) shall be provided.

(c) Ambulance rooms (when 500 or more workers are ordinarily employed in the factory). The ambulance room shall be of the prescribed size, having equipments, medical and nursing staff as prescribed, which shall be made readily available during all working hours.

(d) A canteen (when ordinarily 250 or more workers are employed in the factory).

There are a lot of cases which dealt with the issue, namely, whether the workers employed by the contractor in canteen may be treated as employees of the principal employer?

In *Saraspur Mills Co. Ltd. v. Ramanlal Chimanlal*,\(^\text{33}\) the Supreme Court held that workers employed in a canteen even if run by a cooperative society were ‘workers’ as the occupier of the factory is under a mandatory obligation to maintain and run a canteen under Section 46 of the *Factories Act, 1948*. 
This question was more elaborately dealt with in *M.M.R. Khan v. Union of India*. In this case, the Supreme Court was concerned with canteen run by Railway Establishments falling under three different categories: Firstly, statutory canteens – these canteens are provided compulsorily in view of the provisions of Section 46 of the *Factories Act, 1948*. Since the Act admittedly applies to the establishments concerned and the employees working in the said establishment exceed 250. Secondly, non-statutory recognized canteens – these canteens are run in an establishment which may or may not be governed by the Act but which admittedly employ 250 or less employees and hence, it is not obligatory on the employer to maintain. However, they are set up as a staff welfare measure where the employee exceeds 100. These canteens are established with the prior approval and recognition of the employer as per the procedure contemplated under the Rules and Regulations of the Establishment; and thirdly, non-statutory and non-recognized canteens – these canteens are run at establishments under the second category but employ 100 or less than 100 employees and are established without the prior approval of or recognition of the employer.

Again in *All India Railway Institute of Employees Association v. Union of India*, The Supreme Court dealt with same question. The Court held that the employees in the Railway Institute or Clubs were not employees of the Railway Establishment.

*Parimal Chandra Raha v. Life Insurance Corporation of India* is a leading case on the Subject. Here the Supreme Court ruled:

(a) Where there is a statutory obligation (e.g. under Factories Act, 1948) to provide and maintain a canteen for the use of his employees, the canteen becomes the part of the establishment and the workers employed in such canteen are the employees of the management.

(b) Where there is no statutory obligation but there is otherwise obligation on employer to provide a canteen such as part of service condition, the canteen becomes the part of the establishment and the
workers employed in such canteen are the employees of the management.

(c) Where there is no obligation to provide a canteen but there is an obligation to provide facilities to run canteen, the canteen does not become a part of the establishment.

However, in *Indian Petrochemicals Corporation Ltd. and another v. Shramic Sena and Others,* a new gloss was given to this decision by stating that the presumption arising under the *Factories Act* in relation to such workers is available for the purpose of the Act and no further. The Supreme Court held that the Factories Act, 1948 does not govern the rights of employee with respect to (i) recruitment (ii) seniority (iii) promotion (iv) retirement benefits, etc. These are governed by other statutes, rules, contracts or policies. Therefore, employees of the statutory canteen cannot *ipso facto* become the employees of the establishment for all purpose. The Court added that (i) It should be borne in mind that the initial appointments of these workmen are not in accordance with the rules governing appointments; (ii) Rules governing establishments; (iii) Rules governing policy of recruitment of the management; (iv) The aforesaid recruitments could also be in contravention of the various statutory orders including reservation policy; (v) Further as an instrumentality of the State has an obligation to conform to the requirements of Article 14 and 16 of the Constitution; (ii) In spite of the same, the services of the workmen are being regularized by the Supreme Court not as a matter of right of workmen but with a view to eradicate unfair labour practices and bring equity to undo social injustice.

The Supreme Court again in *Indian Overseas Bank v. I.O.B. Staff Canteen Workers’ Union and Another,* while considering the effect of *Parimal Chandra Raha and Others v. L.I.C. of India and Others and Indian Petrochemical Corp. Ltd. and another v. Shramic Sena and Others* ruled that the workers of a particular canteen statutorily obliged to be run a canteen render to more than to deem them to be workers for limited purpose of the Factories Act and not for all purposes and in cases where it is a non-statutory recognized canteen the Court should find out whether the obligation to run was implicit or explicit on the facts proved in that
case and the ordinary test of control, supervision and the nature of facilities are those of the main establishment.”

In *Barat Fritz Werner Limited v. State of Karnataka,* the Supreme Court ruled that the workers working in canteens even if employed through the contractor have to be treated as “workers” and no restricted meaning can be given even where the *Factories Act, 1948* is not applicable to an establishment but canteen facility is provided as a condition of service.

In *Hari Shankar Sharma and Ors. v. Artificial Limbs Manufacturing corporation and Ors,* the Supreme Court held that the employees of a statutory set up, or of any other facility, provided by the establishment in discharge of statutory mandate need not necessarily be employees of the establishment as Section 46 of *Factories Act* leaves it to the discretion of establishment to resort to direct employment or to employ a contractor and their status depends upon the manner of discharge of statutory obligations. There it was further held that the condition in the agreement between the contractor and the establishment that the new contractor should retain the employees who had served under the earlier contractors would not necessarily mean that such employees were employees of the establishment.

In *Mishra Dhattu Nigam Ltd. v. M. Venkataiah and Ors.*, the Supreme Court held since the management was required by the *Factories Act,* to provide canteen facilities, the workers engaged through the contractors were the employees of the principal employer, and the canteen workers engaged through the contractors were entitled to regularisation of their services.

In *Gopalakrishnan and Others v. Cochin Port Trust,* the only question that arose in this petition was whether petitioners who were employees of the canteen established by Cochin Port Trust, were entitled in regularisation in the service of the Port Trust. The High Court held they were so entitled and allowed the petition. It observed the canteen in question was a statutory canteen established under Section 46 of the *Factories Act, 1948.* The Port Trust was having over all control, including, financial, over the functioning of the canteen.
The petitioners were therefore held entitled to be treated as employees of the Port Trust Subject to their eligibility at time of appointment as to age limit, health standard, educational qualification etc.

In *Haldia Refinery Canteen Employees Union and Another v. Indian Oil Corporation Ltd. and Others*[^43^], settling a lingering debate, the Supreme Court has ruled that even if management of an organisation exercises control over the types of workers to be engaged in its canteen run by a contractor, they do not become employees of the office concerned.[^44^]

The ruling was given by a bench comprising Justice Ashok Bhan and Justice A.K. Mathur, while dismissing an appeal filed by Haldia Refinery Canteen Employees Union Challenging a Calcutta High Court Judgment.

In this case the appellants were working in the statutory canteen run by the respondent through contractor in its factory at Haldia, District Midnapore, West Bengal. Respondent was treating the appellant as the employees of the contractor. Aggrieved against this the appellant filed the writ applications in the High Court.

Appellant-Employees Union, despite initial success before single judge, could not retain it when the respondent cooperation took the matter up in appeal before a Division Bench. It held the appellants were not entitled to regularisation as the employees of the respondent, since they were employees of the contractor who ran the canteen, albeit statutory, in the factory of respondent. Aggrieved against the aforesaid judgment of the Division Bench, the present appeal has been filed in Supreme Court by appellant – Employee Union.

The Supreme Court, after going through the conditions of the contract, observed the control that the respondent exercised over the contractor, was only to ensure that the canteen was run in efficient manner. It did not mean the canteen employees (by virtue of such control) became the employment of the management. Workmen in a statutory canteen such as the appellants, became workers of the establishment for the purpose of the Factories Act, 1948 only and not for any other purpose, the Supreme Court pointed out.

The Supreme Court referred also to certain facts which rendered the claim of the appellants not tenable. First, the management was not reimbursing to the contractor the wages of the workmen. Second, two settlements had been made
between the contractor and the canteen workmen. The respondent was not a party to either of them. So the appeal was dismissed.

This ruling assumes significance since the Apex Court had, in its earlier judgments held that the workers in a canteen attached to an office would be treated as employees of that office if the management exercised control over the selection of the canteen workers and payment of their salaries, even if they were being engaged by a contractor.

(e) Rest rooms/shelters and lunch rooms with provision for drinking water (when ordinarily 150 or more workers are employed in the factory).

4. **Annual leave with wages**

   A workers who works for 240 days is allowed an annual leave with wages at the rate of one day for every 20 days of work. Annual leave can be accumulated up to 30 days for adults and 40 days for children.\(^45\) The annual leave pay is to be paid at the rate average to the daily wage immediately preceding the leave. This will include basic and other allowances except boxes and overtime.\(^46\)

   It is now clear that there are various provision in Factories Act which provide health safety and welfare for women workers. Unfortunately, all of these provisions are applicable to the organised sector which employ barley 10 percent of the total female labour force. So there is urgent need to extent these provisions to unorganised sector where majority of women work.

   In factories Act the hours of work for men and women working in perennial factories are the same at present. It is, therefore, necessary to reduce the hours of work from 9 to 6 for women because they have to work both inside their homes as well as outside. A woman worker is both a domestic drudge as well as wage earner. It is in the interest of working women and her family to set special limit to her hours of work.

B. **The Mines Act, 1952**

   The Act has been enacted to amend and consolidate the law relating to the regulation of labour and safety in mines. It seeks to regulate the working conditions in mines by providing for measures required to be taken for the safety and security of workers employed therein and certain amenities for them. The Act contains detailed provision relating to their health and safety, hours and limitation
of employment, leave with wages. The Act extends to the whole of India and applies to all mines as defined in the Act. The Act came into force w.e.f. 01.07.1952.

The Act applies to all ‘mines’ which means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes (i) All borings, bore holes, oil wells and accessory crude conditioning plants including the pipeline within the oilfield, (ii) all shafts belonging to a mine, (iii) all levels and inclined planes, (iv) all open cast workings, (v) conveyors or aerial ropeways used for the removal of minerals or refuse from the mine, (vi) workshops and stores within the precincts of a mine, (vii) railways, tramways and sidings belonging to a mine, and (viii) the power station supplying electricity for the purpose of working the mine.

**Special Provision relating to women**

1. **Prohibition of Night Work**

   The Mines Act, 1952 prohibits employment of women during night hours. According to Section 46(1)(b) of this Act no women shall, notwithstanding anything contained in any other law be employed in any mine above ground except between the hours 6 a.m. and 7 p.m. Every women employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment. However, notwithstanding anything contained in Sub-Section (1), the Central Government may, by notification in the official gazette, vary the hours of employment above ground of mine or class or description of mines, so that no employment of any women workmen between the hours of 10 p.m. and 5 a.m. is permitted thereby.

2. **Prohibition of work in hazardous occupation**

   The Mines Act, 1952 also prohibits employment of women in any part of a mine which is below ground. Section 57(j) of the Mines Act, 1952 empowers the Central Government to make regulations for prohibiting, restricting or regulating the employment of women in mines or in any class of mines or on particular kinds of labour which are attended by danger to the life, safety or health of such persons.
Also, the Indian Merchant Shipping Act puts a ban on recruitment of women except as nurses, to take employment on board sea-going ships.

3. Creches

Under the Mines Act, 1952 the Central Government is authorised to make rules requiring the mines to maintain crèches if women workers are or were employed at one day of the preceding 12 months. Thus the Mines Creche Rules 1966 make it obligatory for the owner, agent or manager of every mine, wherein women are employed or were employed on any day of the preceding 12 months, to provide a crèche at his colliery to look after the children of such workers. Each crèche is required to have a trained nurse and the prescribed set of equipment. Supply of food to the children attending crèche is also obligatory in the part of the management.

4. Latrine and Urinal Facilities

Section 20 says that there shall be provided, separately for males and females in every mine, a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the mine at all times. It also provides that the latrines and urinals shall be adequately lighted, ventilated and maintained in a clean and sanitary condition. It also empowers Central Government to specify the number of latrines and urinals to be provided in any mine, in proportion to the number of males and females and provide other matters relating to sanitation.

General Provisions

1. Provision for Drinking Water

The owner or agent of a mine shall make effective arrangements to provide and maintain, at suitable points conveniently situated, a sufficient supply of cool and wholesome drinking water for all persons employed therein. In the case of persons below ground, any other effective arrangements shall be made for supply of drinking water. All such points shall be legibly marked ‘Drinking Water’ in a language understood by a majority of all the persons employed in the mine.

2. Medical Appliances

In every mine, prescribed number of first aid boxes or cupboards equipped with prescribed contents shall be provided and maintained so as to be readily
accessible during all working hours. Every first-aid box or cupboard shall be kept in the charge of a responsible person who is trained in first aid treatment and who shall always be readily available during the working hours of the mine.

In every mine suitable arrangements shall be made for the conveyance to hospitals or dispensaries of injured or ill persons.

In every mine wherein more than 150 persons are employed, there shall be provided and maintained a first aid room of the prescribed size having the prescribed equipment and staff.

3. **Safety Measures**

   If in respect of the operations of a mine it appears to the chief inspector or only inspector that any matter, thing or practice is dangerous to human life or safety or is defective so as to threaten bodily injury to any person employed therein, he may give written notice to the owner, agent or manager of the mine asking him to remedy the situation within the specified time and in the specified manner. If the terms of the notice are not complied with, he may prohibit the employment in or about that mine of any person after the expiry of the specified period.

   Similarly, in case of urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, e.g. when there is flooding of a mine or emission of poisonous gas, the chief inspector or any authorised inspector may prohibit, through a written order, the employment of any persons therein until that danger is removed.

   Every person, whose employment is prohibited in or about a mine on grounds of unsafe working conditions, shall be entitled to payment of full wages for the period his employment is prohibited, unless such person is provided with alternative employment at the same wages.

4. **Hours and Limitation of Employment**

   (a) **Weekly day of rest**

   No person shall be allowed to work in a mine on more than six days in any one week. Where any person is deprived of any of the weekly days of rest, he shall be allowed, within the month in which such days of rest were due to him or within the next two months, compensatory rest days of equal number.
(b) **Hours of work above ground**

No adult employed above ground in a mine shall be required or allowed to work for more than forty-eight hours in any week or for more than nine hours in any day except to facilitate the change of shifts.

The periods of work along with his interval for rest, shall not in any day spread over more than twelve hours, and no worker shall work for more than five hours continuously before he has had an interval for rest of at least half an hour. But the chief inspector may, however, permit the spread over to extend over a period not exceeding fourteen hours in any day.\(^56\)

(c) **Hours of work below ground**

No adult employed below ground in a mine shall be allowed to work for more than forty-eight hours in any week or for more than eight hours in any day except to facilitate the change of shifts.

No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work shown in respect of him in the register.\(^57\)

(d) **Extra wages for overtime**

Where in a mine a person works above ground for more than nine hours in any day, or works below ground for more than eight hours in any day, or works for more than forty-eight hours in any week, whether above ground or below ground, he shall in respect of such overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. The period of overtime work shall be calculated on a daily basis, or weekly basis, whichever is more favorable to him.

Though comprehensive, the Act did not break new ground, since it paid more attention to safety measures and provisions of medical facilities in the nature of first aid rather than any comprehensive medical aid to workers.\(^58\)

C. **The Plantation Labour Act, 1951**

This Act regulates, for the first time, the condition of work of plantation workers and provides for their welfare. Though, in the first instance, it applies only to tea, coffee, rubber and cinnamon plantations, the State Governments have been empowered to extend the provisions of the Act to other plantations with the approval of the Central Government.\(^59\)
For the purpose of this Act the plantation means any plantation to which this Act applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory covered under the Factories Act, 1948.\(^6\)

Under the Plantation Labour Act 1951 the definition of worker is provided as a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work skilled, unskilled, manual or clerical but does not include (a) medical officer employed in plantation, (b) any person employed in plantation including any member of medical staff whose monthly wages exceed Rs. 750 (c) any person employed in the plantation primarily in a managerial capacity, notwithstanding that his monthly wages do not exceed Rs. 750 and (d) any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of buildings, roads, bridges, drains or canals.

The government has approved the *Plantation Labour (Amendment) Bill, 2008* to amend the *Plantation Labour, Act 1951* to provide a mechanism for ensuring the safety, health and wealth of the about one million plantation workers in the country. The government plans to amend the definition of family to remove the distinction between a female and a male worker and the definition of worker would also be amended by enhancing the wage ceiling from 750 to Rs. 10,000.\(^6\)

**Special Provisions relating to women**

1. **Prohibition of Night Work**

   The Plantation Labour Act, 1951 also contains provisions for prohibition of employment of women during night. Section 25 of the Act provides that except with the permission of the State Government no woman worker shall be employed in any plantation otherwise than between the hours of 6 a.m. and 7 p.m. However, this prohibition does not apply to midwives and nurses employed as such in any plantation.\(^6\)

2. **Crèches**

   Under the Plantation Labour Act, 1951, every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where
the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers. If, in respect of any plantation wherein less than fifty women workers including women workers employed by any contractor are employed or were employed on any day of the preceding twelve months, or where the number of children of such women workers is less than twenty, the State Government, having regard to the number of children of such women workers deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may, by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such directions. The rooms shall provide adequate accommodation, be adequately lighted and ventilated, be maintained in a clear and sanitary condition and be under the charge of a woman trained in the care of children and infants. The State Government may make rules prescribing the location and the standards of the rooms in respect of their construction and the equipment and amenities to be provided therein.

3. **Latrine and Urinal Facilities**

Section 9(1) of the Plantations Labour Act, 1951 also provides that in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed shall be provided. These latrines and urinals shall be maintained in a clean and sanitary condition.

**General Provisions**

1. **Health Provisions**

   (a) **Drinking water**

   Every employer of a plantation shall make effective arrangements at convenient places, for the supply of wholesome drinking water for all workers.

   (b) **Medical Facilities**

   The employers are required to provide and maintain the prescribed medical facilities for the plantation workers and their families. If in any plantation the requisite medical facilities have not been provided, the Chief Inspector may cause such facilities to be provided and maintained and recover the cost thereof from the defaulting employer.
2. **Welfare Measures**

(a) **Canteens**\(^{68}\)

In every plantation wherein 150 workers are ordinarily employed, one or more canteens shall be provided and maintained for the use of workers in accordance with the rules framed in respect thereof.

(b) **Recreational Facilities**\(^{69}\)

The employer may be required to provide suitable recreational facilities for the workers and children employed in his plantation.

(c) **Educational Facilities**\(^{70}\)

Where the number of children, between the ages of 6 and 12 years, of the workers employed in any plantation is more than 25, the employer may be required to provide educational facilities of the prescribed standard for the benefit of those children.

(d) **Housing Facilities**\(^{71}\)

It is the duty of every employer to provide and maintain necessary housing accommodation (a) for every worker and his family residing in the plantation and (b) for every worker and his family who is residing outside the plantation and who having put in ‘6 months’ continuous service in the plantation, expresses a desire in writing, to reside in that plantation. The condition of 6 months service will not, however, apply to worker who is a member of the family of a deceased worker who, immediately before his death, was residing in the plantation. The housing facilities should be provided in accordance with the rules made in this regard.

(e) **Employer’s Liability in case of Accident due to House Collapse**\(^{72}\)

If death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided by the employer and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house, or to a natural calamity, the employer shall be liable to pay compensation as per the provisions of the Workmen’s Compensation Act, 1923.

(f) **Other Facilities**

The employer may be required to provide the workers with such number and type of umbrellas, blankets, rain coats or other like amenities for the protection of workers from rain or cold as may be prescribed under the rules.\(^{73}\)
3. **Hours and Limitation of Employment**

(a) **Working hours**

The working hours of an adult worker shall not exceed 48 hours in a week. An adult worker may work overtime. So that his working hours do not exceed 9 hours on any day and 54 hours in a week.\(^{74}\)

Payment for overtime work on any day, or in any week, or for work done on any closed holiday or on a day of rest, is to be made at twice the rates of ordinary wages.\(^{75}\)

(b) **Weekly Holiday**

The State Governments may make rules providing for a day of rest to be allowed to all workers in every period of 7 days and also providing for the conditions and the circumstances in which an adult worker may be required or allowed to work overtime. A worker, if he so likes, may work on his day of rest, provided that he does not work for more than 10 days consecutively without a full holiday intervening.\(^{76}\)

(c) **Rest Interval**

No worker shall work for more than 5 hours before he has had a rest interval of at least half an hour. The spread-over on any day for an adult worker in a plantation shall not exceed 12 hours, inclusive of his interval for rest and any time spent in waiting for work.\(^{77}\) But, in plantation, the position is equally unsatisfactory though some of the better organised estates have provided a high standard of welfare amenities.

D. **Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996**

The purpose of this Act to regulate the employment and conditions of service of construction workers and to provide for their safety, health and welfare measures. The Act applies to every establishment which employs/had employed on any day of preceding 12 months, 10 or more building workers in building or construction work. It covers all Central and State Government establishments. The special feature of the Act is that it covers all private residential buildings if the cost of construction is more than rupees ten lakhs.
For the purpose of this Act, the building and other construction work is defined as construction, repair etc. of buildings, roads etc. The definition does not include any building or other construction work to which Factories Act or Mines Act applies.

**Special Provisions relating to women**

1. **Latrines and Urinals**

   In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such type as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place.

   Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

2. **Accommodation**

   (1) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

   (2) The temporary accommodations provided under Sub-Section (1) shall have separate cooking place, bathing, washing and lavatory facilities.

3. **Creches**

   (1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

   (2) Such rooms shall:

   (a) provide adequate accommodation,

   (b) be adequately lighted and ventilated,

   (c) be maintained in a clean and sanitary condition,

   (d) be under the charge of women trained in the care of children and infants.
General Provisions

1. **Fixing hours for normal working day, etc.**

   Government has been empowered to fix the number of hours of work for a building worker, to provide for a day of rest in every period of 7 days and for the payment of remuneration in respect of such days of rest, to provide for payment of work on a day of rest at a rate not less than the overtime rate.

2. **Wages for overtime work**

   If any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he is entitled to wages at the rate of twice his ordinary rate of wages.

3. **Prohibition of employment of certain persons in certain building or other construction work**

   Any person who is deaf or who has defective vision or who has a tendency to giddiness is not required or allowed to work in any such operation of building or other construction work which is likely to involve risk of any accidents.

4. **Drinking water**

   (1) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

   (2) All such points shall be legibly marked “Drinking water” in a language understood by a majority of the persons employed in such place and no such point shall be situated within six meters of any washing place, urinal or latrine.

5. **First Aid**

   Every employers shall provide in all the places where building or other construction work is carried on such first, aid facilities as may be prescribed.

6. **Canteens etc**

   The appropriate Government may, by rules, require the employer:

   (a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed, a canteen for the use of the workers,
(b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

In actual practice, the provisions of this Act are beneficial only to the skilled workers and those who work continuously in the industry. Unskilled workers, who do not work with a construction establishment continuously, may not get the benefits available under the Act. It will not be possible for those unskilled, uneducated and purely casual workers to make regular, timely contributions to fund as per the provisions of the law.

E. **The Beedi and Cigar Workers (Conditions of Employment) Act, 1966**

Beedi manufacturing is one of the traditional and largely home-based industries in India. It is largely labour intensive and engages 45 million workers and nearly two thirds of them are women.\(^{86}\)

The Beedi and Cigar workers (Conditions of Employment) Act, 1966 is the only labour enactment, which deals with, home workers in a detailed manner. The enactment is particularly relevant, as bulks of the home workers in beedi rolling are women. The very existence of this law has encouraged the formation of trade unions among workers in beedi rolling industry and this has led to demand for similar laws for home-workers in other occupations and industries.

The purpose of this Act is to provide for the welfare of workers in beedi and cigar establishments self-employed and regulation of work conditions. The Act applies to all employees in beedi and cigar establishments except self-employed persons working in their own houses.

**Special provisions relating to women**

1. **Prohibition of Night work**

   Section 25 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 prohibits employment of women in any industrial premises except between 6 a.m. and 7 p.m.

2. **Creches**

   The Act provide for crèche facility. According to Section 14 of the Act in every industrial premises wherein more than fifty (now thirty after the Amendment of 1993)\(^{87}\) female employees are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under
the age of six years of such female employees. Such rooms shall be provided with adequate accommodation, be adequately lighted and ventilated, be maintained in a clean and sanitary condition and be under the charge of women trained in the care of children and infants. The State Government is also empowered to make rules with respect to the same matters as are provided under the Factories Act.  

3. **Latrines and Urinals Facilities**

(1) In every industrial premises, sufficient latrine and urinal accommodation of such type as may be prescribed shall be provided and shall also be conveniently situated as may be accessible to the employees at all times while they are in the industrial premises.

Provided that it shall not be necessary to provide separate urinals in industrial premises where less than fifty persons are employed or where the latrines are connected to a water-borne sewage systems.

But here the State Government is empowered to specify the number of latrines and urinals provided in proportion to the number of male and female workers.

**General Provisions**

1. **Cleanliness**

   Every industrial premises shall be kept clean and free from effluvia arising from any drain, privy or other nuisance and shall also maintain such standard of cleanliness including white washing, colour washing, varnishing or painting, as may be prescribed.

2. **Ventilation**

   Every industrial premises is to maintain prescribed standards of lighting, ventilation and temperature. The employer has to take effective measures to prevent the inhalation of dust, fume or other impurity and accumulation thereof.

3. **Overcrowding**

   Every industrial premises must have in any work room at least fair and a quarter cubic metres of space for every person employed therein and for this purpose no account is to be taken of any space which is more than three metres above the level of the floor of the work room.
4. **Drinking water**

   Every industrial premises must have sufficient supply of wholesome drinking water at suitable and convenient points and such points are to be legibly marked “drinking water” in a language understood by the majority of persons employed. Drinking water points must not be situated within six metres of any washing place, urinal or latrine.

5. **Washing Facilities**

   In every industrial premises, where blending or sieving or both of tobacco or warming of beedi in hot ovens is carried on, the employer shall provide such washing facilities for the use of the employees, as may be prescribed.

6. **First Aid**

   Every industrial premises shall provide such first aid facilities as may be prescribed.

7. **Canteens**

   The State Government may, by rules, require the employer to provide and maintain in every industrial premises wherein not less than two hundred and fifty employees are ordinarily employed, a canteen for the use of the employees.

8. **Working hours**

   No employee shall be required or allowed to work in any industrial premises for more than nine hours in any day or for more than forty-eight hours in any week.

   Provided that any adult employee may be allowed to work in such industrial premises for any period in excess of the limit fixed under this Section Subject to the payment of overtime wages if the period of work including overtime work, does not exceed ten hours in any day and in aggregate fifty four hours in any week.

9. **Wages for overtime work**

   (1) Where any employee employed in any industrial premises is required to work overtime, he shall be entitled in respect of such overtime work, to wages at the rate of twice his ordinary rate of wages.
10. **Interval for rest**

The periods of work for employees in industrial premises each day shall be so fixed that no period shall exceed five hours and that no employee shall work for more than five hours before he has an interval for rest of at least half an hour.

11. **Spread Over**

The periods of work of an employee in an industrial premise shall be so arranged that inclusive of his intervals for rest under Section 19, they shall not spread over more than ten and a half hours in any day.

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

Beedi and Cigar Workers Act is a broad legislation that covers all employees employed in beedi and cigar establishment. But unfortunately, it does not cover self-employed persons working in their own houses. So the Act should be extended to self-employed persons.

The Act prohibits employment of women during night hours. There are certain people who say that the prohibition of night work of women restrict their employment opportunity in Beedi and Cigar establishments. To remove this fear it is suggested that the permission to work up to 10 p.m. should be granted provided arrangements for transport and security are made.

**F. The Contract Labour (Regulation and Abolition) Act, 1970**

Contract Labour (Regulation and Abolition) Act, 1970 was enacted not only to regulate the contract labour but also to abolish it. To lessen their burden and to avoid liability towards regular employees, employer devised a Scheme of getting their work done through contract workers. Contract labour which forms a unorganised sector of employment were subjected to lot of discriminations and expenses. Contract Labour Act came to mitigate their sufferings and to regulate their employment.

For the purpose of this Act a person is said to be employed as contract labour, in or in connection with the work of an establishment, when he is hired for such work by or through a contractor, with or without the knowledge of the principal employer.

The Act extends to the whole of India. It applies to:
(a) every establishment wherein 20 or more workmen are or were employed on any day of the preceding 12 months as contract labour, and

(b) every contractor who employs or employed on any day of the preceding 12 months, 20 or more workmen.103

The Act does not apply to establishments where only intermittent / casual work is performed.

The Act empowers the Appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment keeping in view (i) the condition of work and benefits provided for the contract labour in that establishment, (ii) whether the process, operation or other work in incidental to or necessary for the work of that establishment and (iii) whether it is of perennial nature.104

After the commencement of the Contract Labour (Regulation and Abolition) Act, 1970, Air India case105 of 1997 is the landmark judgment given by the Apex Court. In this case the Court noted that there is no express provision under Section 10 of the Contract Labour (Regulation and Abolition) Act for absorption of contract labour on abolition of the contract labour system. In the absence of such a provision the Supreme Court has played a creative role by bridging the gap left open by the legislature. Thus, in above, in the majority judgment Ramaswamy, J. observed:

1. Though there is no express provision in the Contract Labour (Regulation and Abolition) Act for absorption of the contract labour when engagement of contract labour stood prohibited on publication of the notification under Section 10(1) of the Act, from that moment the principal employer cannot continue contract labour and direct relationship gets established between the workmen and the principal employer;

2. The Act did not intend to denude the contract labour of their source of livelihood and means of development throwing them out from employed; and

3. In a proper case the Court as sentinel on the qui vive is required to direct the appropriate authority to Submit a report and if the finding is
that the workmen were engaged in violation of the provisions of the Act or were continued as contract labour despite prohibition of the contract labour under Section 10(1), the High Court has Constitutional duty to enforce the law and grant them appropriate relief of absorption in the employment of the principal employer.

In a separate concurring judgment, Majumdar J. observed:

If it is held that on abolition of contract labour system, the erstwhile contract labourers are to be thrown out of that establishment lock stock and barrel, it would amount to throwing the baby out with the bath water.

He added:

Implicit in the provision of Section 10 is the legislative intent that on abolition of contract labour system, the erstwhile contract workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities on that very establishment under Chapter V prior to the abolition of such contract labour system. Though the legislature has expressly not mentioned the consequences of such abolition, but the very Scheme and ambit of Section 10 of the Act clearly indicates the inherent legislative intent of making the erstwhile contract labourers direct employees of the employer on abolition of the intermediary contractor.

Thus in this case it was held that the contract workers have a right to automatic absorption upon abolition.

However, in *Steel Authority of India Ltd. v. National Union Water Front Workers and Others*¹⁰⁶, a Constitution bench of the Supreme Court delivered a momentous judgment having a bearing on contract labour system and ruled:

“Neither Section 10 of the Contract Labour (Regulation and Abolition) Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate government under Sub-Section (1) of Section 10, prohibiting employment of contract labour in any process, operation or other work in any establishment, consequently the principle employer cannot be required to order absorption of contract labour working in the concerned establishment.”¹⁰⁷
Thus in this case the Supreme Court has changed the law laid down in the case of *Air India Statutory Corporation v. United Labour Union and Others* and denied the right of contract labour to be absorbed on abolition of contract labour system, a right earlier created by another three judge bench by judicial legislation. The Steel Authority of India Limited judgment, however, said that the *Air India case* has been wrongly decided and stated that the contract workers would have no right to automatic absorption upon abolition. But the only right available to them is they would have right to a preference in employment if permanent workers were to be employed to fill in the vacancies created by the removal of the contract workers upon abolition.\(^{108}\) However, in the present scenario the Court’s ruling in Steel Authority of India Limited case in effect has succeeded in satisfying the management’s desire to give them free hand to employ contract labour without imposing any liability to absorb them on abolition of the contract labour system in order to compete in the international market. Indeed, the decision is in conformity with the recommendations of the Fifth Pay Commission that in certain jobs the Government of India should also engage contract labour besides meeting some of the view points of the Finance Minister in his budget speech of the year, 2000-2001, namely, to facilitate outsourcing of activities to contract labour. In this case the Supreme Court applied the theory of hire and fire. The principles evolved in the judgment are pregnant with tremendous liability and would bring anomalous results.\(^{109}\) In the era of globalization, privatization and liberalization the effect of this judgment is far reaching. Neither can the judiciary intervene to regulate contract labour in industrial establishments, nor can a set of contract labour/workers seek protection under the Contract Act for the purpose of becoming permanent workers in the job they were engaged in on contract.

The judgment given in Steel Authority of India Limited case was followed in *Pramod Kumar Samal and Others v. National Aluminum Company Ltd. and Others*\(^ {110}\), in which the High Court dismissed the petition seeking a declaration of petitioners to be regular workmen as security guards, sergeants and cooks, and give direction to opposite parties to pay them remuneration equal to that paid to regular employees. The High Court observed that the contract labour was continuing in the establishment with due permission of the competent authority.
Further by virtue of a notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, employment of contract labour in the establishment had not been prohibited.

While relying upon the decision of Steel Authority of India Limited case Court further held that there could be no automatic absorption of contract labour on issuing notification under Section 10(1) of the Act as it does not provide any such relief.

The principle of law laid down in Steel Authority of India Limited case was followed in various recent cases also in Cipla Ltd. v. Maharashtra General Kangar Union and Food Corporation of India v. The Union of India and Others, while supporting the judgment of Steel Authority of India Limited case held that workers has no right of automatic absorption on abolition of contract labour system.

In Secretary State of Karnataka and Ors. v. Umadevi and Ors. In this case it was held that under the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any light. High Courts acting under Article 226 of the Constitution of the India, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional Scheme.
The judgment in *Uma Devi’s* case was followed in *Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad*, wherein it was held that where appointments were made without following the procedure laid down under Articles 14, 16 and 309 of the Constitution, they cannot be directed to be regularised in service.

But, in *U.P. State Electricity Board v. Pooran Chandra Pandey and Others*, where 34 petitioners who were daily wage employees of the Cooperative Electric Supply Society had prayed for regularisation of their services in the *U.P. State Electricity Board*, their Lordships of the Honourable Apex Court, while referring to various pronouncements made by the Apex Court earlier, have held that the decision in Uma Devi’s case, cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution and often *Uma Devi’s* case is being applied by Courts mechanically as if it were a Euclid’s formula without seeing the facts of a particular case. The ratio of any decision must be understood in the background of the facts of that case. A case is only an authority for what it actually decides, and not what logically follows from it. A little difference in facts or additional facts may make a lot of difference in the precedential value of decision. It has also been held in Para No. 18 of the Judgment:

“...We may further point out that a Seven-Judge Bench Division of this Court in *Maneka Gandhi v. Union of India and Another* has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. *Maneka Gandhi’s case* is a decision of a Seven-Judge Bench, whereas *Uma Devi’s case* is a decision of a five-Judge Bench of this Court. It is well settled that a smaller bench decision cannot override a large bench decisions of the Court. No doubt, Maneka Gandhi’ case does not specifically dealt with the question of regularisation of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

The decision in U.P. State Electricity Board case was followed in *S. Srinivasan v. Union of India*. In the present case many writ petitioners have
been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service.

Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have but in such a long service are denied the benefit of regularisation and are made to face the same. Selection which fresh recruits have to face. In view of such a categorical observation made by the Honourable Apex Court, the petitioners are working for the last 25 years or so without any benefit when compared to other similarly situated persons, the prayer of the applicants to regularize their services deserves to be allowed. The respondents are directed to regularise the service of the applicants within a period of eight weeks from the date of receipt of a copy of this order.

Special Provisions relating to women

1. Creches
   Creches are extended to the contract workers by the Contract Labour (Regulation and Abolition) Central Rules, 1971, Construction and Maintenance of Creches. It provides that in every establishment where twenty or more women are ordinarily employed as contract labour there must be provided a crèche located within 50 meters of establishments. While the crèche should be conveniently accessible to the mothers of the children accommodated therein, it shall not be situated in close proximity to establishment where obnoxious fumes, dust or ordour are given off or in which excessively noisy processes are carried on.¹²²

2. Washing and Bathing Facilities
   Under the Contract Labour (Regulation and Abolition) Central Rules, 1971 separate and adequately screened washing facilities be provided for the use of male and female workers.¹²³ Such facilities shall be conveniently accessible and shall be kept in clean and hygienic conditions.¹²⁴

3. Latrines and Urinal Facilities
   Contract labour (Regulation and Abolition) Central Rules, 1971 also provides provision for separate latrine and urinal facilities for male and female workers. It also provides that there shall be atleast one latrine for every 25 females
if number of female workers is 100 and one for every 50 if the number exceeds 100. Every latrine shall be under cover and so partitioned off as to secure privacy and shall have a proper door and fastenings. Outside these latrines and urinals a notice providing “for men only” or “for women only” as the case may be should be displayed. The notice should also bear the figure of a woman or of a man as the case may be. It is suggested that the same provision should be incorporated in other enactments also.

4. Rest rooms and Canteens

Rule 41(3) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 provides that separate rest rooms shall be provided for women employees. These rooms should be properly ventilated and maintained. Rules 44 of the same provide that in a canteen a portion of the dining hall and service counter shall be partitioned off and reserved for women workers, in proportion to their number.

There are a number of provisions in the Act for the welfare and safety of contract labour. There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first aid box equipped with the prescribed contents at every place where contract labour is employed by him.

Section 20(1) provides that if any amenity required to be provided under Section 16, Section 17, Section 18 and Section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed.

In People’s Union for Democratic Rights v. Union of India is very interesting leading case on contract labour. There was a writ petition brought by way of public interest litigation in order to ensure observance of the provisions of various labour laws including Contract Labour (Regulation of Employment and Conditions of Service) Act, 1979 in relation to workmen employed in the construction work of various projects connected with the Asian Games.

It was observed that the workmen whose cause has been championed by the petitioners are employees of the contractors but the Union of India, the Delhi Administration and the Delhi Development Authority which have entrusted the
construction work of Asiad projects to the contractors cannot escape their obligation for observance of various labour laws by the contractor. So far as the Contract Labour (Regulation and Abolition) Act, 1970 is concerned, it is clear that under Section 20, if any amenity required to be provided under Section 16, 17, 18 or 19 for the benefit of the workmen employed in any establishment is not provided by the contractor, the obligation to provide such amenity rests of principal employer and, therefore, if in the construction work of Asiad projects the contractors do not carry out the obligations imposed upon them by any of these Sections, Union of India, the Delhi Administration, and the Delhi Development Authority as principal employers would be liable and these obligations would be enforceable against them.

In *Salal Hydro Electric Project*[^130], judicial intervention by means of Public Interest Litigation has yielded positive results for the benefit of the workmen employed in the Salal Hydro Electric Project. The litigation started on the basis of a news in Indian Express dated 26 August, 1982 that a large number of workmen from different States including the State of Orissa were working on the Salal Hydro Electric Project in difficult conditions and they were denied the benefits of various labour laws and were Subjected to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. The People’s Union for Democratic Right thereupon addressed a letter to Mr. Justice D.A. Desai enclosing a copy of the news report and requested him to treat the letter as a writ petition so that justice may be done to the poor labourers working in Salal Hydro Electric Project. The letter was treated as a writ petition and the Court directed Labour Commissioner, Jammu to visit the site of the project and thereupon Submitted a report to the Court. Pursuant to the order of the Court, the Labour Commissioner, Jammu visited the site of the project and made an interim report on October 11, 1982 followed by a final report dated October 15, 1982. The Court pointed out that since the reports made by the Labour Commissioner, Jammu disclosed that the Project was being carried out by the Government of India, the Court directed that the Union of India in the Labour Ministry as also the Chief Labour Commissioner (Central) also be added as respondents to the writ petition. Because of the directions given by the Court, the Central Government
immediately with a view to secure compliance with the various directions given by
the Court in an interim judgment, issued a circular to all the engineers in charge of
the project who were principal employers as also to all the contractors and Sub-
contractors or piece wagers, directing them to make immediate compliance with
the direction regarding implementation of the labour laws applicable to the
workmen. The Labour Commissioner finally reported to the Court that due
compliance had been made with the provisions of labour legislations, by all the
parties concerned. The Court was also satisfied that the welfare amenities required
to be provided under these statutes were being made to available to the workmen
employed on the Salal Hydro Electric Project.

For regulating its implementation, certain registers, records returns etc. are
to be maintained by the principal employers and contractors.

Penalties have been prescribed for those who violate the law. The Act is
meant for unorganised labour. But its scope is very limited. The limitation in the
law are such that the contractor stands to gain if he engages less than twenty
workers. This provision provides a loophole for all manner of manipulations by
employers and contractors. Therefore, it can be seen that the coverage that this Act
provides is far from satisfactory.

G. Inter-State Migrant Workmen (Regulation of Employment and
Conditions of Service) Act, 1979

The vast majority of migrant workers fall in the unorganised sector. Workers are recruited from various parts of a State through contractors or agents
commonly known as ‘Sardars’, generally for work outside the State wherever
construction projects are available. This system leads itself to various abuses. The
promises that contractors make at the time of recruitment about higher wages and
regular and timely payments are not usually kept. No working hours are fixed for
these workers and they have to work all days in the week under extremely bad,
often intolerable working conditions in hospitable environments. The provisions of
various labour laws are not observed and migrant workers are often Subjected to
various forms of malpractices.
The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted to regulate the employment and conditions of service of inter-state migrant workers.

The Act extends to the whole of India and applies to:

(a) Every establishment in which five or more inter-state migrant workmen (whether or not in addition to other workmen) are employed or were employed on any day of the preceding 12 months, and

(b) Every contractor who employs or employed five or more inter-state migrant workmen (whether or not in addition to other workmen) on any day of the preceding 12 months.¹³¹

Special Provisions Relating to Women

1. Prohibition of Night Work

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 also apply in the area to which the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 applies. Rule 11 of the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Central Rules, 1980 provides that no female migrant worker shall be employed by any contractor before 6 a.m. or after 7 p.m. But this shall not apply to the employment of female migrant workmen in pit head baths, crèches and canteens and midwives and nurses in hospital and dispensaries.¹³²

2. Creches

The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Central Rules, 1980 provide crèche facility. Rule 44 says that in every establishment where twenty or more women are ordinarily employed as migrant workmen and in which employment of migrant workmen is likely to continue for three months or more, the contractor shall provide and maintain two rooms of accessible dimensions for the use of their children under the age of 6 years. One of such rooms shall be used as play room for the children and the other as bedroom for them.
3. **Rest Rooms and Canteens**

Rule 40 of the Inter-State, Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 provides that separate rest rooms shall be provided for female migrant workmen. The rooms should be effective, suitable and adequately ventilated and should be at convenient distance from the establishment. Rule 41 of the same provides that a portion of the dining hall and service counter shall be partitioned off and reserved for women migrant workmen in proportion to their number. Washing places in the dining hall shall be separate and screened to secure privacy.

**General Provisions**

1. **Wage Rates and Other Conditions of Service**

The Act lays down that the wage rates, holidays, hours of work and other conditions of service of an inter-state migrant workman in an establishment shall be the same as of any other workman in that establishment doing same or similar kind of work. If the work performed by migrant workmen is different in natures then their wages and holidays etc. will be as fixed by the appropriate Government. However, no migrant workmen will be paid wages less than the wages fixed under the Minimum Wages Act, 1948, and the wages to all migrant workmen shall be paid in cash.

2. **Displacement of Allowance**

The contractor shall pay to every inter-state migrant workman at the time of recruitment, a displacement allowance equal to 50% of the monthly wages payable him or Rs. 75/-, whichever is higher. The amount paid as displacement allowance shall not be refundable and shall be in addition to the wages or other amounts payable to him.

3. **Journey Allowance**

The contractor shall pay to every inter-state migrant workman a journey allowance of a sum not less than the fare from the place of residence of the workman in his State to the place of work in the other State, both for the outward and return journeys, and such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty.
4. **Other Facilities**

It shall be the duty of every contractor employing inter-state migrant workmen in connection with the work of an establishment to which this Act applies:

(a) to ensure regular payment of wages to such workmen,
(b) to ensure equal pay for equal work irrespective of sex,
(c) to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State,
(d) to provide and maintain suitable residential accommodation to such workmen during the period of their employment,
(e) to provide the prescribed medical facilities to the workmen, free of charge,
(f) to provide such protective clothing to the workmen as may be prescribed, and
(g) in case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kin of the workman.

Section 17 (4) of the Act provides that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, the principal employer shall be liable to make payment of the wages in full or the unpaid balance due, as the case may be, to the inter-state migrant workmen employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

People’s *Union for Democratic Rights v. Union of India* is an epoch-making judgment of the Supreme Court which has not only made a distinct contribution to labour laws but has displayed the creative attitude of judges to protect the weather Sections of the society. The obligation to make payment of wages which rests in the Union of India, the Delhi Administration and the Delhi Development Authority is additionally reinforced by Section 17 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 in so far as migrant workmen are concerned. It is obvious that thee three authorities cannot escape their obligation to the workmen to ensure observance of
these labour laws by the contractors and if these labour laws are not complied with by the contractors, the workmen would clearly have a cause of action against the above three authorities.

2. **Social Security Measures for Women**

   Social Security is a basic need of all women regardless of employment in which they work and live. It is an important form of social protection. In a general sense social security refers to protection extended by the society and State to its members to enable them to overcome various contingencies of life. Women have to face various contingencies when they involved in employment such as sickness, maternity, disablement, employment insecurities and risks. There is a greatest need to provide security and protection to women workers against various contingencies. Thus, social security measures have a two-fold significance. They constitute an important step towards the goal of a welfare state, by improving living and working conditions and affording the women protection against the uncertainties of the future.

   The various legislative measures adopted by the Government and which provide protection to the women workers in certain contingencies have been given as follows:

   **A. The Maternity Benefit Act, 1961**

   The Act was passed with a view to reduce disparities under the existing Maternity Benefit Acts and bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act, repeals the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the Plantations Labour Act, 1951 and all other provincial enactments covering the same field. However, the Act does not apply to factory or establishment to which the provisions of Employee’s State Insurance Act 1948 applies, except as otherwise provided in Section 5A and 5B of the Act.

   **Object and Scope**

   The Act seeks to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide maternity benefit and certain other benefits to women workers.
The Act extends to the whole of India. It applies, in the first instance:

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

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

The State Government is empowered to extend all or any of the provisions of the Act to any other establishment or class of establishments industrial, commercial, agricultural or otherwise with the approval of the Central Government by giving not less than two month’s notice of its intention of so closing.

With the gradual extension of coverage under the Employees’ State Insurance Act, 1948 which also provides for maternity and certain other benefits, the area of application of Maternity Benefit Act, 1961 has shrunk to some extent. The coverage under The Employees’ State Insurance Act is however at present restricted to factories and certain other specified categories of establishments located in specified areas. The Act is, therefore, still applicable to women employees employed in establishments which are not covered by the Employees’ State Insurance Act, as also to women employees, employed in establishments covered by the Employees’ State Insurance Act, but who are out of its coverage because of the wage-limit.

The Act was amended from time to time. The Amendment of 1972 provides that in the event of the application of the Employees’ State Insurance Act, 1948 to any factory or establishment, maternity benefit under the Maternity Benefit Act would continue to be available to women workers, until they become qualified to claim similar benefit under Employees’ State Insurance Act. Again in 1973 the Act was amended so as to bring within its ambit establishments in the circus industry. The 1976 Amendment, further extends the scope of the Act to the women employed in factories or establishments covered by the Employees’ State
Insurance Act, 1948 and in receipt of wages exceeding entitlement specified in that Act.¹⁴³

The Act was again amended in 1988 to incorporate the recommendations of a working group of Economic Administration Reforms Commission. The Act has been extended to shops or establishments employing 10 or more persons. The rate of maternity has been enhanced and some other changes have been introduced.¹⁴⁴ The Amendment of 1995 further expands the coverage of the Act and legalises the medical termination of pregnancy and provides incentives for family planning programme. The Act was amended again in 2007. By which medical Bonus to be increased from Rs. 250 to Rs. 2500/- for working women.

**Meaning of Maternity Benefit**

Prior to the amendment of 1989, if a woman employee could not avail of the six weeks’ leave preceding the date of her delivery, she was entitled to only six weeks leave following the day of her delivery. However, by the above Amendment, the position has changed. Now, in case a woman employee does not avail six weeks’ leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period, i.e., preceding and following the day of her delivery, does not exceed 12 weeks.¹⁴⁵

A woman employee is entitled to maternity benefits under the Act irrespective of the number of children she has. This matter was considered in a high level Committee set up by the Central Government. The Committee thought that though it is contrary to the family planning norms being advocated by the Government, it is also not appropriate to deny a woman employee the benefits under the law, once she gave birth to a child.

**Salient Provisions**

**Restriction on Employment of Pregnant Woman**

No employer should knowingly employ woman during the period of 6 weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. Besides, no woman should work in any establishment during the said period of 6 weeks.

Further, the employer should not require a pregnant woman employees to do an arduous work involving long hours of standing or any work which is likely
to interfere with her pregnancy or cause miscarriage or adversely affect her health, during the period of 1 month preceding the period of 6 weeks before the date of her expected delivery, and any period during the said period of 6 weeks for which she does not avail of the leave as provided for in Section 6 of the Act.\textsuperscript{146}

**Right to Payment of Maternity Benefit**

Section 5(1) of the Act provides that the maternity benefit to which every woman shall be entitled to and her employer shall be liable for, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day.

For the purposes of payment of the maternity benefit to a woman worker, the average daily wage means the average of woman’s wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed, or revised under the Minimum Wages Act, 1948 or ten rupees,\textsuperscript{147} whichever is the highest.

Section 5(2) provides that no woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than eight days\textsuperscript{148} in the twelve months immediately the date of expected delivery. The qualifying period of eight days shall not apply to a women what has migrated into the state of Assam and was pregnant at the time of immigration.

For the purpose of calculating the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holiday with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.\textsuperscript{149}

Section 5(3) provides that a woman shall be entitled to maternity benefit for a maximum period of twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

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

Woman shall be entitled to benefit regardless of how many children they already have. The Act does not care woman who adopt a new born child. If a woman works for another employer while on leave, she will forfeit her right to benefits. Maternity Benefits must be paid by the employer for the period of time that the woman is actually absent as permitted under the Act. If she takes more leave than allowed, the employer is not obliged to pay her.

It is now clear that a woman worker who expects a child is entitled to maternity benefits for a maximum period of twelve weeks which is split up into two periods, viz., pre-natal and post-natal. The first one, i.e. pre-natal or ante-natal period is limited to the period of woman’s actual absence extending up to six weeks immediately preceding (including the day on which her delivery occurs), and the second one, viz. post-natal (compulsory period) consists of six weeks immediately following the date of delivery.

Only a few cases have come up before the Courts, so far in the area of maternity benefit. In *Malayalam Plantations Ltd. v. Inspector of Plantations*, the Full Bench of Court while linking the maternity benefit with the average daily wages of a women worker indicated that such benefit was to be calculated with reference to the working days only. The Court, accordingly held, that there was nothing in the Maternity Benefit Act to show that the duration of maternity benefit covers non-working wage-less days in the week. Therefore, in calculating the benefit the number of weeks for which a women worker is entitled to the benefit must be multiplied by six and not by seven. This view, however did not find the approval of Supreme Court in *B. Shah v. Labour Court Coimbatore*, the Supreme Court referred to various dictionary meanings of the word “week” and observed:
In the context of Sub-Sections (1) and (3) of Section 5 of the Act, the term “week” has to be taken to signify a cycle of seven days including Sundays. The language in which the aforesaid Sub-Sections are couched also shows that the legislature intended that computation of maternity benefit is to be made for the entire period of the women workers actual absence, i.e. for all the days including Sundays which may be wage less holiday, falling within that period and not only for intermittent periods of six days thereby excluding Sundays falling within that period for it were not so, the legislature instead of using the words “for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day” would have used the words “for the working days falling within the period of her actual absence immediately preceding and including the day of her delivery and the six weeks immediately following that day but excluding the wage less days.” Again the word “period” occurring in Section 5(1) of the Act is a strong word. It seems to emphasise, in our judgment, the continuous running of time and recurrence of the cycle of seven days. It has also to be borne in mind in this connection that in interpreting provisions of beneficial piece of legislation like the one in hand which is intended to achieve the objected of doing social justice to women workers employed in the plantations and which squarely fall within the purview of Article 42 of the Constitution, the beneficial rule of construction which would enable the women workers not only to Subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output has to be adopted by the Court.154

The interpretation placed by the Court on the phraseology of Sub-Sections (1) and (3) of Section 5 of the Act appeared to the Court to be in conformity not
only with the legislative intendment but also with paras 1 and 2 of Article 4 of Convention No. 103 concerning Maternity Protection Convention (Revised), 1952 adopted by the General Conference of the International Labour Organisation which are extracted below for facility of reference:

1. While absent from work on maternity leave in accordance with the provisions of Article 3, the women shall be entitled to receive cash and medical benefits.

2. The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefit sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living.

The Court however held, that the computation of maternity benefit has to be made for all the days including Sundays and rest days which may be wage-less holidays comprised in the actual period of absence of the women extending up to six week preceding and including the delivery as also for the days falling within the six weeks immediately followings the day of delivery thereby ensuring that the woman worker gets for the said period not only amount equally 100 percent of the wages, which she was previously earning in terms of Section 3(n) of the Act, but also the benefit of the wages for all the Sundays and rest days falling within the aforesaid two periods which would ultimately be conducive to the interest of both the woman worker and her employer.

It is Submitted that this view is correct and is in consonance with the principles of social justice. It also shows the concern of judiciary to provide better security to women workers in cases of confinement, miscarriage or sickness arising out of pregnancy or premature birth as a child, etc.

In a judgment of far reaching consequences the Supreme Court recently in Municipal Corporation of Delhi v. Female Workers declared that the maternity benefit is applicable to casual workers and daily wage workers also. In this case the question was whether the muster roll employees (which are casual and daily wage employees) of municipal corporation are entitled to maternity benefit. The Supreme Court held:

There is nothing in the Maternity Benefit Act which entitles only regular women employees to the benefit of maternity leave and not to those who are
engaged on casual basis or on muster roll on daily wage basis. Since Article 42 specifically speaks of “just and humane conditions of work” and maternity relief, the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of. The provisions of the Act would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, specifically Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. The Supreme Court further observed:

A just social order can be achieved only when inequalities are obliterated and every one is provided what is legally due. Woman, who constitute almost half of the segment of our society, have to be honoured and treated with dignity at places where they work to earn their livelihood.

Therefore, the maternity benefit cannot be denied to the women employees engaged on muster roll, on the ground that they are not regular employees of the corporation. This is a beneficial piece of judgment which will cover a large number of women workers who were till date refused maternity benefit because of the casual and temporary nature of service.

**Procedure to Claim Benefit**

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

(i) that her maternity benefit may be paid to her or to her nominee

(ii) that she will not work in any establishment during the period for which she receives maternity benefit, and

(iii) that she will be absent from work from such date (to be specified by her), which shall not be earlier than 6 weeks before the date of her expected delivery.\(^{157}\)
The notice may be given during the pregnancy or as soon as possible, after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from work after the day of her delivery. The failure to give notice, however, does not disentitle the woman to the benefits of the Act.

**Payment of Maternity Benefit**

The employer is liable to pay the amount of maternity benefit for the period preceding the date of expected delivery, in advance to the woman employee on production of the proof of pregnancy (in the prescribed form). The balance of amount due for the subsequent period should be paid within 48 hours of production of proof of delivery (in the prescribed form)\(^{158}\)

In case of death of a woman-employee entitled to maternity benefit, the employer shall pay the amount of benefit to her nominee or legal representative, as the case may be.\(^{159}\)

**Protection against Discrimination**

According to Section 12(1) when a woman absents herself from work, in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that notice will expire during such absence or to vary to her disadvantage any of the condition of her service.

Section 12(2)(a) guarantees that a working woman who is discharged at any time during her pregnancy but who would otherwise have been eligible for benefits will still a right to maternity benefits and medical bonus. The only exception to this is if she is discharged for ‘gross misconduct’ as prescribed under rules. In such a case the employer must notify her in writing that her benefits and bonus will be denied. Women who are not eligible for benefits because they have worked less than the required period of time are also not protected against dismissal or discrimination.

**Leave for miscarriage etc. and illness**

In case of miscarriage or medical termination of pregnancy, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of
maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.\textsuperscript{160}

**Leave for Tubectomy Operation**

In case of tubectomy operation, a woman shall, on production of prescribed proof be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of operation.\textsuperscript{161}

**Leave for illness**

Leave for a maximum period of one month with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation.\textsuperscript{162}

**Increase maternity leave to 6 months: Pay Commission\textsuperscript{163}**

Keeping in view the dual responsibilities of the working women and increasing practical difficulties in balancing work and family responsibilities, the Sixth Central Pay Commission has recommended enhancement of maternity leave upto six months and introduced the concept of staggered working hours for women employees to give flexibility to employees to work either early or late depending on their requirements at home.

The Commission has proposed enhancement of maternity leave from 135 day to 180 days (six months) for two children and further continuation of leave upto two years for the same purpose with crèche facilities that can be contributory.

Under the flexible hours Scheme for working women with children, 11:00 a.m. to 4:00 p.m. will be core hours during which all women employees will necessarily need to be present in the office. They will have the option of either coming upto one and half hours earlier or leaving upto two hours late. The time may be adjusted if the office follows different working hours and for this arrangement to succeed, the Commission has recommended biometric exit / entry system.

A. Arulin Ajitha Rani v. Principal and Film and Television Institute of Tamil Nadu, Chennai and ors.\textsuperscript{164} The appellant was a student in film direction and screenplay writing in M.G.R. Film and Television Institute of Tamil Nadu, which is a Government Institute conducting diploma courses in different fields including
the film direction. The question relates to shortage of attendance of the appellant during the academic session of 2005-2006, between June 2005 and March 2006 to be precise. It is not in dispute that the rules and regulations relating to attendance of class envisage that a student is required to attend 80% of the classes in the year concerned.

In the present case, according to the Department, the appellant was not permitted to appear at the examination as her attendance was much below the required attendance. The appellant filed W.P. No. 19355 of 2006, which has been dismissed by the learned single judge under the impugned judgment. Thereafter, initially an order was passed on 18.07.2006 dismissing the writ appeal on merits at the stage of admission. Subsequently, however, Review Application No. 99 of 2006 was filed. While considering such Review Application, counsel for the appellant cited before the Division Bench an earlier order of the High Court which is Kavitha Rajagopal v. The Registrar, Tamil Nadu Dr. Ambedkar Law University, Chennai and another165 decided on 01.12.2004, to the effect that even if there was no specific provision relating to condonation of delay, a pregnant woman was entitled to get maternity leave benefit in the concerned university and the shortage of percentage in attendance can be condoned in exceptional cases. As a matter of fact, in the aforesaid decision, there was reference to another decision of a learned single judge Nithya v. University of Madras.166 Taking into consideration the earlier decisions, the Division Bench recalled the earlier order of dismissal and directed the matter to be taken for hearing.

Learned counsel for the appellant has contended that in view of the International Conventions recognising the necessity to grant maternity leave to pregnant women and in order to avoid any discrimination, the shortage of attendance is required to be condoned. In the above context learned counsel for the appellant has referred to Article 12(2) of the convention on the Elimination of All Forms of Discrimination against women, which is to be following effect:

“12(2) notwithstanding the provisions of paragraph 1 of this Article, States parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”
Similarly, learned counsel for the appellant has also placed reliance upon the provisions contained in the Maternity Benefit Act, 1961. Similarly in *Municipal Corporation of Delhi v. Female Workers*¹⁶⁷, emphasis has been made regarding grant of maternity benefit to the employees. In *Vishaka’s case*, it has not been stated that in spite of clear domestic law on the question, an International Convention is required to be followed. In *Municipal Corporation of Delhi v. Female workers*¹⁶⁸, the importance of grant of maternity relief to the employee, particularly keeping in view the provisions contained in the Maternity Benefit Act 1961 and the provisions contained in Articles 42 and 43 of the Constitution has been emphasised. But, in none of the decisions it has been laid down that notwithstanding any specific provision available under the domestic law, International Conventions are to be implemented.

In the above context, the matter has to be examined.

There is no doubt that the Maternity Benefit Act, 1961 contains several provisions for extending the benefit to the pregnant women in their respective work-field. Section 2 of the Act indicates that the Act applies to (a) every establishment being a factory, mine or plantation including any such establishment belonging to government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances and (b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

However, the proviso contemplates that the State Government may with the approval of the Central Government, declare that all or any of the provisions of the Act shall apply to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

Even assuming that an educational institution may also come within the aforesaid provisions, there is no dispute that the State Government has not issued any notification declaring that the provisions of the Act would be applicable to the educational institutions. There cannot be any dispute regarding the requirement of grant of maternity benefit to the working women. However, the question is, in the
absence of any specific provision applicable to educational institution, whether such provision can be extended.

We do not think that in the context in which such provisions have been made for the working women such provision can be ipso facto made applicable. Whether such benefit can be extended or not is essentially a policy decision to be taken by either the State Government or the Central Government.

In the present case, the learned counsel for the appellant has contended that by applying the above provisions and the International Conventions, the shortage of attendance was required to be condoned as has been done in two earlier occasions by the learned single judges in the two decisions Nithya v. University of Madras\(^{169}\), and Kavitha Rajagopal v. The Registrar, Tamil Nadu Dr. Ambedkar Law University, Chennai and another\(^{170}\).

In the peculiar facts and circumstances of the case, we are unable to apply the ratio of the said decisions to the present case. Even assuming that such provisions can be made applicable, the concerned student could have availed maternity leave of six weeks before the birth of the child and six weeks after the birth of child.

From the factual position, which has been elucidated clearly in the counter affidavit filed in the Review Appln. No. 99 of 2006 and even from the averment made by the appellant herself, it is apparent that the appellant had claimed to have attended the classes till 17.09.2005 and only on that day she was admitted in the hospital and the child was born on 19.09.2005. In other words, it is not the case of the appellant that she was unable to attend the classes because of the pregnancy before 17.09.2005. Similarly, the appellant has stated that she attended the classes after 15.10.2005. During the period from 17.09.2005 to 14.10.2005, 18 working days were available. Even giving full credit for those 18 days, as has been explained in the counter affidavit, the required percentage would come to about 71%. Minimum requirement is 80% with provision for condonation of delay upto 5% i.e., a student having attended 75% or above, can be considered for condonation. No other power is envisaged under the rules and regulations for condonation of further period. Therefore, even assuming that such International
Conventions or the provisions of the Maternity Benefit Act could be made applicable, yet the concerned student fell short of the attendance.

For the aforesaid reasons, we are unable to persuade ourselves to interfere with to order of the learned single judge. The question as to whether similar beneficial provisions should be made applicable to the educational institutions is essentially a policy matter left to the wisdom of the legislature and we do not express any opinion in one way or the other.

The writ appeal is accordingly dismissed.

Therefore, in this judgment it was decided that in the context in which provisions of maternity benefit has been made for the working women, such provisions can not be ipso facto made applicable to educational institutions, whether such benefit can be extended or not to educational institution is essentially a policy decision to be taken by either the State Government or the Central Government.

Payment of medical bonus

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

(2) The Central Government may before every three years by notification in the official gazette, increase the amount of medical bonus Subject to the maximum of twenty thousand rupees.

In exercise of the powers conferred by Sub-Section (2) of Section 8 of the Maternity Benefit Act, 1961, the Central Govt. hereby increases the amount of medical bonus from one thousand rupees to two thousand five hundred rupees with effect from the date of publication of this notification in the official gazette.

Nursing Breaks

Every woman who returns to duty after delivery of child, shall in addition to the interval of rest allowed to her, be allowed in the cause of her daily work, two breaks of 15 minutes duration each for nursing the child until the child attains the age of 15 months.
No Deduction of Wages

The employer should not make any deduction from the normal and usual daily wages of a woman entitled to maternity benefit merely due to the light nature of work assigned to her (by virtue of Section 4(3) of the Act) or for the nursing breaks allowed to her.\textsuperscript{174}

Forfeiture Maternity Benefit

If any woman, who has been allowed to go on maternity leave works in any other establishment for any period during the authorised leave, then her claim to the maternity benefit for such period worked, shall be forfeited.\textsuperscript{175}

One of the major defects in the Maternity Benefit Act is that under this Act entire burden for payment of compensation is on the employers. This has led to a tendency amongst the employers either not to employ women or to evade the payment of maternity benefit. There is, therefore, a need that the benefit under the Act should also be given on the pattern of Employees’ State Insurance Act by creating an insurance fund. The fund should also be administered by Employees’ State Insurance corporation. The Maternity Benefit Act should then be made applicable to all establishment irrespective of size and without any qualifying conditions. With the passage of time maternity benefit should be covered wholly by Maternity Benefit Act and should be deleted from Employees’ State Insurance Act. This will create uniformity in the area of maternity benefit.

Beside this, payment of Maternity Benefit is not linked to the number of children born. It is therefore, suggested that maternity benefit should be restricted only to two children. This will be in the interest of women’s health and a measure to check population growth.

B. \textit{The Employees’ State Insurance Act, 1948}

The Employees’ State Insurance Act, 1948 provides for health care and cash benefit payments in the case of sickness, maternity and employment injury. The Act is applicable to non-seasonal factories using power and employing 10 or more employees and non-power using factories and certain other establishments employing 20 or more employees. Seasonal factories, mines and plantations have not been covered under the Act. It also does not cover the unorganised labour or
self-employed workers. It is applicable to employees drawing wages not exceeding Rs. 10,000 per month.\textsuperscript{176}

The Employees’ State Insurance (Amendment) Bill, 2009 has been introduced to amend the Employees’ State Insurance Act, 1948. Some of salient features of the Bill are: (i) it enhances the age limit from the existing eighteen years to twenty-one years for the purpose of giving benefits to dependents.\textsuperscript{177} (ii) It provides benefits to worker for the accidents happening while commuting to the place of work and vice versa.\textsuperscript{178} (iii) it provides for a new definition of “factory” to provide that when ten or more persons are employed or were employed in the preceding twelve months irrespective of the use of power.\textsuperscript{179}

**Objective**

The main objective of the Employees’ State Insurance Act, 1948, is to provide to the workers medical relief, sickness cash benefits, maternity benefits to women workers pension to the dependents of deceased workers and compensation for fatal and other employment injuries including occupational diseases, in an integrated form through a contributory fund. Where a workman is covered under Employees’ State Insurance Scheme, no compensation could be claimed from his employer under the Workmen’s Compensation Act in respect of employment injury sustained by him.

**Funding and Operation of Scheme**

The Employees’ State Insurance Scheme is mainly financed by contributions from the employers and employees. The rates of the employers’ and employees’ share of contribution are 4.75% and 1.75% respectively. Employees earning less than and upto Rs. 75 per day are exempted from payment of contribution.\textsuperscript{180} The State Governments’ share of the expenditure on the provision of medical care is to the extent of 12.5% (1/8\textsuperscript{th} within the per capita ceiling). The corporation has prescribed a ceiling on the shareable expenditure on medical care. From 1\textsuperscript{st} April 2005, the ceiling on expenditure per insured person family unit has been raised to Rs. 900/- per annum. All capital expenditure on construction of ESI hospitals, and other buildings including their maintenance is borne exclusively by the corporation.
Administration

The ESI Scheme is administered by a statutory body called the Employees’ State Insurance Corporation which has members representing Employers, Employees, Central and State Governments, Medical Profession and the Parliament. The Corporation has a three-tier set-up that includes the headquarters, regional offices and primary unit local officers.

Benefits

1. Sickness Benefit

Every insured Employee is entitled to the cash benefit for the period of sickness occurring during any benefit period and certified by a duly appointed medical practitioner if the contributions in respect of him were payable for not less than \( 78 \) days the corresponding contribution period. However, in the case of a newly appointed employee, eligible for the first time who has got shorter contribution period of less than 156 days, he shall be entitled to claim sickness benefit if he pays contribution for not less than half the number of days available for working in such contribution period. The benefit is payable at the 120 percent of the standard benefit rate against the existing 100 percent, corresponding to his daily average wages. The benefit is, however not payable for any day on which the employee works, remains on leave, holiday or strike, in respect of which he receives wages.

2. Disablement benefit

Disablement benefit is payable in the form of cash in installments, to an employee who is injured in the course of his employment and is, permanently or temporarily, disabled, or contacts any occupational disease. It is sufficient if it is proved that the injury was caused by an accident arising out of, and in the course of employment, no matter when it occurred, and where it occurred. However, the place or time of accident should not be totally unrelated to the employment.

The benefit is payable at the following rates:

(a) For temporary disablement of not less than 3 days and permanent total disablement. At the rate of 50% more than the standard benefit rate.
(b) For permanent partial disablement  At such percentage of the benefit payable in case (a) above as is proportionate to the percentage of the loss of earning capacity. 188

3. Dependent’s Benefit

If an employee dies as a result of any injury sustained in the course of his employment or an occupational disease, his dependents 189 shall be entitled to a benefit in the form of pension. The dependent’s benefit is payable at 40% more than the standard benefit rate.

4. Medical Benefit

An insured employee and his family members, who require medical treatment and attendance, is entitled to receive medical benefit in the form of treatment and attendance at an E.S.I. Hospital, dispensary or clinic. A person is entitled to medical benefit during any period for which contributions are payable in respect of him, or in which he is qualified to claim sickness benefit or maternity benefit, or he is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations. If in respect of a person contribution ceases to be payable, he may be allowed medical benefit for such period and at such conditions as the regulations may specify. 190

Provided further that and insured person who ceases to be in insurable employment on account of permanent disablement shall continue, Subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement.

By Employees’ State Insurance (Amendment) Bill 2009

In Section 56 of the Principal Act, in Sub-Section (3), for the third proviso the following proviso shall Substituted, namely:

“Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical
benefits Subject to payment of contribution and such other conditions as may be prescribed by the Central Government”.

5. **Funeral Expenses**

If an insured employee dies the eldest surviving member of his family or the person who incurs the expenditure on funeral of the deceased employee, is entitled to reimbursement of such expenditure Subject to a maximum of Rs. 3000. The claim for the payment of funeral expenses should be Submitted in form 22 along with prescribed documents within 3 months of the death of the insured employee.

6. **Maternity Benefit**

Maternity benefit is provided to women workers who are covered under the Employees’ State Insurance Act, 1948. The Act provides for periodical payment to an insured woman at the prescribed rate and for a prescribed period in case of confinement, miscarriage, sickness arising out of pregnancy or premature birth of a child. The term confinement means “labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of a child whether alive or dead” and the expression miscarriage as defined in the Act means “expulsion of the contents of a pregnant uterus at any period prior to or during twenty six weeks of pregnancy, but does not include any miscarriage the causing of which is punishable under the Indian Penal Code.

**Eligibility for Maternity Benefit**

An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur in a benefit period, if the contributions in respect of her were payable for not less than half the number of corresponding contribution period. The insured woman becomes eligible for the benefit after being certified to be eligible for such payment by the medical officer to whom she has been allotted or by an insurance medical officer attached to a dispensary, hospital, clinic or other institution to which the insured woman is or was allotted if in the opinion of such insurance medical officer the condition of the women so justifies. Any other evidence in lieu of a certificate of pregnancy, expected confinement or confinement from an insurance medical officer may be accepted
The duration of Maternity benefit available to an insured woman in case of confinement is 12 weeks of which not more than 6 weeks shall precede the expected date of confinement. In case of miscarriage insured woman is entitled to maternity benefit for a period of 6 weeks only provided she gives a notice and Submits a certificate of miscarriage from the concerned medical officer. For illness arising out of pregnancy, delivery, premature birth of a child or miscarriage, she is on production of a certificate from the prescribed medical officer in the prescribed form, entitled to maternity benefit for an additional period of one month.

The rate of maternity is equal to twice the standard benefit rate corresponding to the average daily wages in respect of insured woman during the corresponding contribution period.

The maternity benefit is paid Subject to the condition that the insured woman does not work for remuneration on the days in respect of which the benefit is paid. In the event of the death of an insured woman, the maternity benefit is payable to her nominee or legal representative for the whole period if the child survives and if the child also dies until the death of the child.

An insured woman shall not be entitled to receive for the same period (a) both sickness benefit and maternity benefit or (b) both maternity and disablement benefit for temporary disablement. Where a woman worker is entitled to more than one of the benefits mentioned above she shall have to choose between the two.

The Act prohibits dismissal, discharge, reduction in rank or any other punishment of an insured woman employee during the period she is in receipt of maternity benefit. An insured woman may be disqualified from receiving maternity benefit if she fails without good cause to attend for or to Submit herself to medical examination when so required and such disqualification shall be for such number of days as may be decided by the authority authorised by the
corporation. A woman worker may, however, refuse to be examined by any person other than a female doctor or midwife.\footnote{200}

There are some defects in the Employees’ State Insurance Act. They do not cover the cases of adoptive mothers. Maternity benefit should also be paid to adoptive mothers. This will be in the interest of health and safety of such child. For the purpose of maternity benefit an adoptive mother should be treated as a natural mother.

Employees’ State Insurance pay maternity benefit regardless of number of children born. It is therefore, suggested that maternity benefit should be restricted to only two children by making necessary changes in the law.

C. The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952

The Employees’ Provident Funds and Miscellaneous Provision Act, 1952 is a welfare legislation enacted for the purpose of instituting a Provident Fund for employees working in factories and other establishments. The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies. Presently, the following three Schemes are in operation under the Act through the EPFO:

- Employees’ Provident Funds Scheme, 1952 this Scheme is amended in 2007 and 2008
- Employees’ Deposit Linked Insurance Scheme, 1976 this Scheme is amended in 2008
- Employees’ Pension Scheme, 1995 this Scheme is amended in 2008 and 2009

Coverage of Establishments and Members

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 extends to whole of India, excluding the State of Jammu and Kashmir. The Act is applicable to factories and other classes of establishments engaged in specific industries, classes of establishments employing 20 or more persons. The Act, however, does not apply to cooperative societies employing less than 50 persons.
and working without the aid of power. The Act also does not apply to employees of the Central Government or State Government or local authority. The Central Government is empowered to apply the provisions of this Act to any establishment employing less than 20 persons after giving not less than two months notice of its intent to do so by a notification in the official gazette. Once the Act has been made applicable, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with mutual consent of the employers and the majority of the employees under Section 1(4) of the Act. Thus membership of the fund is compulsory for employees drawing a pay not exceeding Rs. 6500 per month (at the time of joining). Every employee employed in or in connection with the work of a factory or establishment shall be entitled and required to become a member of the fund from the date of joining the factory or establishment. The employees drawing more than Rs. 6500/- per month at the time of joining may become member on a joint option of employer and employee. The Act is currently applicable to factories and other establishment engaged in about 182 specified industries, class of establishment employing 20 or more persons (Industries are specified in Schedule 1 of the Act). As on 31st March 2006, there were 4,44,464 establishment and factories covered under the Act with membership of 429.53 lakh both in the exempted and unexempted sectors.

1. Employees’ Provident Fund Schemes, 1952

(1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees’ Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the (establishments) or class of establishments to which the said Scheme shall apply and (there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme).

[(1A) The Fund shall vest in, and be administered by, the Central Board constituted under Section 5A.

(1B) Subject to the provisions of this Act, a Scheme framed under Sub-Section (1) may provide for all or any of the matters specified in Schedule II].
[(2) A Scheme framed under Sub-Section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.]

This Scheme is amended from time to time.

**Employees’ Provident Funds (Amendment) Scheme 2007**

In exercise of the powers conferred by Sub-Section (1) of Section 7 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government hereby makes the following Scheme further to amend the Employees’ Provident Funds Scheme, 1952 namely:

1. (1) (i) The Scheme may be called the Employees’ Provident Funds (Amendment) Scheme, 2007.

2. In the Employees’ Provident Funds Scheme, 1952 in paragraph 60, after the second proviso to clause (b) of Sub-paragraph (2), the following proviso shall be added, namely:

   “Provided also that the rate of interest to be allowed on claims for refund for the broken currency period shall be the last declared rate on Employees’ Provident Fund and if the rate declared for any current year happens to be less than the previous year’s declared rate, then it would accrue as bonus to the outgoing members and it shall be incorporated into calculation for deriving the current year’s rate of interest at the end of the year and the claims settled under this proviso shall be final.”

**Employees’ Provident Fund (Amendment) Scheme, 2008**

In exercise of the powers conferred by Section 5, read with Sub-Section (1) of Section 7 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees’ Provident Funds Scheme, 1952, namely:

1. (1) This Scheme may be called the Employees’ Provident Funds (Amendment) Scheme, 2008.

2. It shall come into force on the 1st day of April, 2008.

3. In the Employees’ Provident Funds Scheme, 1952, after Paragraph 81, the following paragraph shall be inserted, namely:
“82 Special provisions in respect of certain employees: The Scheme shall, in its application to an employee who is a person with disability under the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (1 of 1996) and under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) respectively, be Subject to the following modifications, namely:

(1) For clause (1) of Paragraph 2, the following clause shall be Substituted, namely:

‘(1) “excluded employee” means –
(i) a person with disability, who having been a member of the Fund has withdrawn the full amount of his accumulations in the Fund under clause (a) or clause (c) of Subparagraph (1) of Paragraph 69;
(ii) a person with disability, whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds twenty-five thousand rupees per month.
(iii) An apprentice.”

(2) In Paragraph 30, after Sub-paragraph (3), the following proviso shall be inserted, namely:

“Provided that the Central Government shall contribute the employer’s share of contribution up to a maximum period of three years from the date of commencement of membership of the Fund, in respect of an employee who is a person with disability, employed directly by the principal employer or through a contractor.”,

(3) In Paragraph 34, after the first proviso, the following proviso shall be inserted, namely:

“Provided further that in the case of any such employee who is a person with disability, the aforesaid Declaration form shall further contain such particulars as are necessary for such employees.”

(4) In Paragraph 36, after Sub-paragraph (1), the following Sub-paragraph shall be inserted, namely:

“(1-A) Every employer shall send to the Commissioner, within fifteen days of every month commencing from the 1st day of April, 2008, in such form as the
Commissioner may specify, the particulars as are necessary, of an employee who is a person with disability and is a member on or entitled to become a member after the 1st day of April, 2008”.

(5) In Paragraph 38, in Sub-paragraph (1), after the second proviso, the following proviso shall be inserted, namely:

“Provided also that the Central Government shall pay the employer’s share of contribution in respect of an employee who is a person with disability, up to a maximum period of three years from the date of commencement of the Fund.

**Employees’ Provident Funds (Second Amendment) Scheme, 2008**

In exercise of the powers conferred by Section 5 read with Sub-Section (1) of Section 7 and Section 14-B of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees’ Provident Funds Scheme, 1952, namely:

1. (1) This Scheme may be called the Employees’ Provident Funds (Second Amendment) Scheme, 2008.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Employees’ Provident Funds Scheme, 1952, for Sub-paragraph (1) of Paragraph 32-A, the following Sub-paragraph shall be Substituted, namely:

“(1) Where a employer makes default in the payment of any contribution to the Fund, or in the transfer of accumulations required to be transferred by him under Sub-Section (2) of Section 15 or Sub-Section (15) of Section 17 of the Act or in the payment of any charges payable under any other provisions of the Act or the Scheme or under any of the conditions specified under Section 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government by notification in the Official Gazette in this behalf, may recover from the employer by way of penalty, damages at the rates given in the table below:
<table>
<thead>
<tr>
<th>S. No.</th>
<th>Period of default</th>
<th>Rate of damages (percentage of arrears per annum)</th>
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<tr>
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<td>Less than 2 months</td>
<td>Five</td>
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<tr>
<td>(b)</td>
<td>Two months and above but less than four months</td>
<td>Ten</td>
</tr>
<tr>
<td>(c)</td>
<td>Four months and above but less than six months</td>
<td>Fifteen</td>
</tr>
<tr>
<td>(d)</td>
<td>Six months and above</td>
<td>Twenty Five</td>
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**Employees’ Provident Funds (Third Amendment) Scheme, 2008**

In exercise of the powers conferred by Section 5, read with Sub-Section (I) of Section 7 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees’ Provident Funds Scheme, 1952, namely:

1.(1) This, Scheme may be called the Employees’ Provident Funds (Third Amendment) Scheme, 2008.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Employees’ Provident Funds Scheme, 1952, after Paragraph 82, the following paragraph shall be inserted, namely:

“83 Special provision in respect of International Workers: The Scheme shall, in its application to International Workers as defined in clause (ff) of Paragraph 2 of this Scheme be Subject to the following modifications, namely:

(1) For clause (f) of Paragraph 2, the following clauses shall be Substituted, namely:

(f) “excluded employee” means an International Worker, who is contributing to a social security programme of his/her country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement.
“International Worker” means:

(a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;

(b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Act applies.

(2) For the Paragraph 26, 26-A and 26-B, the following paragraphs shall be Substituted, namely:

26. Class of employees of International Workers entitled and required to join the fund – (1) (a) Every International Worker of an establishment to whom this Scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraph comes into force.

(b) Every International Worker employed to do any work, in or in relation to any establishment to which this Scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraph comes into force, if on the date of such coming into force, such employee is a Subscriber to a provident fund maintained in respect of that establishment in India.

(2) Where the Scheme applies to an establishment on the expiry or cancellation of an order of exemption under Section 17 of the Act, every International Worker who, but for the exemption would have become and continued as a member of the Fund shall become a member of the Fund forthwith.

(3) After this paragraph comes into force in an establishment, every International Worker thereof, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member from the beginning of the month.

(4) An excluded employee of an establishment to which this Scheme applies shall, on ceasing to be such an employee be entitled and required to become a
member of the Fund from the beginning of the month following that on which he ceases to be such employee.

(5) One re-election of a class of International Workers exempted under Paragraph 27-A to join the fund or on the expiry or cancellation of an order under that paragraph, every International Worker, who but for such exemption would have become and continued as a member of the Fund, shall forthwith become a member thereof.

(6) Every International Worker who is member of a private provident fund maintained in respect of an exempted establishment and who, but for the exemption, would have become and continued as a member of the Fund shall, or joining an establishment to which the Scheme applies, become a member of the Fund forthwith.

26-A. Retention of membership – A member of the Fund shall continue to be a member until he withdraws under Paragraph the amount standing to his credit in the Fund or is covered by a notification of exemption under Section 17 of the Act or an order of exemption under Paragraph 27 or 27-A or the benefits are settled in terms of the relevant provisions under the social security agreement entered into between India and his country of origin.

Explanation: In the case of a claim for refund by a member under Sub-paragraph (2) of Paragraph 69, the membership of the Fund shall be deemed to have been terminated from the date the payment is authorised to him by the authority specified in this behalf by the Commissioner irrespective of the date of claim.

26-B. Resolution of doubts: If any question arises as to whether an International Worker is entitled or required to become or continue as member, or as to the date from which he is entitled or required to become a member, the decision thereon of the Regional Commissioner shall be final:

Provided that no decision shall be given unless both the employer and the International Worker have been given an opportunity of being heard. (3) For Paragraph 36, the following paragraphs shall be substituted, namely:

36. Duties of employers: (1) Every employer shall send to the Commissioner within fifteen days of the commencement of this Scheme, a
consolidated return in such form as the Commissioner may specify, of the International Workers (indicating distinctly the nationality of each and every International Worker) required or entitled to become members of the Fund showing the basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession paid to each of such International Worker.

Provided that if there is no International Worker who is required or entitled to become a member of the Fund, the employer shall send a ‘NIL’ return.

(a) in Form 5, of the International Workers qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying International Worker (indicating distinctly the nationality of each and every International Worker) and

(b) in such form as the Commissioner may specify, of the International Workers (indicating distinctly the nationality of each and every International Worker) leaving service of the employer during the preceding month:

Provided that if there is no International Worker qualifying to become a member of the Fund for the first time or there is no International Worker leaving service of the employer during the preceding month, the employer shall send a ‘NIL’ return”.

2. **Employees’ Deposit Linked Insurance Scheme, 1976**

Employees’ Deposit Linked Insurance Scheme, 1976 is applicable to all factories/establishment with effect from August 01, 1976. All the employees, who are members of the Employees’ Provident Fund are required to become members of this Scheme. Employers are required to pay contributions to the insurance fund at the rate of 0.5 percent of pay i.e. basic wages, dearness allowance including cash value of food concession and retaining allowance, if any. During the year 2005-06, a sum of Rs. 220.69 crore comprising of employers’ contribution was deposited. During the year 2005-06, 19228 claims were settled and an amount of Rs. 49.42 crore was disbursed. At the end of 2005-06, the EPFO had cumulative investments of Rs. 4918.99 crore under this Scheme.
Employees’ Deposit Linked Insurance (Amendment) Scheme 2008

In exercise of the power conferred by Section 6-C read with Sub-Section (1) of Section 7 and Section 14-B of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government hereby makes the following Scheme further to amend the Employees’ Deposit Link Insurance Scheme 1976, namely:

(1)(i) This Scheme may be called the Employees’ Deposit Linked Insurance (Amendment) Scheme, 2008.

(ii) It shall come into force on the date of its publication in the Official Gazette.

(2) In the Employees’ Deposit Link Insurance Scheme, 1976, for Sub-paragraph (1) of Paragraph 8-A, the following Sub-paragraph shall be Substituted namely:

“(1) where an employer makes default in the payment of any contribution to the Insurance fund, or in the payment of any charges payable under any other provisions of the Act or the Scheme, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government by notification in the Official Gazette in this behalf, may recover from the employer by way of penalty, damages at the rates given in the table below:

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3. Employees’ Pension Scheme, 1995

The Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 was amended and a separate Pension Scheme was launched from 16th November 1995 replacing the then Employees Family Pension Scheme, 1971.
Pension Criteria

Superannuation pension will be payable on attaining the age of 58 years and on completion of 20 years of service or more. Early pension can be taken at a reduced rate between 50-58 years of age, on completion of 10 years pensionable service or more. No pension for less than 10 years of service lump sum withdrawal benefit is paid in such cases.

Benefits under the Scheme

The Employees’ Pension Scheme, 1995 provides the following benefit package:

- Superannuation pension
- Early pension
- Permanent total disablement
- Widow or widowers pension
- Children pension or orphan pension
- Nominee pension/dependent parents pension

The category-wise break up of pension claims (all benefits) settled by EPFO during the year 2005-06 is indicated in the following Table:

<table>
<thead>
<tr>
<th>Category of claims</th>
<th>Number of claims settled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Pension Benefits</td>
<td>333724</td>
</tr>
<tr>
<td>Life Assurance Benefit</td>
<td>1302835</td>
</tr>
<tr>
<td>Retirement-Cum-Withdrawal Benefit</td>
<td></td>
</tr>
<tr>
<td>Refunds</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>1636559</td>
</tr>
</tbody>
</table>

Contribution

From and out of the contribution payable by the employer in each month to the provident fund, a part of contribution representing 8.33% of employee’s pay is remitted to the employee’s pension fund. Employer to pay for cost of remittance. The Central Government contributes 1.16% of the pay of employee to the Employees’ Pension Fund. If the pay of the employee exceeds Rs. 6500/- per
month, the contribution payable by the employer and the Central Contribution will be limited to the amount payable on his pay of Rs. 6500.-.

**Employees’ Pension (Amendment) Scheme 2008**

In exercise of the powers conferred by Section 6-A read with Sub-Section (1) of Section 7 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government hereby makes the following Scheme further to amend the Employees’ Pension Scheme, 1995, namely:

(1) (i) This Scheme may be called the Employees’ Pension (Amendment) Scheme, 2008.

(ii) It shall come into force on the 1st day of April 2008.

(2) (i) In the Employees’ Pension Scheme, 1995 Paragraph 4, after Sub-paragraph (2), the following proviso shall be inserted namely:

“Provided that the Central Government shall pay the contribution payable to the Employees’ Pension Fund in respect of an employee who is a person with disability under the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 and under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 respectively, up to a maximum period of three years from the date of commencement of membership of the Fund.”

(2) In paragraph 24, the following proviso shall be inserted namely:

“Provided that if such person is a person with disability, the aforesaid form shall further contain such particulars as are necessary for such person.”

**Employees’ Pension (Second Amendment) Scheme 2008**

In exercise of the powers conferred by Section 6-A read with Sub-Section (1) of Section 7 and Section 14-15 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government hereby makes the following Scheme to amend the Employees’ Pension Scheme 1995, namely:

(1) (i) This Scheme may be called the Employees’ Pension (Second Amendment) Scheme 2008.

(ii) It shall come into force on the date of its publication in the official Gazette.
(2) In the Employees’ Pension Scheme, 1995, for Sub-paragraph (1) of paragraph 5, the following Sub-paragraph shall be substituted namely:

(1) “where a employer makes default in the payment of any contribution to the Employees’ Pension Fund, or in the payment of any charges payable under any other provisions of the Act or the Scheme, the Central Provident Fund Commissioner or Such-officer as may be authorised by the Central Government by notification in the official Gazette in this behalf, may recover from the employer by way of penalty, damages at the rates given in the table below:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Period of default</th>
<th>Rate of damages (percentage of arrears per annum)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Less than 2 months</td>
<td>Five</td>
</tr>
<tr>
<td>(b)</td>
<td>Two months and above but less than four months</td>
<td>Ten</td>
</tr>
<tr>
<td>(c)</td>
<td>Four months and above but less than six months</td>
<td>Fifteen</td>
</tr>
<tr>
<td>(d)</td>
<td>Six months and above</td>
<td>Twenty Five</td>
</tr>
</tbody>
</table>

(ii) In Sub-paragraph (7) of paragraph 12, for the words “three percent”, the words “four percent” shall Substituted.

(iv) Paragraph 12-A and paragraph 13 shall be deleted.

**Employees’ Pension (Third Amendment) Scheme, 2008**

In exercise of the powers conferred by Section 6-A; read with Sub-Section (1) of Section 7 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees’ Pension Scheme, 1995, namely:

1.(1) This Scheme may be called the Employees’ Pension (Third Amendment) Scheme, 2008

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Employees’ Pension Scheme, 1995, after Paragraph 43, the following paragraph shall be inserted, namely:
“43-A. Special provisions in respect of International Workers: The Scheme shall in its application to International Workers as defined in Paragraph 83 of the Employees’ Provident Fund Scheme, 1952 be Subject to the following modifications, namely:

(1) For clause (xv) of Paragraph 2, the following clause shall be substituted, namely:

(xv) “pensionable service” means the service rendered by the member covered by an international social security agreement for which contributions have been received or are receivable, the period of service rendered and considered as eligible under such agreement.

(2) For Sub-para (1) of Paragraph 10, the following Sub-paragraph shall be substituted, namely:

10. Determination of pensionable service: (1) The pensionable service of the member covered by an international social security agreement shall be determined with reference to the contributions received or are receivable on his behalf in the Employees’ Pension Fund, the period of service rendered under a relevant social security programme and considered as eligible for benefits shall be added only for the purpose mentioned under such agreement.

(3) For Paragraph 11, the following paragraph shall be substituted, namely:

11. Determination of pensionable salary: The pensionable salary shall be the average monthly pay drawn in any manner including on piece-rate basis during the contributory period of service of the membership of the Employees’ Pension Fund.

(4) For Paragraph 14, the following paragraph shall be Substituted, namely:

14. Benefits on leaving service before being eligible for monthly members pension: (1) If a member not being an Indian employee, hailing from a country with which India has entered into a social security agreement, has not rendered the eligible service prescribed in Paragraph 9 on the date of exit, or on attaining the 58 years of age, whichever is earlier, he/she shall be entitled to a benefit as may be prescribed in the said agreement on reciprocal basis.

(2) If a member not being an Indian employee hailing from a country with which India has not entered into a social security agreement, has not rendered the
eligible service specified in Paragraph 9 on the date of exit, or on attaining the 58 years of age whichever is earlier, his/her entitlement to the withdrawal benefit under Paragraph 14 shall be, on the principle of reciprocity, and may be available to Indian employees in that country.”

**Employees’ Pension (Amendment) Scheme, 2009**

In exercise of the powers conferred by Section 6-A read with Sub-Section (1) of Section 7 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees’ Pension Scheme, 1995, namely:

1.(1) This Scheme may be called the Employees’ Pension (Amendment) Scheme, 2009.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Employees’ Pension Scheme, 1995, for Table-E, the following Table shall be substituted, namely:

<table>
<thead>
<tr>
<th>Number of full year’s contribution paid</th>
<th>Proportion of pay on last contribution month</th>
<th>Number of full year’s contribution paid</th>
<th>Proportion of pay on last contribution month</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>0.987</td>
<td>13.</td>
<td>14.841</td>
</tr>
<tr>
<td>2.</td>
<td>1.998</td>
<td>14.</td>
<td>16.182</td>
</tr>
<tr>
<td>3.</td>
<td>3.033</td>
<td>15.</td>
<td>17.554</td>
</tr>
<tr>
<td>4.</td>
<td>4.093</td>
<td>16.</td>
<td>18.960</td>
</tr>
<tr>
<td>5.</td>
<td>5.178</td>
<td>17.</td>
<td>20.399</td>
</tr>
<tr>
<td>6.</td>
<td>6.289</td>
<td>18.</td>
<td>21.872</td>
</tr>
<tr>
<td>7.</td>
<td>7.426</td>
<td>19.</td>
<td>23.380</td>
</tr>
<tr>
<td>8.</td>
<td>8.590</td>
<td>20.</td>
<td>24.924</td>
</tr>
<tr>
<td>9.</td>
<td>9.782</td>
<td>21.</td>
<td>26.505</td>
</tr>
<tr>
<td>10.</td>
<td>11.003</td>
<td>22.</td>
<td>28.123</td>
</tr>
<tr>
<td>11.</td>
<td>12.252</td>
<td>23.</td>
<td>29.780</td>
</tr>
<tr>
<td>12.</td>
<td>13.531</td>
<td>24.</td>
<td>31.477</td>
</tr>
</tbody>
</table>
Employees’ Pension (Second Amendment) Scheme, 2009

In exercise of the powers conferred by Section 6-A read with Sub-Section (1) of Section 7 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees’ Pension Scheme, 1995, namely:

1.(1) This Scheme may be called the Employees’ Pension (Second Amendment) Scheme, 2009

(2) It shall come into force on the date of its publication in the Official Gazette.

(3) In the Employee’s Pension Scheme, 1995, in Sub-paragraph (2) of Paragraph 10, for the words “and/or”, the word “and” shall be substituted.

D. The Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 envisages to provide a retirement benefit to the workmen who have rendered long and unblemished service to the employer, and thus contributed to the prosperity or the employer. Gratuity is a reward for long and meritorious service. The significance of this Act lies in the acceptance of the principle of Gratuity as a compulsory, statutory retraital benefit.

Payment of Gratuity Act (Amendment) Bill, 2009 has been introduced to amend the Payment of Gratuity Act, 1972. By this Bill, Section 2 clause (e) of Payment of Gratuity Act, 1972 has been amended. New Definition of employee is given here:

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

Thus, clause 2 of the Bill seeks to Substitute clause (e) of Section 2 of the Payment of Gratuity Act 1972 to bring teachers of the educational institutions within the provisions of the said Act for the purpose of payment of gratuity.
Coverage of Payment of Gratuity Act, 1972

- Every factory, oilfields, plantations, port, railways company and mine.
- 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 10 or more persons are employed or were employed on any day of the preceding 12 months.
- Every motor transport undertaking in which 10 or more persons are employed or were employed on any day of the preceding 12 months.
- Such other establishments or class of establishments in which 10 or more employees are employed or were employed on any day of the preceding 12 months, as the Central Government may, by notification, specify in this behalf.

A shop or establishment once covered shall continue to be covered notwithstanding that the number of persons employed therein at any time falls below 10.

Entitlement

Every employee, other than apprentice irrespective of his wages is entitled to receive gratuity after he has rendered continuous service for five years or more. Gratuity is payable at the time of termination of his services either (i) on superannuation or (ii) on retirement or resignation or (iii) on death or disablement due to accident or disease. Termination of services includes retrenchment. However, the condition of 5 years continuous service is not necessary if services are terminated due to death or disablement. In case of death of the employee, the gratuity payable to him is to be paid to his nominee, and if no nomination has been made then to his heirs.²¹⁹

Allahabad Bank v. All India Allahabad Bank Retired Emps. Assn.²²⁰ this case was related to Section 2(e), 4 and 5 of Payment of Gratuity Act, 1972. In this case All India Allahabad Bank Retired Employees Association filed a writ petition invoking the original jurisdiction of the Allahabad High Court under Article 226 of the Constitution of India with a prayer to issue a writ of mandamus directing the appellant bank herein to pay gratuity to the members of its Association under the
Payment of Gratuity Act, 1972. The High Court on due consideration of the matter declared that the retired employees of the appellant bank were entitled to the benefit of gratuity under the said Act and accordingly directed the payment of gratuity within the time specified in the judgment. The said judgment of the Allahabad High Court is impugned in this appeal.

A short question that arises for consideration in this appeal is as to whether the retired employees of appellant bank are entitled to payment of gratuity under the provisions of the said Act?

The retired employees of the appellant bank having formed an association which includes officers and Subordinate staff sent a legal notice to the appellant bank on 27.11.1988 requiring it to release the amount of gratuity to its members in accordance with the provisions of the said Act. The case set up by the Association was that its members were being illegally deprived of their statutory right to receive gratuity under the provisions of the Act on the pretext that they had opted for pensionary benefits in lieu of gratuity. It appears that on behalf of the Association applications were sent to the competent authority in the prescribed Performa for payment of gratuity in response to which the appellant bank made its stand explicitly clear that it was not possible to make payment of gratuity in addition to pension. Since the whole cause of action is based on response of the appellant bank dated 10.01.1989.

During the pendency of the appeal this Court by its order dated 22.03.2006 directed the parties to appear before the Controlling Authority and the Controlling Authority was required to decide as to whether the benefits under the Allahabad Bank Employees Pension Scheme (old) are more beneficial in comparison to that of the payment of gratuity under the provisions of the Act. The Controlling Authority held that the amount received by the employees under the said Scheme is much more than what they could have receive under the Act. The benefits according to the Controlling Authority available under the Scheme are more beneficial than the gratuity payable under the Act.

Being aggrieved by the order of the Controlling Authority writ petitions filed in this Court challenging the validity of the order of the Controlling Authority.
The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under Sub-Section (5) of Section 4 as to whether the terms of gratuity payable under any Award of agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court’s order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under Sub-Section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate government and that too for the proposes of considering to grant exemption from the operation of the provisions of the Act. Even on merits the conclusions drawn by the Controlling Authority that the Pension Scheme (old) offered by the Bank is more beneficial since the amount of money the pensioners got under the Pension Scheme is more than the amount that could have been received in the form of gratuity under the provisions of the Act is unsustainable. The Controlling Authority failed to appreciate that Sub-Section (5) of Section 4 of the Act, protects the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer than the benefits conferred under the Act. The comparison, if any, could be only between the terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee under Section 4 of the Act. There can be no comparison between a pension Scheme which does not provide for payment of any gratuity and right of an employee to receive payment of gratuity under the provisions of the Act. Viewed from any angle the order of the Controlling Authority is unsustainable. The order is liable to be set aside and the same is accordingly set aside and held that retired employees of appellant bank were entitled to payment of gratuity under the provisions of the Act. Dismiss the appeal of appellant bank.

**Calculation of Benefits**

For every completed year of service or part thereof in excess of six months, the employer pays gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the concerned employee. The amount of the gratuity payable to an employee not to exceed (Rs. 3,50,000).
Administration

The Act is enforced both by the Central and State Government Section 3 authorises the appropriate government to appoint any officer as a controlling authority for the administration of the Act. Mines, major ports, oilfields, railways, factories and established owned or controlled by the Central Government and establishment having branches in more than one State, are controlled by the Central Government. The remaining factories and/establishments are looked after by the State Governments.

The Central/State Governments appoint the controlling authorities for different areas and inspectors, to ensure that the provisions of the Act are complied with. The Central/State Governments also frame rules for administration of the Act. In Maharashtra, the Labour Courts in different localities are notified as Controlling Authority for the administration of the Act.221

The coverage of Payment of Gratuity Act is limited mostly to the organised sector. Beside this the gratuity is payable only those employees who have rendered continuous service 5 year or more. Therefore, it has been suggested that the gratuity is payable to those employees who has rendered continuous service to three years or more.

E. The Workmen’s Compensation Act, 1923

In case of an accident or some diseases occurred at workplace resulting in death or disability of women workers, is not merely a financial loss, but also of house keeping function. It is a irreparable loss to the family itself. Even if male member of the family come across some accident at workplace resulting in injury or death, the women are the real victims. The Workmen Compensation Act is one of the important legal provisions to deal with such cases. Its effective implementation can be a big relief for a worker.

Purpose

To make industry more attractive for labour and increase its efficiency by providing for payment by certain classes of employers to their workmen, as compensation for injuries suffered due to accidents in the course of employment.
Scope and Coverage

The Act extends to the whole of India and it applies to railways and other transport establishments, factories, establishments engaged in making, altering, repairing, adapting, transport or sale of any article, mines, docks, establishments engaged in constructions, fire-brigade, plantations, oilfields and other employments listed in Schedule II of the Act. The Workmen’s Compensation (Amendment) Act, 2000 w.e.f. 08.12.2000 has brought all the workers within its ambit irrespective of their nature of employment i.e. whether employed on casual basis or otherwise than for the purposes of the employer’s trade or business. For the first time, casual labourers will be provided compensation for death or disability.

Under Section 2(3) of the Act, the State Governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three month’s notice in the official gazette. The Act, however, does not apply to members serving in the Armed forces of Indian Unions, and employees covered under the provisions of the Employees’ State Insurance Act, 1988 as disablement and dependents’ benefit is applicable under this Act.

Entitlement

In order to be a “workman” within the meaning of Sectin 2(1)(n) of the Workmen’s Compensation Act, firstly a person should be employed, secondly, he should be employed for the purposes of the employer’s trade or business and lastly, the capacity in which he works should be one set out in the list in Schedule II of the Act.

Benefits

The Compensation has to be paid by the employer to a workman for any personal injury caused by an accident arising out of and in the course of his employment. The employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days. If the injury is cause to when the workman was under the influence of Alcohol or drugs or willfully disobeyed a clear order or violated a rule expressly framed for the purpose of securing the safety of workman or willfully removed or disregarded
a safety devise. The rate of compensation in case of death is an amount equal to 50 percent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs. 80,000 whichever is more. Where permanent total disablement results from the injury, the compensation will be an amount equal to 60 percent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of Rs. 90,000, whichever is more. Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the above purpose will be deemed to be four thousand rupees only.

Administration

The State Governments administer the provisions of this Act through the Commissioners appointed for specified areas. The State Governments also make rules for ensuring that the provisions of the Act are complied with.

The working of the Act has brought to light several shortcomings which impede relief to the workers. A weak feature of the Act is that it places the entire liability for compensation on the employer but there is no obligation on the part of the employer to insure his liability. Thus in many cases small employers find it difficult to pay compensation in the event of a heavy liability arising out of a fatal accident. Such defaults tend to bring the law into disrepute. On the other hand trade unions suggest that the rate of compensation should be increased, as the Act does not meet present requirements and needs Substantial changes. The Act makes no provision for medical care and treatment which is the greatest need of the worker when he meets with an accident.

3. Wages Protection for Women

Though labour welfare enactment’s have provided various protections, safeguard and benefits to working women in our country, there was an emergent need to give more protection to women workers who are discriminated as regards employment and wages. The wages of women workers in India are extremely low. They are generally not paid the minimum wages for the kind of work they do. The wages paid below the minimum wages is a form of gender discrimination at workplace. There are several unfair labour practices pertaining to the payment of wages. The employers did not make payment of wages in definite form, that is sometimes they made payment of wages in cash and sometimes in kind. The
wages were paid after much delay which resulted into poverty and growing indebtedness. In an economy where even minimum wages are not paid to the women workers, the need to protect the wages earned by them has greatest significance. In this regard the most relevant and important pieces of legislations for the women workers are *Minimum Wages Act, 1948*, *Payment of wages Act, 1936* and *Equal Remuneration Act, 1976* which are as follows:

**A. The Minimum Wages Act, 1948**

Even though there is no uniform and comprehensive wage policy for all sectors of the economy in India, mechanism exists for determination of wages in the organised and organised sectors and their enforcement. Wages in the organised sector are determined through negotiations and settlements between employer and employees. In unorganised sector, where labour is vulnerable to exploitation due to illiteracy and lack of effective bargaining power, minimum rates of wages are fixed both of Central and State Governments in the Scheduled employments falling within their respective jurisdictions under the provisions of the Minimum Wages Act, 1948.

The Minimum Wages Act, 1948 is also very relevant for women workers because it is primarily designed for the protection of workers in the unorganised sector, where majority of women work.

**Objective**

The Minimum Wages Act 1948 envisages to provide minimum statutory wages for scheduled employments with a view to obviate the chances of exploitation of labour through payment of very low and sweating wages. The Act also provides for the maximum daily working hours, weekly rest day and overtime. Rates fixed under Minimum Wages Act prevail over the rates fixed under award/agreement.\(^{223}\)

In *Madhya Pradesh Mineral Industry Association v. The Regional Labour Commissioner (Central Jabalpur and Others)*\(^ {224}\), has held that it is true that the provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions, the
Court should adopt what is sometimes described as a beneficent rule of construction.

The Constitutional Bench of the Apex Court in M/s Bhipusa Yamasa Kshatriya and another v. Sangamner Akola Taluka Bidi Kamgar Union and others\(^{225}\) has held that the object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which the employers must pay. The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganised labour or absence of machinery for regulation of wages the wages paid to workers were, in the light of the general level of wages, and Subsistence level, inadequate.

Further power to fix minimum rates of wages does not by itself invest the Appropriate Government with authority to make unlawful discrimination between employers in different industries.

The Apex Court in Airfreight Ltd. v. State of Act Karnataka and Others\(^{226}\) has held that what the Act purports to achieve is to prevent exploitation of labour and for that purpose authorises the appropriate government to take steps to prescribe minimum rates of wages in the scheduled industries. So, in prescribing the minimum wage rates the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare state assumes every employer must pay before he employs labour. Since the capacity of the employer to pay is treated as irrelevant it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. The Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker.

**Applicability**

The Act applies to all persons who work on a temporary basis, such as in breaking stones or in the construction of roads, or to present who work on a piece rate for example, in industries such as beedi making or handloom items. The Act
also applies to persons who work for daily wages – an example of such daily wagers would be persons working in mines or on construction sites, contract labour, and persons engaged in agricultural operations.

For the purpose of this Act wages are defined as all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment, express or implied were fulfilled, be payable to a person employed. It include house rent allowance but does not include the value of the house accommodation, light supply, water, medical attendance, or provident fund or pension fund contribution paid by the employer.

**Fixation of Minimum Rates of Wages**

The State Government is empowered to fix minimum rates of wages for different classes of employees – skilled, unskilled, clerical, supervisory, etc., employed in any scheduled employment and to review and revise the same from time to time, the interval between two revisions not exceeding five years, considering the change in price index and dearness allowance.

In *Workmen of Reptakos Brett and Co. Ltd. v. the Management of Reptakos Brett and Co. Ltd.* The Tripartite Committee of the Indian Labour Conference accepted five norms for the fixation of ‘minimum wage’ in 1957:

(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earning of women, children and adolescents should be disregarded.

(ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.

(iii) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average worker’s family of four, a total of 72 yards.

(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government’s industrial housing Scheme should be taken into consideration in fixing the minimum wage.

(v) Fuel, lighting and other ‘miscellaneous’ items of expenditure should constitute 20% of the total minimum wage.”
The concept of the minimum wage is not the same as it was in 1936. Keeping in view of the socio-economic aspect of the wage structure one more additional component viz., ‘children’s education, medical requirement, minimum recreation and provision for old age, marriage etc. should constitute 25% of the total minimum wage’ should be added.

**Fixation of Working Hours etc.**

In regard to any scheduled employment in respect of which minimum rates of wages have been fixed, the Government may:

(a) Fix the number of working hours constituting a normal working day, inclusive of one or more intervals.

(b) Provide for a rest day with wages, in every period of 7 days and

(c) provide for payment for work on a rest day at a rate not less than the overtime rate.\(^{229}\)

**Wages for two or more classes of work**

Where an employee does two or more classes of work, to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each class.\(^{230}\)

**Payment of minimum wages**

The employer is bound to pay to every employee engaged in a scheduled employment under his wages, at a rate not less than the minimum rates of wages fixed for that class of employees in that employment, without making any deduction there from except those permitted under the Payment of Wages Act.\(^{231}\)

The employees are entitled to the minimum wages at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.\(^{232}\)

Where an employee works on any day for a period less than the requisite number of hours constituting a normal working day, he shall still be entitled to receive wages for the full normal working day except:

(i) Where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and

(ii) In such other cases and circumstances as may be prescribed.\(^{233}\)
If an employee is employed on piece-work basis, the employer shall pay to him, wages at not less than the minimum time rate. The linkage of minimum wages with performance or output, if it falls short of such wages, shall be illegal.

In People’s Union for Democratic Rights and Others v. Union of India and Others, the Apex Court has held that the casual labourers/ workers temporarily employed by the contractors in connection with construction work were entitled for benefit of relevant labour and industrial laws, including Minimum Wages Act. While dealing with the issue of maintainability of the petition under Article 32 of the Constitution of India with regard to enforceability of relevant labour/industrial laws the Court held as under:

“The essential requirement for maintaining the petition under Article 32 for breach of any fundamental right may be provided by the breach of the statutory laws. Non-enforcement of Equal Remuneration Act amounts to denial of equality under Article 14. So also the non-observance of the Contract Labour (Regulation of Employment and Conditions of Service) Act, 1970 amounts to violation of Article 21 in as much as these Acts are clearly intended to ensure basic human dignity to the workmen and the State cannot deprive anyone of this previous and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just. The non-payment of minimum wage is a breach of the fundamental right under Article 23.”

In Sanjit Roy v. State of Rajasthan, the Apex Court held that every person who provides labour or service to another is entitled at least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated.

The Apex Court in Mukesh Advani v. State of M.P. directed the release of benefits to the bonded labour in Raisen Mine in Madhya Pradesh as envisaged in Minimum Wages Act. Where the temporary daily waged employees were claiming parity and equal pay scale with regularly employed employees, the Apex Court in Ghaziabad Development Authority and Others v. Vikram Chaudhary and Others held that even though the petitioners were not entitled for the parity in
pay scale with regularly appointed employees, but however, a direction was issued that the temporary daily waged employees be given minimum wages fixed under the Minimum Wages Act, 1948 as would be prevalent in the locality.

Even later on in *State of Orissa and Others v. Balaram Sahu and Others*, the Apex Court directed payment under the Minimum Wages Act to daily waged employees who were seeking parity with regularly appointed employees.

In *Smt. Kala Devi v. State of H.P. and Ors.* In this case the petitioner was employed as “school mother” with the respondent. It is her grievance that even though she was employed on temporary basis, she was entitled to the wages payable to class-IV employees of the State.

Undisputedly the State of Himachal Pradesh has issued various circulars/notifications under the Minimum Wages Act fixing the wages payable to the workers employed by the State. The petitioner is admitted to have worked on part time basis for atleast 3 to 4 hours in a day. Even though the petitioner was working for the same time / duration as the regularly appointed employees, but however she was not given the same scale of salary for which she was working. Keeping in view the various circulars issued by the State her wages ought to have been enhanced with the passage of time.

The petitioner could not have sustained herself on meagre payment of Rs. 110/- per month. The employee is definitely entitled to minimum wages or wages which are fair, just and reasonable. It is not the petitioner’s fundamental right to have periodical revision of wages but definitely it is petitioner’s legal right to have such wages which are considered to be minimum wage as fixed by the respondents in terms of its various circulars. Rs. 110/- per month is too inadequate for a person to live life with human dignity. Petitioner said that is conscious of the fact that fixation of pay scale / salary depends upon various factors and attending circumstances and it is solely the prerogative of the Government but however the present case is a rare exception in which judicial interference is warranted due to lackadaisical approach adopted by the respondent/State. The State may not have adopted unfair labour practice but definitely has not shown concern for enhancing the wages so as to make a person sustain herself. The apathy on the part of the
State is appalling. Comparison and empathy ought to have been shown in this regard.

This Court has not gone into the question of applicability of the Minimum Wages Act but has only applied the principles and the benefits under the Act.

Under these circumstances it is directed that the respondents shall pay to the petitioner wages in proportion to the hours of her service rates fixed under the notification / circulars issued by the Government under the Minimum Wages Act, for such period she rendered her services with the respondent / State. The petitioner has retired. The arrears shall be disbursed within a period of three months from today, failing which, thereafter she shall be entitled to interest at the rate of 9%.

**Wages in cash/kind**

As a rule, the wages payable under the Act should be paid in cash. The appropriate government may, however, permit the payment of wages wholly or partly in kind, keeping in view the prevailing custom and also allow the supply of essentials commodities at concessional rates.\(^{241}\) The cash value of wages in kind and of concession in respect of supply of essential commodities at concessional rates shall be estimated in the prescribed manner.\(^{242}\)

**Overtime wages**

If an employee works on any day in excess of the normal working hours, the employer shall pay to him overtime wages for every hour or for part of an hour, so worked in excess at the rate prescribed under this Act or under any other law, whichever is higher.\(^{243}\)

As per Factories Act, overtime wages are to be paid at twice the normal rate of wages.

While the Act provides a mechanism for fixing and revising minimum rates of wages, it does not give any guidelines as to the basis on which the minimum wages are to be fixed or revised. This has been the Subject of considerable criticism and discussion over the years. It has been recommended that in fixing minimum wages, the basic minimum needs of workers and his/her family for sustenance should be kept in view so that the wage prescribed is a just wage.
In some notifications of the wages under the Act, there is a tendency to classify work as “light work usually done by women” and “heavy work usually done by men.” Such notifications are highly objectionable and have been criticised as a device to circumvent the law and perpetuate the practice where women workers’ wages are fixed at lower levels than those of men workers. It has been recommended that specific occupations must be listed out and minimum rates of wages notified against these so that it is possible to verify whether women-related occupations are ranked lower in the matter of wages.

B. The Payment of Wages Act, 1936

The Payment of Wages Act, 1936 was enacted to regulate payment of wages to workers employed in industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them. The wage ceiling under Payment of Wages Act, 1936 was fixed at Rs. 1600/- pm. in 1982. With a view to enhance the wage ceiling to 6500/- p.m. for applicability of the Act, to empower the Central Government to further increase the ceiling in future by way of notification and to enhance the penal provision etc. the Payment of Wages (Amendment) Act, 2005, which was passed by both houses of Parliament, has been notified on 06.09.2005 as an Act 41 of 2005 by the Ministry of Law and Justice. Subsequently, the Ministry of Labour and Employment has issued the Notification S.O. 1577 (E) to make the Payment of Wages (Amendment) Act, 2005 effective from the 9th November 2005.244 Recently the Labour Law Notification S.O. 1380 (E) has been issued which enhance the wage limit from 6500/- to 10000/- p.m. 245 The Payment of Wages Act applies to person employed in any factory, railway-directly or through a ‘Sub-contractor’, any industrial/other establishment like mine, dock, plantation etc. can be extended by Government.

For the purpose of this Act the ‘wages’ means all emoluments expressible in terms of money and payable to the employee including any sum payable for termination of service, wages in lieu of holidays or leave, overtime wages and bonus payable under the Bonus Act or under the terms of employment. However, ‘wages’ does not include value of any house accommodation, supply of light, water, medical attendance or any other amenity, contribution to any pension or
provident fund, traveling allowance, reimbursement of any special expense and gratuity. Nor does it include suspension/Subsistence allowance given during suspension period of an employee.\textsuperscript{246}

**Fixation of wage-periods**

Every employer or the person responsible for payment of wages, should fix the wage period, which may be per day, per week or per month, etc. But in no case it should exceed one month.\textsuperscript{247}

**Time of payment**

Every employer/manager should make timely payment of wages. If the number of persons employed in an establishment is less than 1000, then wages must be paid within 7 days of the expiry of the wage period, and in other cases within 10 days of the expiry of the wage period and is other cases within 10 days of the expiry of the wage period.\textsuperscript{248}

Where the employment of any person is being terminated, his wages should be paid within 2 days of the date of termination.

Besides, all payments of wages should be made only on a working day.

**Mode of Payment**

The employer should pay the wages in cash, i.e. in current coins or currency notes. However, wages may be paid either by cheque or by crediting in employee’s bank account, after obtaining his written consent.\textsuperscript{249}

**Not to make Unauthorised Deductions**

The employer should not make any deduction from wages other than, the following:\textsuperscript{250}

(a) Fines
(b) Deduction for absence from duty
(c) Deduction for damage or loss of goods or money, expressly entrusted to the employee’s custody, not exceeding the amount of actual damage or loss caused due to his neglect or default.
(d) Deduction for house accommodation and other amenities or services as notified by the Government, provided by the employer.
(e) Deduction for recovery of advances.
(f) Deduction for recovery of loans made from any labour welfare fund.
(g) Deduction for income-tax payable by the employee

(h) Deduction required to be made by order of a Court or other competent authority.

(i) Deduction for Subscription to provident fund and repayment of advances from provident fund.

(j) Deduction for payment to co-operative societies approved by the Government or an insurance Scheme of post office.

(k) Deductions can be made, with the written authorisation of the employee for payment of any life insurance premium etc.

(l) Deductions for payment of insurance premia on Fidelity Guarantee Bonds and Contribution to any insurance Scheme framed by the Central Government.

From the provisions of the Act, it is clear the Act is not applicable to self employed/home-based workers, as they are not persons employed in the category of establishments mentioned in the Act. It does not, therefore protect a large number of workers in the unorganised sector.

C. The Equal Remuneration Act, 1976

In Part IV relating to the Directive Principles of State Policy Article 39 of the Constitution envisages that the state shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. In order to give effect to this provision, in the year which was being celebrated as the International Women’s Year, President of India promulgated the Equal Remuneration Ordinance, 1975 on 26th September, 1975 to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against women in the matter of employment. The ordinance was replaced by the Equal Remuneration Act, 1976 which received the assent of the President of India on 11th February, 1976.

Objectives

The Equal Remuneration Act provides for payment of equal remuneration to men and women workers, for same work or work of a similar nature and for the prevention of discrimination, on grounds of sex, against women in the matter of employment.
Though the Equal Remuneration Act was passed in 1976, it is one of the least invoked legislations by the intended beneficiaries. There have been a few cases where women have challenged the lower salaries paid to them. In *Air India v. Nargesh Meerza and others*, the Central Government had made a declaration by virtue of a notification that the differences in the remuneration of air hostesses and flights stewards were not based on sex because Section 16 clearly authorises restrictions regarding remuneration to be paid by the employer if a declaration under it is made by the appropriate government. An air hostess challenged the discriminatory employment conditions for air hostesses and stewards along with other thing. The Supreme Court held that the benefit conferred on the female under the Act is not absolute and unconditional. From a comparison of the mode of recruitment, the classification, promotional avenues and other matters, it is clear that air hostesses form an absolutely separate category from the Assistant pursers in many respects such as different grades, different promotional avenues and different service conditions. No hostile discrimination is therefore, involved. The declaration made by the Government of India is presumptive proof of the fact that in matter of allowances, conditions of service and other types of remuneration, no discrimination has been made only on the ground of sex.

Thus equal pay for equal work has been denied to the air hostesses which resulted as tremendous set back to the working women. Secondly, this case has also shown that even during their period in service, discrimination against women was practiced. This situation was remedied by the passing of Equal Remuneration (Amendment) Act 1987, which specifically mentions that there should not be discrimination during employment between men and women.

Thirdly, it also proved beyond doubt in this case that Section 16 is defective and can work against the interests of women employees. Under this Section government can declare that difference in wages in a particular post is not based on sex and the Courts have to accept it without any inquiry. This rule could be used arbitrarily not only in public sector undertakings but also in private employment to shut out an enquiry by the Courts. Therefore, Section 16 needs amendment so that equal pay for equal work cannot be denied.
However, after the *Air India case* the judiciary has played an active role in enforcing and strengthening the Constitutional goal of “equal pay for equal work.”

A milestone in the area of implementation of Equal Remuneration Act was reached with the pronouncement of the Supreme Court decision in *People’s Union for Democratic Rights v. Union of India* in this case the Supreme Court ruled:

It is the principle of equality embodied in Article 14 of the Constitution which finds expression in provision of the Equal Remuneration Act.

In other words if the provisions of the Act are not observed the principle of equality before the law enshrined in Article 14 is violated. In *Randhir Singh v. Union of India* while construing Article 14 and 16 in the light of the preamble and Article 39(d), the Supreme Court held that the principle of “equal pay for equal work” is deductible from them and may be properly applied to cases of unequals scales of pay based on no classification or irrational classification though those drawing different scales pay do identical work under the same employer. This case is a harbinger of a new judicial trend of reading directive principles into fundamental rights. The Supreme Court in this case further observed:

Equal pay for equal work is not a mere demagogic slogan. It is a Constitutional goal capable of attainment through Constitutional remedies by the enforcement of Constitutional rights.

In *Sanjit Roy v. State of Rajasthan*, the Supreme Court directed the State Government not only to pay minimum wages but also to pay wages in accordance with the principle of equal pay for equal work to men and women worker engaged in famine relief work.

Again in *Bhagwan Das v. State of Haryana*, the Supreme Court was of the view that (i) person doing similar work cannot be denied equal pay on the ground that mode of recruitment was different, and (ii) a temporary or casual employee performing the same or similar duties and functions is entitled to the same pay as that of a regular or permanent employee.

The Supreme Court again in a recent case namely *Food Corporation of India v. Shyamal K Chatterjee*, held that equal wages will be payable even to casual workers engaged through contractor when they are doing the same work.
However, in one case the Division Bench of Kerala High Court has held that unless it is shown that there is discrimination amongst the same set of employees by the same master in the same establishment doing the same job and similarly situated, the principle of equal work cannot be enforced.  

The applicability of the Act does not depend upon the financial viability of the employer to pay equal remuneration as provided by it.  

**Scope and Coverage**  
The Act extends to whole of India and applies to the establishments or employments notified by the Central Government. (The Act is now applicable to almost every kind of establishments).  

According to Section 3 the provisions of the Act shall have an effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.  

However, nothing in this Act shall apply:  

(a) to cases affecting the terms and conditions of a woman’s employment in complying with the requirements of any law giving special treatment to women, or  
(b) to any special treatment accorded to women in connection with:  
(i) the birth or expected birth of a child, or  
(ii) the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.  

The Act was amended in 1987. According to this Amendment, Courts can take cognisance on the basis of complaints made by recognized organisations notified by the Central or State Governments. The Amendment removed certain loopholes and made it mandatory for the employer to pay equal wages to men and women workers and prohibit discrimination of women on the ground of sex in matter of recruitment, training, promotion and transfer. The Amending Act also provides for stricter punishment for the violation of this statute.
Salient features of the Act

Duty to Pay Equal Remuneration

Section 14 of the Act imposes a duty on the employer to pay equal remuneration to men and women workers for the same work or for work of a similar nature.

For the purpose of this Act “same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.266

No employer can pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or kind, at rates less favourable than those at which remuneration is paid by him to the workers of the other sex in such establishment or employment performing the same work or work of a similar nature. With a view to implement this duty, no employer should reduce the rate of remuneration of any worker. It has further laid down that where in an establishment or employment, the rates of remuneration payable before the commencement of the Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or as the case may be, the highest (in cases where there are more than two rates), of such rates are to be paid.

With a view to further strengthen this principle, Section 5 lays down that after the coming into force of the Act, no employer while making recruitment for the same work or work of a similar nature, (of in any condition of service Subsequent to recruitment such as promotions, training or transfer)267 make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force. However, this provision will not effect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts is an establishment.
In *Air India Cabin Crew Assn. v. Yeshaswince Merchant and others with Air India Officers Assn. and another v. Air India Ltd. and tagged cases*, where appeals were filed against the Division Bench Judgment of the Bombay High Court. In a batch of petitions filed by the respondents Air India Air Hostesses Association and its members, the High Court held that the age of retirement from flying duties of our hostesses at the age of 50 years with option to them to accept post for ground duties after 50 and upto the age of 58 years is discrimination against them based on sex which is violative of Articles 14, 15 and 16 of the Constitution of India as also Section 5 of the Equal Remuneration Act, 1976 and contrary to the mandatory directions issued by the Central Government under Section 34 of the Air India Corporation Act, 1953.

The Supreme Court negatived the grievance that service conditions providing lower age of retirement to air hostesses is unfavourable as compared to flight persers, who are the male members of the crew on board and are allowed the age of retirement 55 to 58 years The argument claiming parity on retirement age by females with male members of the crew was negativated.

It was held that there is no discrimination against air hostesses based only on sex. It further held that the service condition is neither unconstitutional under Articles 15 and 16 of the Constitution nor violative of Section 4 of the Equal Remuneration Act. The Court quoted notification issued by the Central Government under Section 16 of the Equal Remuneration Act. It upheld the stand of the employer that the different ages of retirement and salary structure for male and female employees in Air India are based on their different conditions of service and not on sex alone.

Section 4 of the Equal Remuneration Act prohibits the employer from paying unequal remuneration to male and female workers for same work or work of similar nature. Section 5 of the Act prohibits discrimination by the employer while recruiting men and women workers for same work or work of similar nature. By amendment introduced to Section 5 by Amendment Act 49 of 1987, the employer has been prohibited from discriminating men and women after their recruitment in the matter of their conditions of service for the same work or work of similar nature.
The expression “same work or work of a similar nature” has been defined in Section 2(h) of the Equal Remuneration Act. Section 16 empowers the appropriate government to make a declaration by a notification that in respect of particular employment difference in regard to remuneration of men and women workers under an employer is found to be based and “factor other than sex” and there is no contravention of provisions of the Act by the employer. In exercise of powers under Section 16, the Central Government issued a notification on 15.06.1979. The Supreme Court held that the declaration is presumptive proof of the fact that in the matter of allowances, conditions of service, and other type of remuneration, no discrimination has been made on the ground of sex only. The Declaration by the Central Government, therefore, completely concludes the matter. The Supreme Court on considering the challenge to the lower retirement age of female members of the crew on board on basis of gender discrimination prohibited by Articles 15(1) and 16(2) of the Constitution observed that these articles do not prohibit the State from making discrimination on the ground of sex coupled with other considerations.

The Supreme Court made reference to Section 15 of the Act at this juncture and observed that the terms and condition of age of retirement settled in course of industrial adjudication by air hostesses through their Association is a term and condition of their employment fixed in accordance with the adjudicatory machinery provided for in the industrial law. It gives them a special treatment as found by them to be favorable to them. There is nothing objectionable for air hostesses to agree lower retirement age from flight duties with option for ground duties after the age of 50 years up to the age 58 years. A service condition giving a special treatment to women is saved by clause (a) of Section 15 of the Equal Remuneration Act. It is also saved by Sub-Section II of clause (b) of said Section which allows special treatment to women in terms and conditions of service relating to retirement. It was held that the early age retirement policy of air hostesses in Air India does not contravene Section 5 of the Equal Remuneration Act and otherwise, it is saved by Section 15(a) and 15(b) (ii) of the Equal Remuneration Act. The challenge of this ground failed.
The Act also does not apply to those employment where differences in regard to the remuneration, or a particular species of remuneration, or men and women workers in any establishment or employment is based on a factor other than sex. In such a case the Government will make a declaration to that effect.\textsuperscript{269}

**Advisory Committee**\textsuperscript{270}

The appropriate (Central or State) Government has constituted Advisory Committees to advise it with regard to the extent to which women may be employed in specified establishments or employments with a view to providing increasing employment opportunities for women.

In making its recommendations, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, the need for providing increasing employment opportunities for women, and such other relevant factors.

The appropriate Government shall issue necessary directions in respect of employment of women workers, after considering the advice of the Committee and after hearing the representation made by the persons concerned in the establishment or employment.

**Maintenance of Register**

Every employer should maintain an up-to-date register in relation to the workers employed by him, in the prescribed form. This register contains particulars such as category of workers, nature of work, number of men and woman employed, rate of remuneration paid etc.\textsuperscript{271}

The major problem with the Act is the definition of “same work or work of a similar nature.” The definition leaves much to be desired and can defeat the object of the Act. It leaves the door wide open for employers to continue mainly with the practice of paying less to women workers as men and women seldom do the same work. It has therefore, been suggested that the term “same work or work of a similar nature” is to be replaced by “same work or comparable worth.” It is not the similarity or identity of work alone that will entitle women to equal pay but also work which is comparable in terms of skill required and its value to the employer that will entitle them to equal value.
It has also been found that Section 16 of the Equal Remuneration Act is defective and can work against the interests of women employees. Under this Section government can declare that the difference in wages in a particular post is not based on sex and the Courts have to accept it without any inquiry. This rule could be used arbitrarily not only in public sector undertakings but also in private employment to shut out an inquiry by the Courts. Therefore, Section 16 needs amendment so that equal pay for equal work cannot be denied.

From the foregoing discussion, it is clear that to provide security against various risks, peculiar to their nature, women workers have been given various rights, benefits, concessions, protection and safeguard under different labour legislations. The main objective for enactment of labour laws was to prohibit the violation of rights of women workers and to provide them security and protection. But despite this all, much remains to be achieved. Women workers are still made to suffer discrimination in social and economic spheres and continue to be the most exploited lot. Most of the labour legislations apply to the organised sector only, leaving unorganised sector, where a majority of the women work, unattended. Even in organised sector, where these legislations apply, the statutory provisions are not strictly complied with. In many cases it has been found that protective measures such as crèches, maternity benefits, separate toilet and washing facilities etc. are neither provided nor properly maintained. The Penal provisions of these enactments are not deterrent enough to prevent the employer from violating them. The machinery for inspection and enforcement is inadequate and ineffective.

It is true that laws are made for the welfare and benefit of people but laws and Constitution do not by themselves solve all the problems. It is the sincere and strict implementation which matters. Although, the need for more and more laws is always felt in a welfare state like ours, yet the existing labour laws, with necessary modifications and amendments are sufficient, for the time being to take care of the women workers in the organised sector leaving unorganised sector of employment unattended. Therefore, these laws should be extended to unorganised sector also where women workers are in a large number. Let us try to be honest in the implementation of these labour laws. The employers should be made to change
their attitude towards women labour by strengthening the enforcing agencies and by imposing stringent punishment on the guilty. Women workers should be treated as partners in industry and not as products.

Moreover, much also depends upon the women workers themselves. Their ignorance and lack of awareness about their right is also responsible for the evasion of these beneficial legislations. Therefore, the need of hour is that women should get fully conscious about their rights and should get courageous enough to fight for their rights by participating in the various activities of trade unions.
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8. Id Proviso to Section 27.
9. AJR 1926 Bom. 57.
10. Section 42(1)(c) of the Factories Act, 1948.
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Section 15

Section 16

1982, II LLJ 454 (SC).

Section 2(2) of the Maternity Benefit Act, 1961.


Proviso to Section 2(1) of the Maternity Benefit Act, 1961


Section 5(a) of the Maternity Benefit Act, 1961.

Id, Section 5(b)

For further changes see the Maternity Benefit (Amendment) Act, 1988.

‘Week’ is to be taken to signify a cycle of 7 days including Sundays. Ref. B. Shah v. Presiding Officer Labour Court, Coimbatore (1978) AIR 12 SC.

Section 4

Substituted for the words ‘or one rupee a day whichever is higher’ by the Maternity Benefit (Amendment) Act, 1988.

Id, Substituted for the words ‘one hundred and sixty days’.

Id, Substituted for the words ‘the days for which she has been laid off’.

Id, Substituted for the second proviso to Sub-Section (3) of Section 5.


AIR 1975 Ker. 86.

AIR 1978 SC 12.

Id at p. 16.

Section 3(n) of the Maternity Benefit Act, 1961 defines wages to mean:

“all remuneration paid or payable in cash to a workman, if the term of the contract of employment express or implied, were fulfilled and includes.

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

2. Incentive bonus

1. Such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to
3. The money value of the concessional supply of food grains and other articles.

4. But does not include:
   (i) Any bonus other than incentive bonus
   (ii) Over time earning and any deduction or payment made on account of fines.
   (iii) Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the women under any law for the time being in force.
   (iv) Any gratuity payable on the termination of service.

156. AIR 2000 SC 1275.
157. Section 6(1) and (2)
158. Section 6(5)
159. Section 7
160. Section 9
161. Section 9A
162. Section 10
164. AIR 2009 Madras 7
165. 2008 (1) CTC 374
166. AIR 1995 Mad. 164
167. AIR 2000 SC 1274
168. Ibid.
169. AIR 1995 Mad. 164
170. 2008(1) CTC 334.
171. Section 8 [This Section amended by Maternity Benefit (Amendment) Act, 2008].
173. Section 11
174. Section 13
175. Section 18
176. Revised from Rs. 7500 p.m. vide notification no. X-14/11/1/2004, P an D 29.09.2006 w.e.f. 01.10.2006.

177. The Employees’ State Insurance Amendment Bill 2009 amend the Section 2(A) in clause (6A) (b).

178. The Employees’ State Insurance Amendment Bill 2009, inserted new Section 51-E after the Section 51-D of the principal Act.

179. The Employees’ State Insurance Amendment Bill 2009 amend the Clause 12 of Section 2 of the Principal Act.

180. Sec. 39 and 42 read with rule 52 as amended vide ESI (Central) First Amendment Rules 2007.

181. Substituted for ‘half the number of days’ vide ESI (Central) Amendment Rules, 1998, w.e.f. 01.09.1998.

182. Rule 55 as amended by ESI (Central) Amendment Rules, 2000 w.e.f. 29.03.2000.

183. The Hindu December 24, 2006

184. Section 63 and Rule 55 of ESI (Central) Rules

185. Section 51 and 52A of Employee’s State Insurance Act, 1978.

186. Specified under Third Schedule to the Act


188. The percentage of the loss of earning capacity has been specified for certain injuries in part II of second schedule.

189. Regulation 52A

190. Section 56 read with Regulation 95-A

191. Rule 59 of ESI (Central) Rules, 1950 as amended by ESI (Central) Amendment Rules, 2007. earlier the limit was 2,500.

192. Section 46(1)(f) and Regulation 95-E as amended by ESI (Central) Amendment. Regulation, 2004, w.e.f. 01.01.2005

193. Section 2(3) of the Employees’ State Insurance Act, 1948

194. Id, Section 2(14B)

195. Rule 94 of the Employees’ State Insurance (General) Regulation 1950.

196. Id, proviso 2 to Rule 94
197. Section 5(2), (3) and (4) of the Employees’ State Insurance Act, 1948
198. Id, Proviso to Section 50(2)
199. Id, Section 65
200. Rule 93 of the Employees’ State Insurance (General) Regulations, 1950
203. Subs. by Act 94 of 1956, Sec. 3 for “factories”.
204. Added by Act 37 of 1953, Section 4
205. Ins. by Act 28 of 1963, Section 3 (w.e.f. 30-11-1963)
206. Ins. by Act 37 of 1953, Section 4
213. 2009 1 LLJ, Notification No. G.S.R. 252 (E), dated 31.03.2008
215. 2009 1 LLJ, Notification No. G.S.R. 705 (E), dated 01.10.2008
219. Section 4, Payment of Gratuity Act, 1972
220. 2009 (14) SCALE
222. Section 3 of the Workmen’s Compensation Act, 1923.
224. AIR 1960 SC 1068.
225. AIR 1963 SC 806.
According to Section 16 of the Equal Remuneration Act 1976, where the appropriate government is, on a consideration of all the circumstances of
the case, satisfied that the differences is regarded to the remuneration, or a particular species of remuneration, of men and women workers in any establishment, or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act.

255. 1982 Lab. IC 1649 at 1658.
256. Ibid
257. AIR 1982 SC 879
258. Ibid
259. AIR 1988 SC 328
260. AIR 1987 SC 2040
261. 2000 LLR 1293 SC
262. F.A.C.T. Ltd., Krishnan Unni 2000 (3) KLT 895 (Ker. HG) (D.B.)
263. Mackinon Mackenzie and Co. Ltd. v. Andrey D’Custa AIR 1987 SC 1281
264. Section 1(2) and (3) of the Equal Remuneration Act, 1976.
265. Section 15
266. Section 2(b)
268. 2003 SCC (L and S) 840.
269. Section 16
270. Section 6
271. Section 8