Labour Policy in India develops its philosophy and design from the Directive Principles of State policy as envisaged in the Indian Constitution. The Directive Principles ensure equal pay for equal work, just and human conditions of work and a fair living wage to all workers. The Government of India, especially after independence in 1947, enacted several Acts in the field of social security, safety, welfare, training and industrial relations evidently marking the commitment of the Government for a social revolution. In the early years of industrialization, labour policy was pre-occupied mainly with the organized labour force; growing attention is now being paid also to the unorganized sector without detracting from the concern of the Government for the problems of the organized sector.
2.1 Labour force in India

The labour force in India consists of about 487 million workers, the second largest after China in 2011. Of these, around 94 percent workers are in unincorporated, unorganized sector ranging from pushcart vendors to home based diamond and gem polishing operations. The organized sectors include those employed in the public sector undertakings, both Central & State governments as well in private sector enterprises. In 2008, the organized sector employed 27.5 million workers, of which 17.3 million workers for central public sector undertakings or government owned public sector undertakings. Table 2.1 indicates that in 2005, there are an estimated 496.4 million workers in the Indian economy. Only seven percent of the work force is in the formal organized sector. Growth in this sector remains sluggish as the employers are forced to downsize the number of workers attributed out of stringent labour laws. To circumvent such laws, private sector companies continue hiring workers on a contract basis. Hence, the unorganized sector, where the workforce generally doesn’t enjoy any remarkable legal protection, has witnessed more growth.

Table 2.1

Labour force in India

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>406</td>
<td>472</td>
<td>482.2</td>
<td>496.4</td>
<td>509.3</td>
<td>516.4</td>
<td>523.5</td>
<td>467</td>
<td>478.3</td>
</tr>
</tbody>
</table>
Figure 2.1 shows that the labour force in India marked an increasing trend over a period of nine years from 1999-2008. However, in the year 2009, the trend reversed marking a decrease to the tune of around 56.5 million workers.

![Labour trends in India](image)

The unorganized sector in India has low productivity and offers lower wages. Even though it accounted for over 94 percent of workers, created only 57 percent of India’s National Domestic Product in 2006, or about 9 fold less per worker than the organized sector\(^4\). According to Bhalla, the productivity gap sharply worsens when rural unorganized sector is compared to urban unorganized sector, with gross value added productivity gap spiking an additional 2-4 fold depending on occupation\(^5\).

In the organized private sector with more than 10 employees per company, the biggest employer in 2008 were manufacturing sector at 5 million, social services which includes private schools and hospitals at 2.2
million, finance which includes bank, insurance and real estate at 1.1 million and agriculture at 1 million. India had more Central & State Government employees in 2008, than employees in all private sector companies combined together. If all sorts of government employees are counted together, India had at 1.8:1 ratio between public sector and private sector employees. The gender equality, male to female ratio in employment was 5:1 in governments owned enterprises, where it was 3:1 in private sector sticking to the natural rate of population growth, India is adding about 13 million new workers every year to its labour pool. Indian economy has been adding about 8 million new jobs every year especially in low paying, unorganized sector6.

Table 2.2 indicates that the Central Government is one of the major independent source of employment in public sector as against the contributions of all State Government; all Quasi Government & all LSG undertakings together.

### Table 2.2

Employment in Public Sector in India

<table>
<thead>
<tr>
<th>Year</th>
<th>Central Govt.</th>
<th>State Govt.</th>
<th>Quasi Govt.</th>
<th>LSGIs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
</tr>
<tr>
<td>1991</td>
<td>34.11</td>
<td>71.12</td>
<td>62.22</td>
<td>23.13</td>
<td>190.58</td>
</tr>
<tr>
<td>1995</td>
<td>33.95</td>
<td>73.56</td>
<td>65.20</td>
<td>21.97</td>
<td>194.66</td>
</tr>
<tr>
<td>2000</td>
<td>32.73</td>
<td>74.60</td>
<td>63.26</td>
<td>22.55</td>
<td>193.14</td>
</tr>
<tr>
<td>2001</td>
<td>32.61</td>
<td>74.25</td>
<td>61.92</td>
<td>22.61</td>
<td>191.38</td>
</tr>
<tr>
<td>Year</td>
<td>Male (%)</td>
<td>Female (%)</td>
<td>Unemployment (%)</td>
<td>Economic Inactivity (%)</td>
<td>Total Employed</td>
</tr>
<tr>
<td>------</td>
<td>----------</td>
<td>------------</td>
<td>------------------</td>
<td>------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>2002</td>
<td>31.95</td>
<td>73.84</td>
<td>60.20</td>
<td>21.75</td>
<td>187.73</td>
</tr>
<tr>
<td>2003</td>
<td>31.33</td>
<td>73.67</td>
<td>59.01</td>
<td>21.79</td>
<td>185.80</td>
</tr>
<tr>
<td>2004</td>
<td>30.27</td>
<td>72.22</td>
<td>58.22</td>
<td>21.26</td>
<td>181.97</td>
</tr>
<tr>
<td>2005</td>
<td>29.38</td>
<td>72.02</td>
<td>57.48</td>
<td>21.18</td>
<td>180.97</td>
</tr>
<tr>
<td>2006</td>
<td>28.60</td>
<td>73.00</td>
<td>59.09</td>
<td>21.18</td>
<td>181.88</td>
</tr>
<tr>
<td>2007</td>
<td>28.00</td>
<td>72.09</td>
<td>58.61</td>
<td>21.32</td>
<td>180.02</td>
</tr>
<tr>
<td>2008</td>
<td>27.39</td>
<td>71.71</td>
<td>57.96</td>
<td>19.68</td>
<td>176.74</td>
</tr>
</tbody>
</table>

Source: Economic Survey 2010-11

Hence a detailed analysis of the labour force working in central public sector undertaking will enable to draw a right inference on labour aspirations and tendencies.

### 2.2 Labour Force in Kerala

The Planning Commission Report, 2010 states that, generation of productive and gainful employment with decent working conditions is viewed as a crucial strategy for *Inclusive Growth*. Hence productive employment and decent work are the key elements to achieve fair globalization and the reduction of poverty.

In Kerala, the employment in the organized sector is decelerating over the years. Figure 2.2 indicates that the total employment in the organized sector in December 2000 was 12.51 lakhs and it declined to 11.02 lakhs in 2005 and then increased to 11.17 lakh in 2009. In 2010, it declined to 11 lakhs of which 4.92 lakhs employees were in private sector and 6.08 lakhs were in public sector.\(^7\)
The total employment in the public sector in Kerala on December 2000 was 6.51 lakhs. It declined to 6.09 lakhs in 2005 and then increased to 6.15 lakhs in 2009.

The sector wise employment in organized sector undertaking in Kerala as in Table 2.3 indicates that as on March 2011, one among the significant sector offers massive employment is the manufacturing sector employing 2,53,532 employees next to the major employment sector community, social & personal services employing 4,93,749 employees.

Source: Directorate of Employment, Govt. of Kerala
Table 2.3
Employment in Public & Private Organized Sector in Kerala

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Industry</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
<td>(7)</td>
<td>(8)</td>
</tr>
<tr>
<td>1</td>
<td>Agriculture and allied industries</td>
<td>83203</td>
<td>8186</td>
<td>80080</td>
<td>79642</td>
<td>79769</td>
<td>75835</td>
</tr>
<tr>
<td>2</td>
<td>Mining and Quarrying</td>
<td>21138</td>
<td>2982</td>
<td>4243</td>
<td>4945</td>
<td>2666</td>
<td>5127</td>
</tr>
<tr>
<td>3</td>
<td>Manufacturing</td>
<td>213661</td>
<td>244796</td>
<td>255095</td>
<td>263135</td>
<td>254682</td>
<td>253532</td>
</tr>
<tr>
<td>4</td>
<td>Construction</td>
<td>27366</td>
<td>21162</td>
<td>21348</td>
<td>21509</td>
<td>21277</td>
<td>28235</td>
</tr>
<tr>
<td>5</td>
<td>Electricity, Gas, Water &amp; Sanitary Services</td>
<td>21490</td>
<td>25723</td>
<td>24270</td>
<td>27786</td>
<td>29317</td>
<td>22065</td>
</tr>
<tr>
<td>6</td>
<td>Trade, Restaurants 7 Hotels</td>
<td>27452</td>
<td>31923</td>
<td>38121</td>
<td>37107</td>
<td>36635</td>
<td>36426</td>
</tr>
<tr>
<td>7</td>
<td>Transport, Storage &amp; Communication</td>
<td>101644</td>
<td>101060</td>
<td>102889</td>
<td>96335</td>
<td>92490</td>
<td>95717</td>
</tr>
<tr>
<td>8</td>
<td>Financing, Insurance, Real Estate &amp; Business Services</td>
<td>82201</td>
<td>86901</td>
<td>86081</td>
<td>102140</td>
<td>102280</td>
<td>100632</td>
</tr>
<tr>
<td>9</td>
<td>Community, Social &amp; Personal Services</td>
<td>523375</td>
<td>514570</td>
<td>505290</td>
<td>499357</td>
<td>492260</td>
<td>493749</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>1101530</td>
<td>1110980</td>
<td>1117417</td>
<td>1131956</td>
<td>1111376</td>
<td>1111318</td>
</tr>
</tbody>
</table>

Source: Directorate of Employment, Govt. of Kerala

Even though unemployment is one of the basic problem that may influence growth of the State, the relatively high skill and adaptability levels
of the workforce has not been perceived as a positive factor by the industrialists in the State. In addition to this thrust area, low rate of productive employment, unprotected unorganized sector, instance of adverse labour relative and inadequate level of skill creation & training were also problems the state is facing.

2.3 Labour Policy in Kerala

The main function of Labour Department, either the Central or State, is to ensure the welfare development of the working class through enforcement of various labour laws, settlement of disputes through conciliation, maintenance of healthy relations, ensuring opportunities for individual development as well administration of various welfare measures.

Marking the commitment the Ministry of Labour & Employment had announced. Labour Policy augmenting its efforts to make Kerala an investor friendly and a hub of quality employees. The highlight of the Labour Policy is shown in Table 2.4.

Table 2.4

Labour Policy, Govt. of Kerala

<table>
<thead>
<tr>
<th>Labour Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creative measures to attract public and private investment</td>
</tr>
<tr>
<td>15 lakh new jobs in the coming five years</td>
</tr>
<tr>
<td>A unified and consolidated legislation for social security schemes</td>
</tr>
<tr>
<td>New social security schemes for workers in the unorganized sector</td>
</tr>
<tr>
<td>Social Security Cards for workers</td>
</tr>
<tr>
<td>Unified and beneficial management of funds of welfare Boards</td>
</tr>
<tr>
<td>Reprioritization of allocation of funds to benefit vulnerable workers</td>
</tr>
</tbody>
</table>
• Model employee-employer relationships
• Long term settlements based on productivity
• Vital industries and establishment declared as ‘public utilities’
• Special conciliation mechanism for projects with investments of 1.50 crore or more
• Industrial relations committee in more sectors
• Empowered body of experts, to suggest required changes so as to make Labour Law reforms in tune with the times
• Referenda for recognition of trade unions
• Statutory amendments for expediting and streamlining the mechanism of Labour Judiciary.
• Amendments to Industrial Disputes Act so tune with the times
• Efficient functioning of Labour Department
• More labour sectors under minimum Wages Act
• Child labour act to be aggressively enforced
• Modern medical facilities for workers
• Rehabilitation packages for displaced workers
• Restructuring in functioning of employment exchanges, computerisation and updating of data base
• Revamping of curriculum and course content in Industrial, training
• Joint cell of labour department to study changes in laws and rules
• Kerala Institute of Labour & Employment to be upgraded
• Policy progress monitoring team to review progress-of implementation policy

Source: Directorate of Employment, Govt. of Kerala

The main focus of the Directorate for employee development in the labour policy were limited to a few agenda. Hence, the labour policy requires
more measures for individual employee development rather than general measures to aim the goal.

2.4 Labour Sector Problems in Kerala

The various labour sector problems that may lead to the sluggish growth of industries in Kerala are:

- High rate of unemployment and underemployment
- Low rate of productive employment creation
- Unprotected unorganized sector employees
- Perception of adverse labour relations
- Inadequate level of skill creation and training
- Inefficiently targeted social security regime

2.5 Labour Legislation in India

Industrialization poses a challenge for an entrepreneur in the form of management of the resources. The management and effective and efficient deployment of the resources of the organization is the factor which decides the profitability and viability of any organization. Labour is one of the basic resources of any industry and has an important bearing on the performance and goals of the organization. In India we have a plethora of laws which deals with issues concerning labour administration, labour welfare, regulation of industrial relations between the management and the workers. For the effective and efficient management of labour in an industry or an organization, it is necessary to have a complete knowledge of the laws, bye laws, regulations and ordinances applicable to the industry in general and to the company or organization specifically. The laws and bye laws applicable to labour issues and interests provides for various compliances in accordance with procedure laid therein.
Labour legislation refers to all laws enacted by the appropriate Government to provide and ensure social and economic security to the labour. These legislations are aimed at reduction of production losses due to industrial disputes and to ensure timely payment of wages and other bare necessities and amenities to the employees. It is a varied body of law applied to such matters as employment, remuneration, conditions of work, trade unions and industrial relations.

2.5.1 Meaning & Definition

Wikipedia, the internet encyclopedia defines labour law as, ‘the body of laws, administrative rulings and precedents which address the relationship between and among employees, employees and labour organizations, often dealing with issues of public law’.

2.5.2 Origin of labour legislations

Labour legislation emerged when the employers tried to restrict the power of workers organizations and keep labour costs low. The workers began demanding better conditions and the right to organize so as to improve their standard of living. Employers cost increased due to workers demand for higher wages and better working conditions. This situation called for the intervention of the Government. In order to put an end to the disputes between the ever warring group, the Government enacted many labour laws.

In India the labour laws are so numerous, complex and ambiguous that they promote litigation rather than the resolution of problems relating to industrial relations. The labour movement has contributed a lot for the enactment of laws protecting labour right in the 19th and 20th centuries.
The history of labour law in India can be traced back to the history of British Colonialism. The influence of the British political economy was naturally dominant in sketching some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for chartering workers became necessary. This was obviously a labour legislation in order to protect the interest of British employers.

The British enacted the Factories Act with a really self centered motive. It is well known that Indian textile goods offered serious competition to British textiles in the export market. In order to make Indian labour costlier, the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile moguls of Manchester and Lancashire. Thus for the first time stipulation of 8 hours of work, the abolition of child labour the restriction of women in night employment, and the introduction of overtime wages for the work beyond eight hours was introduced. While the impact of this measure was clearly for the welfare of labour, the real motivation was undoubtedly the protection of their vested interest.

2.5.3 Need for labour Legislation

The basic principle of industrial legislation is to ensure social justice to the workers. The object of legislation is the equitable distribution of profits and benefits accruing from industry between industrialists and workers and affording protection to the workers against harmful effects to their health, safety and morality. In a developing country like India, labour legislation becomes especially important because of the following reasons:

Labour organizations are relatively weak and in most of the cases, they depend merely on the mercy of the employers. Individual worker is
economically very weak and is unable to bargain his terms with the employers. Now the prior payment of wages, lay off, dismissal, retrenchments etc, are all governed by legislation. The economic insecurity of the workers is also removed to a great extent.

In many organizations, workers may feel occupational insecurity. The workers may not provide with any security in case of accidents, death, occupational mishaps, etc. Through the enacted labour laws certain benefits have been statutorily given to workers which he otherwise may not get from their employer.

In factories, there are working conditions on account of which the employee’s health and safety is always in danger. The Factories Act contains a number of provisions relating to health, safety and welfare of workers. Special provisions have been made for women also.

Labour Legislation is one of the most progressive and dynamic instrument for achieving socio-economic progress.

**2.5.4 Objectives of Labour Legislation**

The objectives for various labour laws are as follows:

- To protect the workers from profit seeking exploiters.
- To promote cordial industrial relations between employers and employees.
- To preserve the health, safety and welfare of workers.
- To protect the interests of women and children working in the factories.
2.5.5 Principles of Labour Legislation:

The four principles which govern the labour legislations in India are:

1. Social Justice

The concept of social justice refers to providing justice to everyone in the society so that the poor are not exploited by the rich. It is in the interest of both employers and employees that they should consider themselves as two wheels of a cart and firmly believe that one cannot exist without the other.

2. Social equity

Labour legislation based on this principle provides for achievement of definite standards of living, position in society of the workers, these standards can be achieved by bringing about changes in the law governing them. The power to enact the law and amendment in the provisions of law to meet the changed standards were exercised by the Government.

3. National Economy

Labour legislation ensures industrial peace and helps in the industrialization of the country. The Directive principles of the constitution contain the idea of welfare state. It is a fundamental responsibility of a welfare State to look after the interest of workers who are the weakest section of the society and satisfy their physical needs with the increase in productivity and the benefits are shared with the workers, resulting in their prosperity. Thus for the growth of economy and development of the country, labour legislation acts as guiding principle.
4. International Conventions

International labour organisations aim at securing the minimum standard of living for the workers throughout the world. If any convention is passed by Government, it becomes binding if it is ratified by any country. Thus, labour legislation is guided by these conventions.

2.5.6 Elements of labour Legislations

The basic subject matter of labour law can be divided under nine broad categories:-

1. Employment
2. Individual employment relationships
3. Wages & remuneration
4. conditions of work (Covering vocational guidance & training, career planning & advancement)
5. Health, Safety and welfare
6. Social Security
7. Trade union & industrial relations
8. Administration of Labour Laws
9. Special provisions for particular occupational or other groups.

Among the distinctive elements of labour law that reflect the political, socio-economic and legal differences among countries it stands situational in nature. In the United Kingdom, for instance, the tradition has been to allow a maximum of initiative and freedom to employers’ and workers’ organisation in the regulation of their mutual relationships and the determination of conditions of work.
2.5.7 Classification of Various Labour Laws

There are over 45 legislations on labour from the Central Government and the number of legislations enacted by the State Governments is close to four times that of the Central Acts.

Labour Laws can be classified into the following eight categories:

i. Laws related to Industrial Relations
ii. Laws related to Wages
iii. Laws related to Specific Industries
iv. Laws related to Equality and Empowerment of Women
v. Laws related to Deprived and Disadvantaged Sections of the Society
vi. Laws related to Social Security
vii. Laws related to Employment & Training
viii. Others

Laws related to Industrial Relations

1. The Trade Unions Act, 1926
2. The Industrial Employment (Standing Orders) Act, 1946
3. The Industrial Employment (Standing Orders) Rules, 1946
4. The Industrial Disputes Act, 1947

Laws related to Wages

1. The Payment of Wages Act, 1936
   The Payment of Wages Rules, 1937
2. The Minimum Wages Act, 1948
   The Minimum Wages (Central) Rules, 1950

3. The Working Journalist (Fixation of Rates of Wages) Act, 1958
   Working Journalist (Conditions of Service) and Miscellaneous
   Provisions Rule, 1957

4. The Payment of Bonus Act, 1965
   The Payment of Bonus Rules, 1975

**Laws related to Specific Industries**

1. The Factories Act, 1948

2. The Dock Workers (Regulation of Employment) Act, 1948

3. The Plantation Labour Act, 1951

4. The Mines Act, 1952

5. The Working; Journalists and other Newspaper Employees'
   The Working Journalists and other Newspaper Employees' (Conditions

6. The Merchant Shipping Act, 1958

7. The Motor Transport Workers Act, 1961

8. The Beedi & Cigar Workers (Conditions of Employment) Act, 1966

10. The Sales Promotion Employees (Conditions of Service) Act, 1976
   The Sales Promotion Employees (Conditions of Service) Rules, 1976

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

12. The Shops and Establishments Act

13. The Cinema Workers and Cinema Theatre Workers (Regulation of
   Employment) Act, 1981
   The Cinema Workers and Cinema Theatre Workers (Regulation of
   Employment) Rules, 1984

14. The Dock Workers (Safety, Health & Welfare) Act, 1986

15. The Building & Other Construction Workers (Regulation of

16. The Dock Workers (Regulation of Employment) (inapplicability to
   Major Ports) Act, 1997


20. The Beedi Workers Welfare Cess Act, 1976

   Labour Welfare Fund Act, 1976


Laws related to Equality and Empowerment of Women

1. The Maternity Benefit Act, 1961

2. The Equal Remuneration Act, 1976

Laws related to Deprived and Disadvantaged Sections of the Society

1. The Bonded Labour System (Abolition) Act, 1976

2. The Child Labour (Prohibition & Regulation) Act, 1986

Laws related to Social Security

1. The Workmen's Compensation Act, 1923

2. The Employees' State Insurance Act, 1948

3. The Employees' Provident Fund & Miscellaneous Provisions Act, 1952

4. The Payment of Gratuity Act, 1972

5. The Unorganized Workers Social Security Act, 2008
Laws related to Employment & Training

1. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
2. The Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1959
3. The Apprentices Act, 1961

Others

1. The Fatal Accidents Act, 1855
2. The War Injuries Ordinance Act, 1943
3. The Weekly Holiday Act, 1942
4. The War Injuries (Compensation Insurance) Act, 1943
6. The Personal Injuries (Compensation Insurance) Act, 1963
7. The Labour Laws (Exemption from Furnishing Returns and Maintaining Register by Certain Establishments) Act, 1988
8. The Public Liability Insurance Act, 1991

Source: Ministry of Labour & Employment

Labour Jurisdiction-State vs Central

Under the Constitution of India labour is a subject in the Concurrent List where both the Central & State Government are competent to enact legislation subject to certain matters being reserved for the Centre.
### Constitutional Status

<table>
<thead>
<tr>
<th></th>
<th>Union List</th>
<th>Concurrent List</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entry No.55:</td>
<td>Regulation of labour and safety in mines and oil fields</td>
<td>Entry No. 22: Trade Unions; Industrial and labour disputes.</td>
</tr>
<tr>
<td>Entry No. 61:</td>
<td>Industrial disputes concerning Union employees</td>
<td>Entry No. 23: Social Security and insurance, employment and unemployment</td>
</tr>
<tr>
<td>Entry No.65:</td>
<td>Union Agencies and institutions for “Vocational …..training..”</td>
<td>Entry No.24: Welfare of labour including conditions of work, provident funds,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>employers liability, workmen’s compensation and old age pension and maternity</td>
</tr>
<tr>
<td></td>
<td></td>
<td>benefit.</td>
</tr>
</tbody>
</table>

Matters relating to Social Security are Directive Principles of State Policy and the subjects in the Concurrent List. The following social security issues are mentioned in the Concurrent List (List III in the Seventh Schedule of the Constitution of India) –

**Item No. 23:** Social Security and insurance, employment and unemployment.

**Item No. 24:** Welfare of Labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pension and maternity benefits.

### Part III Fundamental Rights

**Article 16. Equality of opportunity in matters of public employment**-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the
governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

**Article 24. Prohibition of employment of children in factories, etc.** —No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

**Part IV Directive Principles of State Policy**

**Article 41 Right to work, to education and to public assistance in certain cases**

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want,

**Article 42 Provision for just and humane conditions of work and maternity relief**

The State shall make provision for securing just and humane conditions of work and for maternity relief

**Article 43. Living wage, etc., for workers.**—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas,
Article 43A. Participation of workers in management of industries.—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

2.5.7.1 Payment of Wages Act 1936

Objectives

- To ensure regular and prompt payment of wages and to prevent the exploitation of a wage earner by prohibiting arbitrary fines and deductions from his wages.

Applicability of the Act

- The Act is applicable for payment of wages to persons employed in any organisation.
- Not applicable to wages which averages Rs 6,500 per month or more.
- Wages include all remuneration, bonus, or sums payable for termination of service, but do not include house rent reimbursement, light vehicle charges, medical expenses, TA, etc.

Important provisions of the Act

- Responsibility of the employer for payment of wages and fixing the wage period.
- Procedures and time period in wage payment.
- Payment of wages to discharged workers.
- Permissible deductions from wages.
The Act is to regulate payment of wages to certain class of employed persons. The main purpose of this Act is to ensure regular and timely payment of wages to the employed persons, to prevent unauthorized deductions being made from wages and arbitrary fines being imposed on the employed persons. The Act extends to the whole of India.

**Application of the Act:**

The Act applies to payment of wages to persons employed in factory or railways. It also applies to any 'industrial or other establishment' specified in Section 2(ii). [Section 1(4)]. 'Factory' means factory as defined in Section 2(m) of Factories Act. - - Industrial or other establishment specified in Section 2(ii) are –

- Tramway or motor transport services
- Air transport services
- Dock wharf or jetty
- Inland vessels
- Mines, quarry or oil-field
- Plantation.

The Act can be extended to other establishment by State/Central Government.
Presently, the Act applies to employees drawing wages upto Rs 6,500. [Section 1(6)]. Every employer is responsible for payment to persons employed by him on wages. [Section 3].

2.5.7.2 Payment of Bonus Act 1965

The term “bonus” literally means share of profit. The term "bonus" has not been defined in the Payment of Bonus Act, 1965. Webster's International Dictionary, defines bonus as “something given in addition to what is ordinarily received by or strictly .due to the recipient” The Oxford Concise Dictionary defines it as “something to the good into the bargain (and as an example) gratuity to workmen beyond their wages”

L.A.T Formula regarding payment of bonus:

A dispute relating to payment of bonus by the Cotton Mills of Bombay was decided by the Industrial Court, Bombay. An appeal against the award of the Industrial Court was considered by the Full Bench of the then Labour Appellate Tribunal (LAT).

In its decision, the LAT laid down the principles involved in the grant of bonus to workers. These principles are known as the LAT Formula. According to the formula, the following prior charges were to be deducted from gross profits:

1. Provision for depreciation;
2. Reserve for rehabilitation;
3. Return of 6 per cent on the paid up capital; and
4. Return on the working capital at a lower rate than the return on paid-up capital
The balance, if any, was called "available surplus" and the workmen were to be awarded a reasonable share out of it by way of bonus for the year.

Bonus is really a reward for good work or share of profit of the unit where the employee is working. Often there were disputes between employer and employees about bonus to be paid. It was thought that a legislation will solve the problem and hence Bonus Act was passed. Unfortunately, in the process, bonus has become almost as deferred wages due to provision of payment of minimum 83.33% and maximum 20% bonus. Bonus Act has not in any way reduced the disputes.

The Act is applicable to (a) any factory employing 10 or more persons where any processing is carried out with aid of power (b) Other establishments (established for purpose of profit) employing 20 or more persons. Minimum bonus payable is 8.33% and maximum is 20%. Bonus is payable annually within 8- months from close of accounting year. Bonus is payable to all employees whose salary or wages do not exceed Rs. 10,000 per month provided they have worked for at least 30 days in the accounting year.

Once the Act is made applicable, it continues to apply even if number of employees fall below 20. The Act is applicable to Government companies and corporations owned by Government which produces goods or renders services in competition with private sector. However, the Act is not applicable to Government employees, the employees of Municipal Corporation or Municipality, railway employees, university and employees of educational institutions, public sector insurance employees, employees of RBI and public sector financial institutions, charitable hospitals, social welfare organisations and defence employees. The Act does not apply to any institution established not for purposes of profit.
Establishments to which the Act is-applicable - The Act applies to (a) every factory employing ten or more persons, where any process is carried out with the aid of power and (b) every other establishment in which twenty or more persons are employed on any day during an accounting year, [section 1(3)].

2.5.7.3 Employees Provident Fund and Miscellaneous Provisions
Act, 1952

Objectives

- To make provisions for the future of the industrial worker after the retirement or for his dependents in the case of his early death.
- Compulsory Provident Fund
- Family Pension
- Deposit linked insurance

Scope and coverage

- Applicable to factories and establishments employing 20 or more persons.
- Can be made applicable by central government to establishments employing less than 20 persons or if the majority of employees agree.
- Excludes establishments employing 50 or more persons or 20 or more persons but less than 50 persons, until the expiry of three years in the case of the former, and five years in the case of the latter, form the date of setting up of establishment.
- Applicable to all persons who are employed directly or indirectly through contractors in any kind of work.
Eligibility

- Employees drawing pay not exceeding Rs.6,500/- per month.

Schemes framed under the Act

- The Employees’ Provident Funds Schemes, 1952;
- The Employees’ Pension Scheme, 1995 and
- The Employees’ Deposit Linked Insurance Scheme, 1976

Benefits

- Apart from terminal disbursal of non-refundable withdrawals for life insurance policies
- Construction of house
- Medical treatment
- Marriage
- Higher education
- Family Pension
- Retirement – cum – withdrawal benefits
- Deposit linked insurance Amount equal to the average balance in Provident Fund of deceased subject to a maximum of Rs. 65,000/-

As per Preamble to the Act, the EPF Act is enacted to provide for the institution of provident funds, pension fund and deposit linked insurance fund for employees in factories and other establishments. The Employees’ Provident Funds and Miscellaneous Provisions Act is a social security
legislation to provide for provident fund, family pension and insurance to employees. Employee has to pay contribution towards the fund. Employer also pays equal contribution. The employee gets a lump sum amount when he retires, which will be useful to him after retirement.

The EPF Act contains basic provisions in respect of applicability, eligibility, damages, appeals, recovery etc. The three schemes formed by Central Government under the Act make provisions in respect of those schemes.

**Applicability of the Act –** The Act applies to (a) every establishment which is a factory engaged in industry specified in Schedule I to the Act and in which 20 or more persons are employed and (b) any other establishment or class of establishment employing 20 or more persons which may be specified by Central government by notification in official gazette. Central Government can also apply provisions of the Act to any establishment even if it employs less than 20 persons. [Section 1(3)]. However, temporary workers should not be counted to decide the applicability of the Act.

Even if the provisions of PF Act are not applicable in a particular establishments, if employer and majority of employees agree, the Central Provident Fund Commissioner can apply the provisions to that establishments by issuing a notification in the official Gazette. [Section 1(4)]. Once the provisions of Act become applicable, it continues to be applicable even if number of employees fall below 20. [Section 1(5)]

**Coverage of Act -** The Act has been extended to Factories, Mines, otherthan coal mines; Hotels and restaurants; Plantation of tea, Coffee, rubber, [Tea factories in Assam have been excluded. Trading and commercial establishments engaged in purchase, sale or storage of goods, Establishments
of exports, importers, advertiser, stockexchange, Canteens, Establishments of Attorneys. CA, ICWAs, Engineers, Contractors, architects and paramedical practitioners, Hospitals, Travel agencies, Bank doing business only in One State. General insurance, Expert services, Clubs and societies rendering services to their members; Agricultural farms, Financial Establishments other than banks; building and construction industry; Poultry farming & University, college or schools. The Act has been extended w.e.f.1.4.2001 vide notification dated 22.3.2001, to courier services also. Aircraft or airlines other than aircraft or airline owned or controlled by Government & establishment engaged in rendering cleaning and sweeping services.

Once as establishment is covered under PF, all its departments and branches wherever they are situated are also covered.

2.5.7.4 Payment of Gratuity Act, 1972

Gratuity is a lump sum payment to employee when he retires or leaves service. It is basically a retirement benefit to an employee so that he can live life comfortably after retirement. However, under gratuity Act, gratuity is payable even to an employee who resigns after completing at least 5 years of service.

Gratuity is reward for good, efficient and faithful service rendered for a considerable period.

Act Provides for Minimum Gratuity Only – The gratuity Act provides only for minimum gratuity under a contract or under an award, the employee is entitled to get higher gratuity. (Section 9(5)).

Employer’s Liability under the scheme- The Act applies to every factory, mine, plantation, port, and railway company. It also applies to every shop and
establishment where 10 or more persons are employed or were employed on any day in the preceding 12 months. [Section 1 (3)]. Since the Act is also applicable to all shops and establishments, it will apply to motor transport undertakings, clubs, chambers of commerce and associations, local bodies, solicitor’s offices etc. If they are employing 10 or more persons.

**Employees eligible for gratuity** – Employee’ means any person (other than apprentice) employed on wages in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled or unskilled, manual, supervisory, technical or clerical work, whether terms of such employment are express or implied, and whether such person is employed in a managerial or administrative capacity. However, it does not include any Central / State Government employee –workers as well as persons employed in administrative and managerial capacity.

Gratuity is payable to a person on (a) resignation (b) termination on account of death or disablement due to accident or disease (c) retirement (d) death. Normally, gratuity is payable only after an employee completes five years of continuous service. In case of death and disablement the condition of minimum 5 years’ service is not applicable. [Section 4(1)]

The Act is applicable to all employees, irrespective of the salary.

**Amount of gratuity payable** – Gratuity is payable @ 15 days wages for every of completed years of service. In the last year of service, if the employee has completed more than 6 months, it will be treated as full year for purpose of gratuity and in case of seasonal establishment, gratuity is payable @ 7 days wages for each season. [Section 4(2)]
Wages shall consist of basis plus D.A. as per last drawn salary. However, allowances like bonus, commission, HRA, overtime etc. are not to be considered for calculations. [Section 2(5)].

In case of employees paid on monthly wages basis, per day wages should be calculated by dividing monthly salary by 26 days to arrive at daily wages. Maximum gratuity payable under the Act is Rs. 10 lakhs as amended on May 2010.

Income – Tax Exemption – Gratuity received up to Rs. 10 lakhs is exempt from income Tax. Gratuity paid above that limit is taxable. ([Section 10(10)] of income Tax Act.). However, employee can claim relief u/s 89 in respect of the excess amount.

No Compulsory insurance of gratuity liability – Section 4 A provides that every employer must obtain insurance of gratuity liability with LIC or any other insurer. However, Government companies need not obtain such insurance. If an employee is already member of gratuity fund established by an employer, he has option to continue that arrangement. If an employee employing more than 500 persons establishes an approved gratuity fund, he need not obtain insurance for gratuity liability. However, this Section has not yet been brought into force. Hence, presently, such compulsory insurance is not necessary.

**Gratuity cannot be attached** – Gratuity payable cannot be attached in execution of any decree or order of any civil, revenue or criminal court, as per Section 13 of the Act.
2.5.7.5 The Employees State Insurance Act, 1948

Objective

The ESI Act has been passed to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for related matters. As the name suggests, it is basically an ‘insurance’ scheme i.e. employee gets benefits if he is sick or disabled.

Administration

Employees State Insurance Corporation (ESIC) has been formed to supervise the scheme under Section 3 of the Act. The Corporation supervises and controls the ESI scheme.

No Dismissal or Punishment During Period of Sickness - A section 73 of the Act provides that no employer shall dismiss, discharge or reduce or otherwise punish employee when he is in receipt of disablement benefit or is under medical treatment or is absent from work due to sickness.

This gives protection to employee when he is in receipt of sickness benefit or maternity benefit. Employer cannot take disciplinary action against employee in such cases. This provision is grossly misused by employees.

Applicability of ESI Scheme – The scheme is applicable to all factories. [Section 1(4)]. The Appropriate Government can also make it applicable to any other industrial, commercial, agricultural or other establishments, by issuing notification and giving 6 months notice. [Section 1(5)].

Thus, ESI Act can be made applicable to ‘shops’ also. However, since Government has to provide for hospitals and medical facilities, the Act can be made applicable to different parts of State at different dates. Thus, if a factory
is at a place where ESIC is unable to provide medical facilities, ESI Act may not be made applicable to that area. Government can exempt a factory or establishment or persons or class of persons from provisions of ESI Act, if the Government is convinced that the factory itself is providing very good medical facilities to employees.

2.5.7.6 The Factories Act, 1948

Objectives

1. To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.

2. To prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.

Applicability of the Act

1. Applicable to the whole of India including Jammu & Kashmir.

2. Covers all manufacturing processes and establishments falling within the definition of “factory.”

3. Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Scheme of the Act

1. The Act consists of 120 sections and 3 Schedules.

2. Schedule 1 contains list of industries involving hazardous processes

3. Schedule 2 in about permissible level of certain chemical substances in work environment

4. Schedule 3 consists of list of notified diseases.
### 2.5.7.7 Apprentices Act, 1961

The main purpose of the Act is to provide practical training to technically qualified persons in various trades. The objective is to promote new skilled manpower. The scheme is also extended to engineers and diploma holders.

The Act applies to areas and industries as notified by Central government [Section 1(4)]

#### Scheme of the Act

There are 38 sections in total and 1 Schedule. This Schedule is about modifications in the Workmen’s Compensation Act, 1923 with respect to its application to apprentices under the Apprentices Act, 1961.

#### Obligation of Employer-

- Every employer is under obligation to provide the apprentice with the training in his trade in accordance with the provisions of this Act and the rules made there under.
- If the employer is not himself qualified in the trade, he has to ensure that a person who possesses the prescribed qualification is placed in charge of the training of the apprentice.
- Every employer has to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices; and
- Every employer is under obligation to take apprentices in prescribed ration of the skilled workers in his employment in different trades.[Section 11]
In every trade, there will be reserved places for scheduled castes and scheduled tribes. [Section 3A].

The employer has to make arrangements for practical training of apprentice [Section 9(1)]

Employer will pay stipends to apprentices at prescribed rates. If employees are less than 250, 50% of cost is shared by Government. If employer is employing more than 250 workers, he has to bear full cost of training.

Obligations of Apprentices:

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely;

- To learn his trade conscientiously and endeavour to qualify himself as a skilled craftsman before the expiry of the period of training;
- To attend practical and instructional classes regularly;
- To carry out all lawful orders of his employer and superiors in the establishments; and
- To carry out his obligations under the contract of apprenticeship.

In case of graduate technician apprentice or technician (Vocational) apprentice, apart from the stated obligations, the Act imposes further obligation to learn his subject in Engineering or Technology or Vocational Course. (Section 12)
Who can be an Apprentice – Apprentice should be of minimum age of 14 years and he should satisfy the standard of education and physical fitness as prescribed. [Section 3]

Reservation of training places for scheduled casts;

Section 3 A provides that in every designated trade, training places shall be reserved by the employer for the Scheduled Castes and Scheduled Tribes and where there is more than one designated trade in an establishment, such training places shall be reserved on the basis of the total number of apprentice in all the designated trades in such establishment. The reservation shall be such as may be prescribed having regard to the population of the Scheduled Castes and Scheduled Tribes in the State concerned.

Duration of Training – Duration of training period and ratio of apprentices to skilled workers for different trades has been prescribed in Apprenticeship Rules, 1991. Duration of Apprenticeship may be from 6 months to 4 years depending on the trade, as prescribed in Rules. Period of training is determined by National Council for training in Vocational Trades (established by Government of India) - (Section 6)

Contract with Apprentice- Apprentice appointed has to execute a contract of apprenticeship with employer. The contract has to be registered with Apprenticeship Adviser. If apprentice is minor, agreement should be signed by his guardian. [Section 4(1)] Apprentice is entitled to casual leave of 10 days in a year.

Date of commencement of apprenticeship training:

The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into.
Registration:

- The employer shall send the contract to the Apprenticeship advisor for registration within three months of the date on which it was signed (Rule6)

- The contract shall be registered by the Apprenticeship adviser on being satisfied that the person described as an apprentice in the said contract is qualified under this Act.

- Registration of contract of apprenticeship under Section 4(4) is not a necessary ingredient of definition of apprentice. (Bhaskaran V. KSEB (1986)1LLN 869).

Terms and conditions of contract:

The contract may contain such terms and conditions as may be agreed to by the parties to the contract. In case, the Central Government after counseling the Central Apprenticeship Council makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training then the terms and conditions of every contract relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

The Workmen’s Compensation Act 1923- was the first step towards social security of workmen. The main object of the Act is to provide for the payment of compensation by certain classes of employers to their workmen for injury by accident. ie, “the cost of product should bear the blood of the workmen”.

The main purpose of the Act is to provide special machinery to deal with the cases of compensation in case of accidents and to make arrangement for some prompt compensation to the injured workman who cannot afford to go to the Court of Law. Act provides a simple, cheap and prompt procedure for the recovery of compensation and relieves the parties of unnecessary litigation.

**Scope and Coverage:** The Act extends to the whole of India, to workmen employed in factories, mine, plantations, transport establishments, construction works, railways, ships, circuses and other hazardous occupations and employment specified in Schedule II to the Act.

The Act does not apply to members of Armed Forces of the union and the workmen who are covered by the Employees’ State Insurance Act, 1948

**Employers’ Liability for compensation**

1. for personal injury caused to him by accident and
2. for any occupational disease contracted by him

**The Maternity Benefit Act 1961** :- To regulate the employment of women in certain establishments for certain periods before and after child- birth and to provide for maternity benefit and certain other benefits. It extends to the whole of India.

Latest amendment in 1988 came into force with effect from January 10, 1989

**Scope and Coverage of the Act**

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

b) To every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which 10 or more persons are employed or were employed, on any day of the preceding 12 month.

**The Industrial Disputes Act 1947:** The object of the Act is to make provision for the investigation and settlement of industrial disputes. The Act is primarily meant for regulating the relations of employers and workmen, past present and future. The principal aim of the Act is to encourage collective bargaining and to maintain industrial peace by preventing illegal strikes and lockout and to provide layoff and retrenchment compensation. The Act extends to the whole of India including the state of Jammu and Kashmir.

Authorities under the Act- The main object of Industrial Disputes Act is investigation and settlement of industrial Disputes. With that object in view various authorities have been created under the Act. The Act provides for the following modes of settlement of Industrial Disputes.

1. Voluntary settlement and conciliation
2. Adjudication
3. Arbitration

The adjudication of Industrial Disputes under the Industrial Disputes Act is performed through different agencies and authorities constituted under the Act. The important agencies and authorities constituted under the Act are
• Works Committee
• Conciliation Officers
• Boards of Conciliation
• Courts of Inquiry
• Labour Courts
• Industrial Tribunals
• National Tribunals
• Grievance Settlement Authorities
• Arbitrator

The Minimum Wages Act 1948-The object of the Act is to prevent exploitation of the workers and therefore it aims at fixation of minimum wages which the employers must pay. The provisions of the Act are intended to be applied to those industries only where by reason of unorganized labour or want of proper arrangements for effective regulation of wages or for other causes, the wages of the labourers are very low. The Act extends to the whole of India and it came into force on 15th March 1948.

Administration of the Act for administering and regulating and ensuring the payment of minimum wages the following bodies are constituted under the Act.

1. Advisory Board-The Advisory Board is appointed by the appropriate Govt. for coordinating the work of committees and sub committees and advising the appropriate Govt. in the matter of fixing and revising minimum rates of wages.

2. Central Advisory Board- The Central Advisory Board is appointed by the Central Govt. for the purpose of Advising the central and state Govt. in the matters of the fixation and revision of minimum rates of
wages and other matters under the Act, and for coordinating the work of the advisory Boards

Safeguards in payment of minimum wages

1. **Wages in Kind**- Minimum wages payable under the Act shall be paid in cash

2. **Payment of minimum rate of wages**- Where in respect of any scheduled employment minimum wages have been fixed, the employer shall pay to every employee at a rate not less than the minimum rate of wages fixed for that class of employees in the employment.

3. **Fixing hours for a normal working day**- In regard to any scheduled employment where minimum rate of wages have been fixed, the appropriate Govt. shall have the power for fixing working hours for a day.

4. **Rates of overtime**- Where an employee, whose minimum rate of wages is fixed under the Act works over time, the employer shall pay wages at the rates fixed for overtime work under the Act or any other law whichever is higher.

5. **Wages of worker who works for less than normal working day**- If a worker works for a period less than the requisite number of hours constituting a normal working day, is entitled to receive wages for the full normal working day unless the failure to work is caused by his unwillingness to work or in such other cases and circumstances as may prescribed.

6. **Wages for two or more classes of work**- where an employee does two or more classes of work to each of which a different rate of
wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each class of work.

7. **Minimum time rate wages for teamwork** - where an employee is employed on piecework or which minimum time rate and not a minimum piece rate has been fixed under the Act, the employer shall pay to such employee wages at not less than the minimum time rate.

8. **Maintenance of registers and records** - Every employer shall maintain registers and records giving particulars of the employees, work performed and the wage details

**Enforcement of the Act**

The appropriate Govt. may, by notification in the Official Gazette, appoint Inspectors for the purpose of the Act and define the local limits within which they shall exercise their functions.
References


