Chapter III

LEGAL PROVISIONS FOR THE WOMEN
WELFARE AND SAFETY


Introduction

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 welfare legislations are of two kinds. The first category contains those statutory enactments which are exclusively for women workers, e.g. the Maternity Benefit Act, 1961 and the Equal Remuneration Act, 1976. In the second category are included those labour statutes which provide measures for the workers at large but contain special provisions for the welfare of women workers. The Statute in the second category are (i) The Factories Act, 1948 (ii) The Mines Act, 1952 (iii) The Plantation Labour Act, 1951 (iv) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, (v) The Contract Labour (Regulation and Abolition) Act, 1970 (vi) The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (vii) Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996 (viii) Minimum Wages Act, 1948 (ix) Payment of Wages Act, 1936 (x) The Employees’ State Insurance Act, 1948 (ix) The Workmen Compensation Act, 1923, (xii) The Employees Provident Funds and Miscellaneous Provisions Act, 1952 and (xiii) Payment of Gratuity Act, 1972.

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 person's 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.

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 atleast 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.

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.

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

<table>
<thead>
<tr>
<th>Category</th>
<th>For intermittent work</th>
<th>For continuous work</th>
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<tr>
<td>Adult females</td>
<td>66 lbs</td>
<td>44 lbs</td>
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<tr>
<td>Adolescent females</td>
<td>50 lbs</td>
<td>38 lbs</td>
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<tr>
<td>Female children</td>
<td>30 lbs</td>
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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,138 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,139 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 months' 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. 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. 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. 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.

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, 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 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. 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 upto 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 upto 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,152 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,153 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. 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 Act155, 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 air 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. 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). 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.
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.

Leave for Tubectomy Operation

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

Leave for illness

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

Increase maternity leave to 6 months: Pay Commission

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 days 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. ArulineAjitha Rani v. Principal and Film and Television Institute of Tamil Nadu, Chennai and ors.**

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 **KavithaRajagopal v. The Registrar, Tamil Nadu Dr. Ambedkar Law University, Chennai and another** 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 inspite 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 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 *KavithaRajagopal v. The Registrar, Tamil Nadu Dr. Ambedkar Law University,
Chennai and another*.

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 eluciated 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
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.172
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.

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. 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. 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. 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.177 (ii) It provides benefits to worker for the accidents happening while commuting to the place of work and vice versa.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.

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.180 The State Governments’ share of the expenditure on the provision of medical care is to the extent of 12.5% (1/8th within the per capita ceiling). The corporation has prescribed a ceiling on the shareable expenditure on medical care. From 1st 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 181 (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.182 The benefit is payable at the 120 percent of the standard benefit rate against the existing 100 percent,183 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.184

2. **Disablement benefit**

   Disablement benefit185 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.186 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.
Health and Safety Provisions as per Factories Act

Occupational Health and Safety in India: Health and Safety provisions under Indian Factories Act 1948. The Act has been promulgated primarily to provide safety measures and to promote the health and welfare of the workers employed in factories. The Factories Act, 1948, has been promulgated primarily to provide safety measures and to promote the health and welfare of the workers employed in factories. The object thus brings this Act, within the competence of the Central Legislature to enact. State Governments/Union Territory Administrations have been empowered under certain provisions of this Act, to make rules, to give effect to the objects and the scheme of the Act.

Applicability:

This Act applies to factories, which qualify the definition of “Factory” under the section 2(m) of the Act or to those industrial establishments, to whom section 85 have been made applicable by the State Government, by notification in the Official Gazette. This applies to any premises wherein 10 or more persons with the aid of power or wherein 20 or more workers without aid of power are/were working on any day in the preceding 12 months, wherein manufacturing process is being carried on.

What are the provisions relating to health for employees working in factories and the manufacturing process addressed by the Factories Act, 1948?

The main focus of Factories Act is towards the Health benefits to the workers. Health Chapter of the Act contains specification from Section 11 to 20. Detailed information of the sections of is provided as under:

**Section 11:** This section basically specifies the issues of cleanliness at the workplace. It is mentioned in the provision that every factory shall be kept clean and

| 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. |
free from effluvia arising from any drain, privy or other nuisance. This includes that there should be no accumulation of dirt and refuse and should be removed daily and entire area should be kept clean.

**Section 12:** This section specifies on disposal of wastes and effluents. That every factory should make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

**Section 13:** This section focuses on ventilation and temperature maintenance at workplace. Every factory should work on proper arrangements for adequate ventilation and circulation of fresh air.

**Section 14:** This section details on the proper exhaustion of dust and fume in the Factory. In this it is mentioned that factory which deals on manufacturing process should take care of the proper exhaustion of dust, fume and other impurities from its origin point.

**Section 15:** This section specifies regarding the artificial humidification in factories. In this the humidity level of air in factories are artificially increased as per the provision prescribed by the State Government.

**Section 16:** Overcrowding is also an important issue which is specified in this section. In this it is mentioned that no room in the factory shall be overcrowded to an extent that can be injurious to the health of workers employed herein.

**Section 18:** This section specifies regarding arrangements for sufficient and pure drinking water for the workers. There are also some specified provisions for suitable point for drinking water supply. As in that drinking water point should not be within 6 meters range of any washing place, urinal, latrine, spittoon, open drainage carrying effluents. In addition to this a factory where there are more than 250 workers provisions for cooling drinking water during hot temperature should be made.
Section 19: This section provides details relating to urinals and latrine construction at factories. It mentions that in every factory there should be sufficient accommodation for urinals which should be provided at conveniently situated place. It should be kept clean and maintained. There is provision to provide separate urinals for both male and female workers.

Section 20: This section specifies regarding proper arrangements of spittoons in the factory. It is mentioned that in every factory there should be sufficient number of spittoons situated at convenient places and should be properly maintained and cleaned and kept in hygienic condition.

What are the provisions relating to safety for employees working in factories and the manufacturing process addressed by the Factories Act, 1948?

The Factories Act, 1948 also provides provisions relating to safety measures for the workers employed herein. This is to ensure safety of workers working on or around the machines. The detailed information on each provision relating to safety measures is as under:

Section 17: Under section it has been described that there should be proper arrangement of lighting in factories. In every part of the factory where workers are working or passing should be well equipped with lighting arrangement either by natural sources or artificial sources.

Section 21: This section specifies that fencing of machinery is necessary. That any moving part of the machinery or machinery that is dangerous in kind should be properly fenced.

Section 23: This section prescribes that employment of young person on dangerous machinery is not allowed. In the case where he is been fully instructed in the usage of the machinery and working under the supervision he might be allowed to work on it.

Section 24: This section provides provision of striking gear and devices for cutting off power in case of emergency. Every factory should have special devices for
cutting off of power in emergencies from running machinery. Suitable striking gear appliances should be provided and maintained for moving belts.

**Section 28:** This section prohibits working of women and children on specific machinery. As per this section women and children should not be appointed for any part of factory working on cotton pressing.

**Section 32:** In this section it has been specified that all floors, stairs, passages and gangways should be properly constructed and maintained, so that there are no chances of slips or fall.

**Section 34:** This section specifies that no person in any factory shall be employed to lift, carry or move any load so heavy that might cause injury. State Government may specify maximum amount of weight to be carried by workers.

**Section 35:** This section provides specification regarding safety and protection of eyes of workers. It mentions that factory should provide specific goggles or screens to the workers who are involved in manufacturing work that may cause them injury to eyes.

**Section 36:** As per this section it is provided that no worker shall be forced to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby.

**Section 38:** As per this section there should be proper precautionary measures built for fire. There should be safe mean to escape in case of fire, and also necessary equipments and facilities to extinguish fire.

**Section 45:** This section specifies that in every factory there should be proper maintained and well equipped first aid box or cupboard with the prescribed contents. For every 150 workers employed at one time, there shall not be less than 1 first aid box in the factory. Also in case where there are more than 500 workers there should
be well maintained ambulance room of prescribed size and containing proper facility.

**What are the specific regulations for the health and safety provisions for women employees under various legislations in the country?**

There are specific regulations relating to health and safety of women employees under various laws in our country. Provisions relating to health and safety of women under various Acts are as under:

**Factories Act, 1948**

- Women are prohibited from working between 7.00 pm to 6.00 am. There has been a recent amended to allow women to work in night shift in certain sectors including the Special Economic Zone (SEZ), IT sector and Textiles. This is subject to the condition that the employers shall be obligated to provide adequate safeguards in the workplace, equal opportunity, their transportation from the factory premises to the nearest point of their residence.
- Section 22 of the Act prohibits that no woman 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, if that would expose the woman to risk of injury from any moving part either of that machine or of any adjacent machinery.
- Section 27 of the Act provides that no woman shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work.

**Plantation Labour Act, 1951**

- Section 25 of the Act bans employment of any women in any plantation between 7.00 pm to 6.00 am without permission of the State Government. But it specifically exempts from its purview women who are employed in any plantation as midwives and nurses.
- The Act also provides provisions relating to sickness and maternity leave for the women employees.
Mines Act, 1952

- Section 46 of the Act prohibits employment of any women in any part of a mine which is below-ground. And in any part of the mine above ground except between the hours 6.00 am and 7.00 pm. It also provides that every women employed in a mine above ground shall be allowed break of not less than 11 hours between the end of day work and the commencement of the next day of work.

Provisions relating to Offences and Penalties under the Factories Act, 1948 for contravention of laws relating to safety and health of the workers?

- For contravention of the provisions of the Act or Rules- imprisonment upto 2 years or fine upto Rs.1,00,000 or both.
- Contravention causing death or serious bodily injury - fine not less than Rs.25,000 in case of death and not less than Rs.5000 in case of serious injuries.
- Continuation of contravention - imprisonment upto 3 years or fine not less than Rs.10,000 which may extend to Rs.2,00,000.
- On contravention of Chapter IV pertaining to safety or dangerous operation.

Factories Act works with a primary object to protect workers employed in the factories against industrial and occupational hazards. For that purpose, it seeks to impose upon the owners or the occupiers certain obligations to protect works unwary as well as negligent and to secure for them, employment in conditions conducive to their health and safety from accidents.

Legal Provisions for protection of health and safety at work in India

Laws regarding protection of health and safety at work in India have been looked at in this paper. Provisions of Factory Act, Mines At, Construction workers Act, ESI Act, Employees Compensation Act, Shop & Establishment Act, Plantation Workers Act etc. have been examined. Several other have still been left out like Electricity Act, Boiler Act, Explosive Act, Petroleum Act and so on. Limitations of the legal provisions have been spelled out at the end.
Historical background:

It was in 1881 that under the pressure of British mill owners that British government ruling India then, enacted this law. The British Mill Owners argued to provide them fair and equal conditions for business, as the British mills were supposed to follow provisions of Factory Act enacted in 1833 while for the Indian mill owners there were no legal provisions to follow. First mill in India was set up in Mumbai in 1854. First strike was reported in 1877 in Empress Mill, Nagpur. Bombay Mill Hands Association was established by Narayan Lokhande in 1890 which demanded for weekly leave on Sunday for textile mill workers. The Factory Act was amended several times. Major changes came in 1987 following Bhopal tragedy. 7th edition of “Labor Problems and social Welfare” (R.C.Saxena) published in 1959 reports: “....the employers do not report occupational diseases and many times no compensation is paid in deserving cases, because a cause of disablement or death due to occupational disease is not properly diagnosed.”(P.535). We are still struggling with the same problem. It adds,”.... The Industrial Health Research Unit of the Indian Research Fund Association has also undertaken some surveys regarding occupational diseases, especially in case of lead intoxication in printing presses and toxicity of industrial dust. In Bombay also a Research Laboratory has already been set up for the purpose. The All India Institute of Hygiene and Public Health has also compiled “A Re2 view of Occupational Health Research in India” which contains a summary of various technical Committee of 12 members to advise on adding to and revision of the list of Occ. Disease. The organization of Chief Advisor, Factories also carries out surveys for locating occupational hazards in certain specified industries. It may be mentioned that the occupational diseases are one of the important causes of bed health of industrial workers.”(P.536). Now, we do not know which of these institutions have survived and what impact have they left.

Major Legal Provisions:

Factory Act:

The Act is applicable to the manufacturing activities as defined by the Act. It is applicable to whole of India. Provisions are equally applicable to ALL workers—casual, contract, permanent or temporary as Act do not make any differentiation.Major provisions are regarding health, safety and welfare. State
Governments notify State Rules and have adequate powers to apply law to the industry and the number of employees as they wish. Normally law is applicable to unit employing 10 or more workers but for certain industries it is made applicable to the units employing 5 or more or even 1! In 1987 Ch.IV-A was introduced for hazardous units. Threshold limit values were introduced for the first time in the Act then for 117 substances. But the list has neither been reviewed nor expanded. It was expected that the workplace environment will be monitored but in most cases that is not done. In absence of data on work environment it becomes difficult to correlate impact on health of workers. There is no provision to employ Industrial Hygienist. There is also no clear provision for the monitoring of workplace environment. Major problem is with enforcement. Administration lack adequate manpower. Particularly after 6th pay commission implementation, erosion in manpower has picked up a fat pace. In Gujarat, presently only 40% of the sanctioned staff is in place. Another problem is that of corruption. Both the problems can be over come to some extent by giving powers to the workers/TUs/civil society organizations to prosecute units for violation. Presently the power rest with Government only. Private complaints may be filed with prior permission from Government. In Hazardous units it is mandatory to employ Factory Medical Officers (FMO) who are qualified in Industrial/Occupational health. Medical Practitioners/ owners are expected to notify incidents of occupational diseases listed in Sch.III of the Act but that has remained very poor and State is not making any efforts to resolve the problem. Positive incentive for notification may be one of the changes that may be made in the Act. Civil society too has done nothing on its own to generate reliable data. Data on occupational disease is altogether a different subject is not dealt with here in depth. Professional medical associations have been protecting interests of business. Individual workers, too, know their interest well and help in hide the facts on occupational diseases. Labor laws and judicial system have failed in instilling trust among the workers. Trade Unions have developed as labor wings of political parties and they might be waiting for the political power to come in their hands when they can influence. Left rule in W.Bengal for more than 25 years have not left any encouraging results with regard to diagnosis, reporting and recording of occupational diseases. Exemplary fines or jail are not imposed o n violators. In most cases workers are made to work for 12 hours with tacit state approval, without being
paid for overtime wages and in violation of total hours for overtime permitted. Data on serious injury remain largely under-reported.

**ESI Act & E.C. Act:**

The Act is applicable to the units employing 10 or more workers in geographical notified area. Again, in the unit where it is applicable, employees earning Rs. 15,000 or less are covered. In some States, Act is applicable to the educational institutions, cinemas and so on. It is observed that units do not cover all of their workers—temporary, contract and some permanent workers are not covered violating the law. For those who are covered, employers play trick with the records by showing lesser attendance so as to pay less amount of contribution towards insurance. As a result workers are not able to get benefits as all the benefits have attached conditions. Several examples may be quoted. Most glaring example is that of tribal workers from Gujarat, Rajasthan and Madhya Pradesh working in quartz crushing units in Gujarat. More than 2-3,000 workers might have died of silicosis over last 30 years but none could claim compensation from ESIC for lack of coverage or lack of adequate attendance. In case of occupational diseases workers are paid compensation from the date of their examination by Medical Board and not from the date of onset of the disease. Workers who get diseases after leaving employment find it extremely difficult to claim compensation. Also, the workers who do not full fill the condition of employment for specified period also cannot get compensation. Because employers play with the records, workers cannot prove the complete employment period and then are deprived of the benefit. Standards for evaluating the disability due to diseases are not developed and are being done arbitrary by the Medical Board. Assessment by the Board are in most cases most dissatisfactory and unscientific. ESI dispensaries and hospitals are run by the State health departments. These facilities are often understaffed and lack most basic equipments. ESI Medical manual is not well enforced and ESI Corporation has failed in monitoring these facilities. ESI Act and rules need to be amended to give powers to the workers/TUs/civil society organizations to prosecute units for violation. In Employees Compensation Act in last few years welcome changes have been made. Still, the list of occupational disease in Sch.III need to be changed in both the Acts (is common in both) to include list of occupational diseases prepared by ILO. In case of Employees not covered under ESI Act can claim compensation under
Employees Compensation Act. If the unit has not bought insurance for E.C. Act if becomes difficult for employee to claim compensation as one is afraid of being fired. There are few who take risk, get fired and file claim. When the Compensation Commissioner pass order in favor of the claimant, the employer would refuse to pay or simply not pay. There are large numbers of such claims when workers are not paid despite favorable orders. Some legal provision need to be taken to prevent such action on part of employers.

**Mines Act:**

In India the Mines Act was first enacted in the year 1901. The original Mines Act was replaced in 1923 and subsequently in 1952 the Parliament has enacted the present Mines Act. The Act was last amended in 1983. It has provisions for safety, health and welfare. In 1983 it was amended to prohibit laborers below 18 yrs of age, inspection of mines by workers representatives, safety committees and to regulate the use of machinery to take care of the hazards associated with the introduction of new types of machines. In 2011 the Act was again amended mainly to keep pace with the liberal policy for investment and increase penalties for violations. In statement of objective for amendment it stated that “Operations are getting more and more mechanized with introduction of heavy machines, shallow deposits are getting depleted and mines are becoming deeper and complicated and operators from other parts of the world have started acquiring mining rights and managing mining operations within our country. This has created a new safety and health risk scenario at the work places in these sectors.” But when you look at the amendments, you do not see any amendment regarding safety as such. These amendments in the Mines Act, 1952 envisage extending the Act to the whole of India including territorial waters, continental shelf, exclusive economic zones and other maritime zones of India substituting the definition of owner so as to make it more comprehensive and specific; define the ‘foreign company’ with reference to the Companies Act, 1956; provide for appointment of officials in addition to agent of employer in the mines; increase in the penalties provided in various sections and to shift the burden of proof upon the person who is being prosecuted or proceeded against. Here, too, identification of occupational diseases and compensation for the same have remained a matter of concern. Still, it may be stated that comparatively DGMS is better than DGFASLI as
DGMS has better data on Occ. diseases than DGFASLI. There is huge number of illegal mining and workers engaged in such mines remain out of purview of the legal provisions.

**Plantation Act, 1951:**

In this Act there are provisions for health and welfare like drinking water, sanitation, medical facilities for workers and their families, hours of work, weekly holiday. It provide for reporting of accidents at work. No provisions for safety, i.e. prevention of accidents or occupational diseases.

**The Motor Transport Workers Act:**

The Act provide welfare of motor transport workers and to regulate the conditions of their work. It is applicable to any motor transport undertaking employing more than 5 and State Govts are empowered to make it applicable to the units employing even less. The act provide for Hours of work, first aid facility, medical facility, uniforms, rest rooms, daily interval of rest, restrict employment of young persons, wages for over time, annual leave with wages etc. There are no provisions to maintain safe conditions in the vehicle. Transport workers are exposed to heat (of engine as well as environment), vibrations (whole body), glare of light, illumination, fuel fumes and dust, noise and so on. There are no threshold limit values to maintain the vehicles in safe condition.

**The Beedi and cigar workers (Conditions of employment) Act, 1966:**

This Act provides for welfare of the workers and regulate conditions of work. For health and welfare it provides for cleanliness, drinking water, latrines and urinals, washing facility, crèches, first id, canteens. It also provide to regulate working hours, weekly holidays, leave with wages etc. Here, too there are no provisions to regulate tobacco dust or monitor work environment to prevent accidents or occupational disease.

**The Bombay Shops and Establishment Act, 1948:**

The act applies to local areas mentioned in the schedule. The State Government has powers to apply provisions to such other local areas having population of 25,000 or more and may also apply to such local areas having
populationless than that. The Act provide for monitoring hours of work and wages including daily and weekly hours, holiday, interval of rest, wages for overtime, leave with pay, cleanliness, ventilation, illumination. No standards have been set for these. No provisions to prevent accidents or occupational diseases. Interestingly there are no provisions for sanitation, drinking water, access, lifting of weight, provision for seating etc. Now in Mall culture workers are exposed to several hazards. No exposure limits prescribed. In shops various different activities are carried out like restaurants, aatta-chakki (workers are exposed to grain dust and silica dust), hair cutting (workers are exposed to hair and filth with it, powders, solvents, soap etc), glass (exposed to glass dust). Standing for long hours, dealing with public has hazard of violence and so on. There are no studies of health conditions of these workers.

The Building and other Construction workers (Regulation of employment and conditions of service) Act, 1996:

The Act provide for establishing Advisory and Expert Committees at Central and State level. It applies to establishment employing 10 or more construction workers but does not apply to residential houses for own cost not exceeding Rs. 10 lakh. It provides for drinking water, latrines and urinals, free accommodation, crèche, canteens. For safety and health it provides for appointing safety committee and safety officers (for units employing 500 or more employees), notifying accidents and 15 occupational diseases listed in sch.II. State Governments are empowered to make rules for preventing accidents. The Act provide prosecution powers to the Inspectors appointed under the Act, Trade Union and any NGO registered under Societies Registration Act. Still, individual worker is not given such power. State rules provide detail rules for prevention of accidents, provide safe work condition, personal protective equipments etc. The Gujarat rules provide for TLV only for noise and Carbon monoxide. There is cursory reference to vibration but does not even refer to national standards. In rule 73 it talks of monitoring dust and fumes but no safe levels have been prescribed but refer to ‘National standards’. Similar for illumination, rules refer to national standards without giving any safe levels.
Sch.XII gives TLVs for chemicals which is replication of Sch.II of the Factory Act. But there is no provision to maintain record of the noise levels. Rules provide for periodical medical examination and in some case pre-employment medical examination, appoint medical officer, working hours, weekly holiday and payment of overtime wages, equipments for communication. Interestingly no specific provisions to prevent exposure to asbestos or silica dust.


Regulations provide for cleanliness, access, stairs, escape in case of fire, excessiveness, fire protection, illumination, life saving appliance, fencing, ladders, working space, protection from dangerous and harmful environment, safety of lifting appliances, dock railway, conveyors, loading-unloading, personal protective equipments, handling of dangerous goods and tetraethyl lead, solvents, notification of accidents and occupational diseases, (owner is required to inform family of the employees- No other law has such provision which is required), employing safety officers, drinking water and sanitation, ambulance room, pre and periodical medical examination, OH services, safety committee. Sch.IV lists 11 notifiable occupational diseases which includes pneumoconiosis.

**Concluding Remark:**

As seen above we have laws for protection of H & S at work for workers in manufacturing, mines, construction and docks. There are laws for beedi and cigar workers, plantation workers, motor transport workers, shop workers and many more occupations- but as seen above these laws do not have adequate provisions to protect H & S at work. Generally it is believed that there are no laws for workers in unorganized sector but as far as protection of H & S at work there are no laws for workers in organized sector. Workers in services sector in particular like health care, education, bank and insurance, municipal workers, telecommunication, post and courier etc are not governed by any law. In manufacturing sector, workers employed in units employing less than 10 workers have no law for their protection of H & S at work and there is huge number of such workers. In Gujarat pesticide formulations, dyes & intermediates and many more hazardous chemicals are manufactured by such units. Major workforce is in agriculture where there is no law
for protection of these workers from snake bite, pesticides, tractor accidents and injuries by other implements, infectious diseases etc. In Gujarat since last 15 years, each year, on average 200 agriculture workers die of Leptospirosis. The Insecticide Act, 1968 and Rules 1971 provide for notification of cases of poisoning. It does not provide for protective equipments for the workers engaged in its use. The Dangerous machines (Regulation) Act, 1983 and Rules 2007 apply to themanufacture of threshers, chaff cutters, sugar cane crushers etc. The Act provide for the standard specifications of the machines which need to be adhered to by the manufacturer. Such machines are then, by design prevent accidents in agriculture. These are two legislations which may be said to have some connection with protection of health and safety of these workers at work. Violence at work, sick building syndrome, repetitive strain injury (RSI), bullying at work have remained out legal purview. Criterion for assessment of disability due to occupational diseases has not been well developed. Sexual harassment at work has been taken care of to some extent by way of Supreme Court ruling in Vishakha Vs. State of Rajasthan. ILO convention 155 deal with protection of H & S at work for workers in all economic sectors irrespective of number of workers employed. All BRICS countries except India have ratified this convention. When we talk of UHC we will have to think of establishing OHS services for workers in all economic sectors. There are several laws but implementing agencies are different. E.g. Factory Act is enforced by state labor department, Boiler Act is enforced by separate wing of Labor department (in Gujarat), Electricity Act is enforced by State industry department, Explosive Act, Petroleum Act and Rules framed under it like SMPV Rules, Gas Cylinder Rules, Calcium Carbide Rules are enforced by Central Ministry of heavy industries and Public Enterprise and so on. Several organizations have recommended to rationalize and simplify these laws to avoid duplication and more effective enforcement. In year 1990 National Labor Law Association recommended to set up National Commission of H & S as well as Central and State Boards of OSH and later Second labor commission in year 2000, recommended to set up OHS Commission and OHS Committee. The Commission recommended to enact new law called OSH Bill and included draft of the Act in its report.
References:


