POST INDEPENDENCE LABOUR POLICY AND LEGISLATION

The most significant period pertaining to labour legislation and policy in India relates to post-independence. There is hardly any doubt that India has remained its own master before being shackled by the Britishers but during pre-British periods including ancients times, science and technology had not advanced to a significant extent, nor any of those was a machine-age, nor factories and industries had seen the light of the day on the scale they did in this century. Hence it was the first ever time for a sympathetic government to think about the human resources available in the country enormously. The vast number of industrial labour had by then added new and complex dimensions to the already gigantic problems of the working class and the job of even formulating the policy at the initial level must have looked insurmountable. But those in authority then mustered up their courage and visualised different complex problems in a better perspective than was done earlier.

Preceding chapters speak for themselves that the labour policy followed during various past regimes was according to the then existing social conditions as also according to the dictates of law givers, kings, emperors and rulers and so on. The policy was mostly unwritten and there was hardly any legislation to regulate the conditions of labour. It was during the British rule in India that rules and regulations for regulating the conditions of workers started gaining statutory significance. The first Factories Act and the first Mines Act were passed in 1881 and 1901.
respectively.¹ It was only after the formation of International Labour Organisation in 1919 that the labour legislation started getting international importance.² The legislation extending to the entire working class, as distinguished from workers in specific industries, was first enacted after 1922.³ Most of such important laws pertain to workmen’s compensation, trade unionism, industrial relations, hours of work for railway employees, payment of wages, etc.⁴ By enacting many labour laws in consonance with its labour policy and I.L.O. conventions, the British Government in India not only laid the foundation stone for the present labour policy in India but also showed the way to be followed in future.

It was primarily after the attainment of Independence in 1947 and adoption of Indian Constitution with its Preamble, Fundamental Rights and Directive Principles of the State Policies which came into effect on January 26, 1950, that the Government of India chalked out several programmes to be followed. The Government had to ensure that its programmes and policies meet the present day requirement and come up to the expectations of the working class in general. The labour legislations which cover a large number of workers in many fields comprise the Trade Unions Act, the Payment of Bonus Act, the Industrial Disputes Act, the Workmen’s Compensation Act, the E.S.I. Act, the Provident Fund Act, the Industrial Employment (Standing Orders) Act, the Maternity Benefit Act, the Factories Act, etc. Specific legislations pertaining to plantations, mines, motor-transport, railways, shipping, dock workers, shop and commercial

⁠¹ See, Chapter IV.
⁠² See, Chapter, V.
⁠⁴ See, Chapter, IV.
A brief description of some of the important labour legislations enacted and amended after independence is as follows:

6.1 The Laws Enacted After Independence

6.1.1 The Factories Act, 1948

The legislators felt the necessity to regulate the conditions of service of workers for their betterment, due to rise in the number of workers employed in the factories, during the later half of 19th century. Moreover, India had attained independence and a change was taking place in social environment and outlook. There was growing consciousness among workers working in the factories. Experience of the working of the Factories Act 1934 revealed a number of defects and weaknesses with regard to safety and welfare of the factory workers. Consequently, the Government of India framed a Bill in 1947 for a radical over-haul of existing law which was passed on 23rd September, 1948. The new Act called the Factories Act, 1948 was put into force on 1st April 1949. The Act was amended in 1954 to remove certain practical difficulties in the calculation of leave with wages and to bring provisions relating to employment of women and young persons in factories during night in conformity with the I.L.O. conventions which had been ratified by the Government. In 1976, as a result of the recommendations of the Labour Ministers Conference and also of the National Commission on Labour, the Act was again amended. The main objective of the Act is to ensure adequate safety of the workers and to promote the health and welfare of the workers employed in the factories. It specifies in clear terms the requirements regarding cleanliness, lighting, ventilation, etc., and provides for the disposal of
wastes and effluents, the elimination of dust and fumes, the provision for drinking water facilities, latrines, urinals, and of spit tons, and the control of temperature, etc. For example, factories employing more than 250 persons are required to supply cool drinking water during summer.¹ The Act prescribes a minimum space of 500 cft. for each worker in factories built after the commencement of the Act and 350 cft. for each worker in factories built before its commencement so as to eliminate overcrowding. There is a separate chapter (Chapter IV) in the Act which deals with the safety measures ensuring the safety of the workers working on or near machinery. These relate to fencing of machinery, installing of new machinery, testing and examination of appliances, plant, etc., precaution against danger of fumes and fire. It also lays down rules and conditions under which young persons may be employed on dangerous machines and prohibits the employment of women and children near cotton-openers. It empowers the State Governments to fix maximum weight which may be lifted or carried by men, women or children. The provisions relating to welfare measures such as washing facilities, facilities for storing and drying, first-aid appliances, canteens, rest shelters, creches, seating arrangements for workers, lunch rooms, etc. are given in chapter V of the Act. There is also a provision for Welfare Officer to be appointed in the factories employing 500 or more workers, and so on.

The minimum age of employment of children has been fixed at 14. A child or adolescent has to obtain a certificate of fitness for work by a Certifying Surgeon before getting employment in factories. The hours of work for adult workers have been fixed at

¹ Bhagoliwal, T.N., Economics of Labour and Industrial Relations, Sahitya Bhawan, Agra, 1982, p. 142.
48 hours per week and 9 hours per day with a spread over of 10 and half hours in a day inclusive of rest intervals. For children and adolescents, the hours of work have been fixed at four and a half hours per day and spread over of 5 hours. An adult worker is not allowed to work for more than 5 hours unless he has had an interval of rest for at least half an hour. Employment of women and children between 7 p.m. and 6 a.m. is prohibited. For overtime work, the Act provides that the employee shall be paid twice the normal rate of wages.

The Act lays down that besides weekly holidays, every worker will be entitled to avail leave with wages after 12 months of continuous service (which means 240 days in a calendar year) at the following rate: adult — one day for every 20 days of work, subject to minimum of 10 days; children — one day for every 15 days of work subject to minimum of 14 days. Provision has also been made for proportionate leave with wages for a worker who is discharged or dismissed before he has completed the 240 days qualifying period of work in a factory. It is obligatory on the part of factory managers to give information regarding specified accidents which cause death or serious bodily injury or regarding occupational diseases contracted by employees. Medical practitioners attending persons suffering from occupational diseases are also required to report the causes to the Chief Inspector of Factories. The Act authorises Factory Inspectors to take samples of substances used in manufacturing process, if their use is either contrary to the provisions of the Act or likely to cause bodily injury to the health of the workers.

The Act has been further amended in the year 1987, under the title 'Factories (Amendment) Act, 1987' (Act No.20 of 1987),
which received the assent of the President on the 23rd of May 1987. The amending Act provides an insertion of chapter IV-A with regard to the industries involved in hazardous processes. According to this chapter, the State Government has been empowered to constitute a site appraisal committee for grant of permission for initial location of a factory involving hazardous process. It also requires the occupier of the factory to discuss all information regarding dangers, health hazards and the measures to overcome such hazards arising from the exposures to or handling of materials or substances in the manufacture, transportation, etc. The Central Government has been empowered to appoint enquiry committee to enquire into the standards of health and safety observed in factories. Inspectors have been given sweeping powers to get the provisions implemented. Contravention of provisions of chapter IV-A attracts imprisonment which extends to 7 years and fine upto Rs 20,000/-.. Section 70 has also been amended so that no female adolescent or a male adolescent who has not attained the age of 17 years but has been granted a certificate of fitness to work as an adult shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m. The State Government may vary the limits but not so as to work between 10 p.m. and 5 a.m. for any female adolescent. These provisions are not applicable in case of serious emergency where national interest is involved. No female child shall be allowed to work in any factory except between 8 a.m. and 7 p.m.¹

During the year 1984, the State Governments were advised to make the following amendments to their Factory Rules taking guidance from the Model Rules, amended for the purpose. The

amendments to the Model Rules so finalised pertained to
(a) Disposal of trade waste and effluents; the rules have been
suitably modified to fall in line with the Water (Prevention and
Control of Pollution) Act, 1974 and the Air (Prevention and
Control of Pollution) Act, 1981 and other appropriate authorities;
(b) The existing Model Rule 76 has been substituted by a new Rule
to provide for safety requirement against exploitation taking
place in ovens and driers; (c) New Schemes have been made for
handling etc., of asbestos to replace the old one. The new one
incorporates recommendations of the Asbestos Information Centre
and the same practices are being followed by advanced countries;
(d) A new Schedule has been added to provide requirements against
serious health hazards to workers arising out of the use or
handling of carbon disulphide; (e) Another schedule has been added
under Model Rule 116 prescribing for safety requirements
pertaining to highly flammable liquids and flammable compressed
gases; and (f) The Model Rule 123-A prescribing permissible levels,
of certain chemicals has also been revised to include the maximum
permissible limits for asbestos as per the recommendations of
Asbestos Information Centre and also in line with various other
regulations followed by developed countries.¹

The State Governments are responsible to administer the Act
through Factory Inspectors and Certifying Surgeons. Although the
Central Government has no executive responsibility for the
administration of the Act, it has set up an advisory organisation,
known as the office of the Chief Advisor, Factories. The Director
General of Factory Advice Service and Labour Institute assists the
States in the administration of the Act.² They serve as a clearing

². Saxena, R.C., Labour Problems and Social Welfare, K. Nath &
6.1.2 The Indian Mines Act, 1952.

The first step in the direction of regulating working conditions in mines was taken in 1901, which was later replaced by the Indian Mines Act of 1923. The Act of 1923 laid greater emphasis on safety of mine workers than on welfare measures. To bring the legislation relating to mine workers in line with that of factory workers, the Government introduced a Bill on 18th December, 1949 which was passed on 15th February 1952, known as the Indian Mines Act, 1952. The Act applies to all persons engaged in any work incidental to or connected with mining operations and extends to whole of India except the State of Jammu and Kashmir.

The Act reduces the hours of work for all adult workers, both on surface and underground, to 48 hours per week and provides that no worker will be allowed to work for more than 9 hours a day above the ground and 8 hours a day below the ground. A rest interval for half an hour is to be given after every five hours a day and no worker is to work for more than 6 days in a week. The Act provides that the surface workers will be paid for overtime at the rate of one and a half times the ordinary rate of wages. But no one is to work for more than 10 hours a day even with overtime. The maximum spread-over has been fixed at twelve hours for surface workers and 8 hours for underground workers. The Act raised the age limit of persons employed underground from 17 to
18 years and limited the hours of work for adolescent to four and a half hours per day. It prohibits the employment of woman workers underground and provides that no woman will be allowed to work on surface except between 6 a.m. and 7 p.m. The Act makes adequate provisions relating to health, safety and welfare, on the lines of the Factories Act, 1948 such as for appointment of welfare officers, for first aid appliances, creches, rest shelters, pit-head bath, central rescue stations, canteens, ambulance, stretchers, cool and wholesome drinking water, latrines and urinals, etc. For the purpose of administration, the Act provides for the appointment of Chief Inspector of Mines, who is to be assisted by Inspectors of Mines and District Magistrates. They can issue directions to carry out such remedial measures as may be necessary for the safety of workers.

The Indian Mines Act of 1952 was amended by the Mine (Amendment) Act 1959 which was brought into force on the 16th January, 1960. The amended Act includes boring, bore holes, oil wells, shafts, quarries, open cast working and railways, aerial rope ways, conveyors, tram ways standing workshop, power station, etc., or any premises connected with mining operations and near or in the mining area, in the definition of Mines. The Act provides for the maintenance of first-aid room in mines where more than 150 persons are employed. The Act provides for the payment of overtime at a uniform rate of twice the ordinary rate of wages for persons employed above and below ground. The penalties for breach of the provisions of the Act have been made more severe.

The Act was amended in 1983 by the Mines (Amendment) Act, 1983 which received the assent of the President on 25th December, 1983 and came into force with effect from 31st May 1984.
According to the amended Act, no person below 18 years of age shall be allowed to work in any mine or part thereof. The other amendments mainly relate to removal of certain practical difficulties experienced in its enforcement, provision for additional safety regulations, closer association of workers with safety measures, provision for minimum penalty in case of gross negligence or recklessness, and increase in the levy of cess for the administration of certain Rescue Stations. The amended Act provides for entitlement for an alternative employment in the mine to a worker found medically unfit, which is directly ascribable to his employment, and for payment of disability allowance as well as a lumpsum amount where he desires to leave employment. The Chief Inspector of Mines has been empowered to prohibit employment of persons in cases where, despite warnings, the management does not show any improvement in regard to safety measures. Keeping in view the greater hazards to which the underground workers are exposed, the present rate of one day for every sixteen days of work performed for the calculation of annual leave with wages of a person employed below ground in a mine has been modified to one day for every fifteen days of work performed. A new provision has come into existence for granting proportionate leave or wages in lieu of leave, to person whose services are terminated or who quit employment voluntarily or die during the course of the year before they put in the required number of attendance. Another new provision enables the Chief Inspector of Mines or any other authorised Officer to undertake a safety and occupational health survey in Mines. The amended Act also makes it clear that no fee or charge shall be realised from any person employed in a mine in respect of any protective arrangement or facilities to be provided or any equipment or appliance to be supplied under the provisions.
of the Act. The present definition of "serious bodily injury" in the main Act has been amended by introducing a new definition of "reportable injury" to cover injury resulting in forced absence for a period of 72 hours or more. The present requirement of 48 hours of forced absence of a worker because of bodily injury has now been reduced to 24 hours. The amended Act provides for the establishment of a standing committee for the entire country with power to appoint one or more adhoc committees to deal with specific question relating to mines or group of mines. The functions of the committee include drafting of rules and regulations under the Act and enquire into such accidents as may be referred to by the Central Government and hears and decides appeals or objections against the Act.

The recommendation of the first conference on Safety in Mines for effective association of worker with the promotion of safety in mines by forming safety committees has also been given effect. The present levy and collection of duty of six paise per tonne of coke and coal produced in and despatched from a coal mine has been enhanced to 25 paise per tonne.¹

6.1.3 Minimum Wages Act, 1948

It was at the third and fourth meetings of the standing Labour Committee held in 1943 and 1944 that the issue concerning the implementation of the observation of Royal Commission on Labour and various Labour Enquiry Committees about the State regulation of wages by fixing minimum wages in India was discussed. It was also subsequently discussed at the successive sessions of the tripartite Labour Conferences in 1943, 1944 and

1945. The last of these approved in principle the enactment of minimum wage legislation. Hence on 11th April, 1946, Dr. B.R. Ambedkar, the then Labour Minister in the Government of India introduced the Minimum Wages Bill, but then it was not passed because of the constitutional changes in India. It was passed in March 1948 and is known as the Minimum Wages Act, 1948. The Act was amended in 1954, 1957 and 1961 and so on. It extends to the whole of India. The Act empowers both the Central and State Governments to fix within a specified period minimum rates of wages payable to employees. Once the minimum rates of wages are fixed according to the prescribed procedure, it is obligatory on the part of employer to pay the said wages irrespective of his capacity to pay. It provides for fixing minimum wages in certain employments where sweated labour is prevalent or where there is great chance of exploitation of labour. Minimum rate of wages need not be fixed in respect of any employment in a State if it employs less than one thousand employees. The employments mentioned in the schedule include woollen carpet making or the shawl weaving establishments; tobacco, including bidi making; rice mills; flour mills; dal mills; oil mills, plantations; employment under any local authority, road construction or building operations, stone making or stone crushing; 'lac' manufactures; mica workers; public motor transport; tanneries and leather manufactures; and agriculture. By an amendment in 1962, employments in gypsum mines, baryte mines and bauxite mines have been added to the list of scheduled employments under the Act. The Act gives provisions for the fixation of (a) a minimum time rate, (b) a minimum piece rate, (c) a guaranteed time rate, and (d) an overtime rate appropriate
to different occupations in different classes of work. A minimum rate includes: (a) a basic rate of wages and a cost of living allowance or (b) a basic rate with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at the concessional rates or (c) an all inclusive rate.

The appropriate governments are empowered to appoint committees to hold enquiries and advise in fixing the rates of minimum wages. Advisory committees can also be appointed for coordination and for subsequent revision of wage-rate. A Central Advisory Board is to be set up by the Central Government for advising the Central and State Governments and for integrating the work of the State Advisory Board.

Part II of the Schedule of the Act covers agricultural workers. However, the problem of fixing minimum wages for agricultural workers is even more difficult than fixing minimum wages for the factory workers. Unfortunately, very little statistical information is available so far as the agricultural wages in different parts of the country is concerned. Besides, fixing the hours of normal working day in agricultural operation is not an easy task. Agricultural labour is spasmodically employed and usually the same worker performs different tasks at different stages of agricultural operations. Moreover, most of the wages are assessed in cash. Then, the vast multitude of small proprietors, who will be required to enforce the Act, will create a great difficulty in the enforcement of any such Act. The agriculturists in India neither have the knowledge nor the inclination to keep registers and records which would be necessary for the administration of the Act. It was, therefore, perhaps right that
the question of fixing minimum wages was postponed, until an exhaustive inquiry was made and statistics collected about the conditions and the prevailing wages in case of agricultural labour. An All-India Agricultural Labour Enquiry was, therefore, undertaken in 1950-51. The reports of this enquiry were published. A second All India Agricultural Labour Enquiry was started in August 1956 which was completed and the reports published. Rural Labour Enquiries were also conducted in 1963-65 and 1974-75. The date for fixing minimum wages as pointed out above was extended to 31st December 1959 and now the States have been left free to fix minimum wages as they find it necessary.

Rates of minimum wages for agricultural workers have now been fixed in all the States though in some States only specified areas have been covered. Minimum wages have also been fixed in Central Government agricultural farms, military farms and farms attached to Institutes. In U.P., on the recommendations of a Committee appointed in 1951, the minimum rates of wages of agricultural workers were first fixed in 12 eastern districts, described as low-wage districts, in case of workers employed in farms of 50 acres or more. Subsequently, the minimum rates of wages were extended to all the farms in these 12 districts of the State, except four hill districts.

It was at a Seminar held in August 1965 that the question of minimum wages for agricultural labour was discussed. It recommended that the minimum rate of wages for any agricultural operation should not be less than Re.1 per day and that the appropriate governments should appoint Committees to decide whether a higher minimum could be fixed. The Seminar also recommended the provision of adequate enforcement machinery.
Inaugurating a three-day National Symposium on Minimum Wages for Agricultural Labour, organised by the National Labour Institute at New Delhi, in February 1984, the then Union Labour Minister, Shri Veerendra Patil, suggested that a fresh labour enquiry should be undertaken in order to ascertain the present socio-economic conditions of rural labour. Mr. T.S. Sankaran, an expert in labour administration, told that there were a large variety of contracts affecting the relationship between the land owners and agricultural labour and unless these factors were studied with particular reference to their impact on the implementation of minimum wages, a mere increase in the number of Government functionaries or a more frequent revision of the wages would be of no avail. In another theme paper, Mr. K.S. Raghupati, Chief of the Asian and Pacific Regional Labour Administration, International Labour Office, Bangkok, said that the fixation of minimum wage had to form part of the overall development strategy encompassing various rural development programmes.

In developing countries like ours, which face the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages.

The Minimum Wages Act, 1948 was enacted with an object of making provisions against exploitation of the ignorant, less organised and less privileged members of the society by the capitalists. This anxiety of the State for improving the general economic conditions of some of its less favoured members appears to be in supercession of old principle of absolute freedom of contract and the doctrine of 'laissez faire' and in recognition of the new principle of social welfare.¹

6.1.4 The Payment of Bonus Act, 1965

To give effect to the recommendations of the Bonus Commission, the Government with certain modifications issued an Ordinance in May 1965 and later replaced it by the Payment of Bonus Act, 1965 in September of that year. The Act applies to every factory and every establishment in which 20 or more persons are employed and to those public sector undertakings which are not run departmentally and which compete to the extent of 20% with establishments in private sector. Further the Act will not be applicable to employees who have entered into agreement with their employers before or after the 29th of May, 1965, for payment of profit or production bonus. In case of new establishments, whether set up before or after the commencement of the Act, bonus would be payable for the accounting year in which the products manufactured by the establishment are sold.

The Act covers all employees receiving the salary or wages up to Rs. 1600/- per month. The salary or wage of a worker includes basic wage and dearness allowance only. The Act provides that a minimum of 30 days work in a year has to be put in to qualify for payment of bonus. The Act also provides for a reduction in the payment of bonus payable to those who work for less than the stipulated number of days during an accounting year. However, an employee who has been dismissed from service for fraud, or riotous behaviour while in premises of the establishment, or theft, misappropriation or sabotage of any property of the establishment, is disqualified from receiving bonus under the Act. The available surplus in respect of an accounting year is to be computed after deduction of certain prior charges.
from gross profit. The prior charges include depreciation, direct
taxes, development funds, return on capital, remuneration for
working partners and proprietors, 60 per cent of the available
surplus (67 per cent in the case of foreign companies) is allocable for the payment to employees in each year. The payment of bonus will be made within 8 months after the close of the accounting year. But the Government is empowered to extend this period not beyond two years.

The Act was amended in 1969 which increased the available surplus for distribution to worker as bonus. In September 1972, the President promulgated an Ordinance which was later on replaced by the Payment of Bonus (Amendment) Act, 1972. The amended Act increased the minimum rate of bonus from 4% to 8.33% of workers' salary or wages or Rs.80 (Rs.50 in case of child worker) whichever is higher for the accounting year on any day in the year 1971. In 1975, the Act was further amended and effected many changes such as the minimum rate of bonus was reduced from 8.33% to 4% of the wages or Rs.100 whichever is higher (Rs. 60 in case of the workers who have not completed 15 years of age); the Government was empowered to extend the Act to establishment employing 10 or more persons; the payment of bonus was linked to profit and productivity¹; and bonus becomes payable only if there is a nominal allocable surplus. The amended Act of 1975 caused a great discontentment among the workers. In 1977, the Government again amended the Act according to which the rate of minimum bonus was raised from 4% to 8.33% which had to be paid by establishments whether they made a profit or not during the accounting year on any day in 1976. The Act was further amended by the payment of

¹ Saxena, R.C., Ibid., p. 634.
Bonus (Amendment) Act of 1979 which provided payment of minimum bonus of 8.33% irrespective of any allocable surplus with the establishment. It limited the maximum percentage of bonus to 20%. Wherever, in any accounting year, the allocable surplus exceeds the amount of minimum bonus payable to employees under the Act, the employer is bound to pay to every employee, in lieu of the minimum bonus, a bonus proportionate to the salary or wage earned by the employee in that accounting year, subject to a maximum of 20 per cent of such salary or wage. All employees, excepting apprentices, earning not more than Rs. 1600 per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative or clerical work are eligible to the payment of bonus under the Act. An ordinance raising the salary or wage ceiling from Rs. 1600/- per month to Rs.2500/- per month for eligibility of bonus under the Payment of Bonus Act, 1965 has been promulgated by the President of India on 7th November, 1985. However, the amount of bonus payable under the Act is to be calculated on a maximum salary or wage of Rs.1600/- per month even if the salary or wage of any employee exceeds this amount. The bonus which was originally voluntary payment has thus become a statutory obligation under the Payment of Bonus Act, 1965.

6.1.5 The Employees' State Insurance Act, 1948

The Employees State Insurance Act, 1948 provides some measure of security to an industrial worker working in factories and other establishments. The introduction of a comprehensive scheme of health insurance for industrial workers had been engaging the attention of the Government for a long time. In the year 1928, a question for examination arose for the first time with regard to sickness insurance when the Government was required
to ratify the draft conventions and recommendations adopted at the 10th International Labour Conference. The decision was deferred in the then prevailing conditions. In 1931, the Royal Commission on Labour recommended the introduction of such legislation. This question was also seriously considered in the Conference of Labour Ministers. The Government of India appointed Dr. B.P. Adarkar, in March 1943 to report on health insurance of industrial workers in India.\(^1\) Dr. Adarkar recommended a simple scheme for sickness insurance. Later on, two International Labour Organisation experts, Messers Stack and R. Rao, examined the report and made their suggestions. They suggested unification of maternity benefit and employment injury benefit along with sickness insurance scheme. The Government followed the recommendation of Messers Stack and Rao. The Employees' State Insurance Bill was introduced in the Central Legislation on 6th November 1946 and passed into an Act on 2nd April 1948.\(^2\)

The Act is a social piece of legislation intended to confer certain benefits to employees in cases of sickness, maternity and employment injury and makes certain other provisions for certain related matters. Several remedial measures, which the legislature thought it necessary to enforce in regard to such workmen, have been specifically dealt with and appropriate provisions have been made to carry out the policy of the Act as laid down in the relevant sections.\(^3\) The Act was amended in 1951 to remove a few lacuna in the Act.

\(^{3}\) Basant Kumar Sarkar V. The Eagle Rolling Mills Ltd., 1946, II, L.I.J., 105.
The Act extends to the whole of India. It was formerly applied to all factories other than seasonal factories using power and employing 20 or more persons. But now the provisions of the Act have been extended with sections 1(5) of the Act in which (i) small factories using power and employing 10 persons or more and those not using power but employing 20 or more persons; and (ii) shops, hotels, restaurants, cinemas, theatres, motor transport and newspaper establishments employing 20 or more persons\(^1\) are included. By the amendment in 1975, the Act covered all employees whose remuneration does not exceed Rs. 1000/- per month and are connected with the work of the factory or establishment to which it applies. The Act does not include any member of the Indian Naval, Military or Air Force.

The Insurance scheme framed under the Act is administered by an autonomous body called the Employees State Insurance Corporation. It consists of the representatives of the Central and State Governments, employers' and employees' Organisations, medical profession and Members of the Parliament. The Union Minister for Labour and Employment is the Chairman and the Minister for Health is the Vice-Chairman of the Corporation. The scheme is financed by the Employees' State Insurance Fund consisting of contributions from employers and employees and grants, donations and gifts from Central and State Governments, local authorities or any individual or body. It is the primary responsibility of the employer to pay his as well as his employees' share. Employee's share or contribution is deducted from his wages by the principal employer.

\(^1\) Bhagoliwal, T.N., Ibid., p. 39.
Under the Act provisions have been made for the following benefits.

1) Sickness Benefit
2) Maternity Benefit
3) Disablement Benefit
4) Dependents' Benefit
5) Medical Benefit
6) Funeral Benefit

Sickness benefit is given in the form of periodical payment to any insured person when his sickness is certified by a duly appointed medical practitioner. The benefit is not payable for an initial period of two days, except in case where the worker falls sick for a second time within 15 days. The daily rate of sickness benefit amount is equivalent to one-half of the assumed daily wages. The Act provides maternity benefit to an insured woman employee consisting of periodical payment in case of confinement or miscarriage or sickness arising out of pregnancy, confinement or pre-mature birth of a child or miscarriage. The rate of benefit is a flat rate of 75 paise per day or twice the sickness benefit rate, whichever is higher. Disablement benefit is provided to an insured person suffering from disablement as a result of injury in course of employment (which includes certain occupational diseases specified in the Third Schedule of the Act). The Act makes provision for dependent benefit which is payable to the dependents of an insured employee who dies as a result of an employment injury. An insured person whose condition demands medical treatment is entitled to receive medical treatment which includes free medical treatment in case of sickness, employment injury and maternity. The benefit of medical care has now also
been extended to the families of the insured persons. Under the Amendment Act of 1966, the Act also provides funeral benefit which includes an amount up to Rs. 100/- payable to the oldest surviving member of the family or such person who actually incurs funeral expenses.

6.1.6 The Employees' Provident Fund (and Miscellaneous Provisions) Act, 1952

The Employees' Provident Fund and Miscellaneous Act, 1952 has been enacted for the better future of the industrial worker on his retirement and for the dependents in case of his death while in employment. The main purpose of the enactment of the Act is to institute a provident fund for the employees working in factories and other establishments. The employer is required to make the contribution to provident fund in the same way as the employer. It is, in fact, through a joint contribution of employer and employee that the scheme is made workable.

Initially, the scheme was applicable to 6 major industries, viz., Cement, Cigarettes. Electrical, Mechanical and General Engineering products, Iron and Steel, Paper and Textile employing 50 or more persons. Subsequently, the Act was extended to many industries. Under the Act, the Central Government was empowered to extend the Act, by notification, to other industries employing less than fifty persons whose employer and a majority of employees agree to come under the Act. By an amendment of the Act in 1956, the Government was authorised to extend the Act to non-factories also. The Act has been amended again in 1960 which extended the scope of the Act to establishments employing 20 or more persons. The Act ensures that the establishments once covered under the Act do not go out of the purview of the Act because of
the reduction in their employment strength except when the strength is reduced to less than 15 and remains so far a period of one year continuously. The Act provides for the exemption to certain establishments in special cases from the provisions of the Act.

Earlier, the period of service for eligibility to become the member of the Employee's Provident Fund was one year's continuous service or 240 days of actual work during a period of 12 months or less or on becoming permanent whichever is earlier. This period was reduced to six months' continuous service or 120 days of actual work during a period of six months or less in 1974. From January 1981, it has been further reduced and now the period of eligibility for membership is three months' continuous service or 60 days of actual work during a period of three months or less or on becoming permanent whichever is earlier. As regards the maximum pay limit for eligibility of membership originally it was Rs 300/- a month. It was raised to Rs 1000/- a month in May 1957 and Rs 1600/- per month in December 1976. Employees getting more than Rs 1600/- per month are also eligible to become members under certain conditions. In August 1985, it was decided to increase the wage ceiling for coverage under the scheme to Rs 2000/- per month. The pay includes basic wage plus dearness allowance including cash value of food concession and retaining allowance, if any.

The central features of the Provident Fund Scheme, under the Act are that it is made compulsory on both employer and employees and that both parties are required to contribute. The employer will contribute both on his behalf and his workers' behalf in the first instance, and will deduct the members' contribution from their wages. The employees and the employer will each contribute
six and quarter per cent of total emoluments of the worker, i.e., of the basic wage plus dearness allowance and retaining allowance, if any, including the case value, of food concession given to the employees. The employees, if the scheme framed under the Act so provides, may contribute an amount not exceeding 8%. The Act was amended in February 1959 to facilitate that. In 1961, the scheme was amended so as to provide for deduction of contributions on "Retaining Allowance" usually paid in sugar and other seasonal factories.

A special reserve fund was created in 1960 for being utilized towards paying the provident fund accumulation to the outgoing members (in unexempted establishments) or their nominees/heirs where the employer failed to remit the fund, the whole or part of the provident fund contributions deducted from the wages of the member. A Death Relief Fund has also been set up with effect from 1st January, 1964 for affording financial assistance to the nominees/heirs of the deceased members.

A Family Pension Scheme was introduced in March 1971. It provides long term financial security to the families of industrial employees, covered under the Employees Provident Fund Act of 1952, in the event of their premature death. The Scheme applies compulsorily to all employees who become members of the Provident Fund Scheme after March 1971. Option to join it is given to old members who joined the Provident Fund Scheme prior to that date. The total number of subscribers to this Scheme at the end of September 1984 was Rs. 82.05 lakhs. The Scheme is financed by transfer of a portion of employees share of provident fund representing $1\frac{3}{4}$ % of his pay with an equal amount out of the employer's share. The Central Government also contributes at the
rate of $1\frac{1}{8}\%$ of the pay of the members of the Fund. The benefit provided under the scheme are as follows:-

(1) **Family Pension**— If a member of the Family Pension Scheme dies during reckonable service before attaining the age of 60 years, family pension will be paid at the rates specified in the Table 6.1 given below provided the member had contributed to the Family Pension Fund for not less than one year:

![Table 6.1](image)

The family pension is now payable from the day immediately following the death of a member.

(2) **Life Assurance Benefit**— Where a member who has contributed to the Family Pension Fund for a period not less than one year, dies while in reckonable service, a lumpsum of Rs.2000/- will be payable to his/her family as Life Assurance Benefit.

(3) **Retirement-cum-Withdrawal Benefit** -- This becomes payable to a member either on attaining the age of 60 years or on cessation of membership from the Family Pension Fund before attaining the age of 60 years for reasons other than death. This is subject to the

condition that a member has contributed to the Family Pension Fund for a period of not less than one year. The rate specified for retirement-cum-withdrawal benefit varies with number of full years contributions paid subject to a minimum of Rs. 110/- (with one year's contribution paid) and a maximum of Rs. 9000/- (with 40 years' contribution paid). The benefit schemes were liberalised from 1st January, 1983 and adhoc relief ranging from Rs. 20/- to Rs. 35/- was granted to those who were family pensioners at the end of March 1982. Upto 31st March, 1984 the amount of contributions received in the family Pension Fund was Rs.758.46 crores and the amount of claims settled was Rs. 25.67 crores.

In 1976, the Government introduced a new scheme entitled Employees' Deposit Linked Insurance Scheme, applicable to all the employees who are members of the provident fund in both exempted and unexempted establishments. Under it, in the event of death of a provident fund subscriber while in service, the person receiving his provident fund amount would receive an additional amount equal to the average of the provident fund accumulations to his credit during the three years immediately preceding the death if such average was not below Rs. 1000/- at any time during the said period. The maximum amount of benefit payable under the scheme is Rs. 10,000/-. The employee members are not required to make any contribution to the Insurance Fund. Only the employers are required to pay contribution to the fund at the rate of 0.5 per cent of the total emoluments. The Central Government also contributes to this Fund at the rate of 0.25 per cent of the total emoluments in addition to the administrative expenses of the scheme. Upto 31st March, 1984, the amount of contributions received under the scheme amounted to Rs.201.42 crores and the amount paid was Rs. 34.05 crores.
6.1.7 The Maternity Benefit Act, 1961

Maternity benefit is an indemnity for the loss of wages incurred by a woman worker who voluntarily before birth of child and compulsorily thereafter abstains from work in the interest of the health of her child and herself. The International Labour Organisation passed a convention in 1919 by which a leave period of 12 weeks is prescribed. The Government of India did not ratify the convention. Keeping in view the great need of maternity benefit for woman workers, a number of maternity benefit Acts were enacted by the Provincial Governments and former Indian States prior to independence. After independence also, a series of State Acts, e.g., Bihar Act (1947), the West Bengal Act (1948), (amended in 1959), the Orissa and Rajasthan Acts (1953), the Kerala Act (1957), the Madhya Pradesh Act (1958) and the Mysore Act (1959) were enforced.¹ But these Acts differed widely in their scope, provisions for different qualifying conditions, different rates of benefit and different periods for which the benefit would be available. To reduce the disparities, the Central Government enacted a legislation in 1961 known as Maternity Benefit Act, 1961.

The Act regulates the employment of women in certain establishment for certain periods before and after child birth and to provide for maternity benefit and certain other benefits to such women. It applies, in the first instance, to every establishment be it a factory, mine or plantation including any such establishment belonging to Government.

¹ Bhagoliwal, T.N., Ibid., p. 38.
Provided that the State Government may, with the approval of the Central Government after giving not less than two months notice of the intentions of so doing, by notification in the official gazette, declares that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise, but shall not apply to any factory or establishment to which the provisions of Employees' State Insurance Act, 1948 apply.

The Act has been amended by the Maternity Benefit (Amendment) Act, 1976. According to the object and reasons a number of women are employed in factories or establishments which are covered under the Employees' State Insurance Act, 1948 but such employees are not covered by the Act as they are in receipt of wages exceeding the amount specified in the Act. Under the provision of the Act no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or miscarriage. The Act provides for the payment at the rate of average daily wages or Re. 1/- whichever is higher for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day. The maximum period of benefit is 12 weeks — six weeks upto and including the day of her delivery and six weeks immediately following that day. In case the woman dies during this period, the benefit is available only for the day upto and including the day of her death. When a woman having been delivered of child, dies during the period of six weeks immediately following the date of delivery leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately
following the day of delivery. But if the child also dies during the said period, then for the days upto and including the day of death of the child. The Act also provides for the payment of medical bonus of Rs 25/-, if no pre-natal confinement and post natal care is provided for the employee free of charge. The Act also prohibits to discharge or dismiss them during the period of maternity leave.

6.1.8 The Payment of Gratuity Act, 1972

Industrial workers had been demanding gratuity for a long time. The industrial tribunals also considered the demand favourably, particularly in units which do not have other social security provisions like provident fund and/or pension. Though the workers demanded gratuity in addition to other social security provisions, the tribunals looked at the demand for more prosperous establishments. The Government of Kerala enacted legislation in 1970 for payment of gratuity to workers employed in factories, plantations, shops, and establishments. The Governor of West Bengal promulgated an ordinance on June 3, 1971, prescribing a similar scheme of gratuity which was subsequently replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act of 1971. After this, some other State Governments have also voiced their intention of enacting similar measures in their respective States. Therefore, a Central law became essential to ensure a uniform pattern of payment of gratuity to the employees throughout the country. In 1972, the Payment of Gratuity Act came into existence which provides for the payment of gratuity to employees drawing Rs. 1000/- or less per month as wages. The Act became effective on September 16, 1972, which applies to whole of India.
The Act is applicable to (i) every factory, mine, oilfield, plantation, port or Railway company; (ii) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which 10 or more persons are employed, or were employed on any day of the preceding 12 months; and (iii) such other establishments or class of establishments in which 10 or more employees are employed or were employed on any day of the preceding 12 months or as the Central Government may by notification specify in this behalf. The Act makes the provision for the payment of gratuity to an employee — (a) on his superannuation, (b) on his retirement or on his resignation, (c) on his death or total disablement due to accident or disease, after completion of not less than five years of continuous service; provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or total disablement and provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee, or if no nomination has been made, to his heirs. The Act lays down that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the average of wages drawn by the employee concerned during the last three months after the termination of employment provided that the amount of gratuity payable to an employee shall not exceed fifteen months' wages and provided further that nothing affects the right of an employee to receive better terms of gratuity or retirement benefits under any award or agreement or contract with the employer. The gratuity of an employee may be forefeited to the extent of the damage or loss caused to the property of the
employer by the wilful omission or negligence of the employee whose services have been terminated for any such act and the gratuity of an employee shall be wholly forefeited if the service of such employee has been terminated for his riotous or disorderly conduct or any other act of violence on his part or an offence involving moral turpitude committed by him in the course of his employment at any place which is in, or in the vicinity of, his place of employment. The Act also makes provision for grant of exemption by notification of appropriate Government, settlement of any disputes as to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim for payment of gratuity, recovery of gratuity from the defaulting employers, penalties for offences, etc. The Government enacted two Acts in 1984, namely, The Payment of Gratuity (Amendment) Act, 1984 and the Payment of Gratuity (Second Amendment) Act 1984. The first had been introduced in 1982. The first Act extends the wage limit for coverage under the Act from Rs. 1000/- to Rs.1600/- per month and provides for appointment of Inspectors for better enforcement of the provisions of the Act. The second Act seeks to amplify the definition of continuous service with retrospective effect from February 11, 1981. The Act provides that employees of establishments working for less than 6 days in a week (observing a 5 day week) will be deemed in continuous service for one year even if they had worked for 190 days in the preceding year. This amendment had become necessary in view of a Supreme Court judgement earlier.

6.1.9. The Industrial Disputes Act, 1947

The Government of India has been taking keen interest in the maintenance of industrial peace in the country. During the Second
World War, compulsory adjudication of disputes was introduced under Rule 81-A, of the Defence of India Rules and the Government had taken all the powers under it. The Government made free use of wide powers, in practice, and referred the cases of disputes for adjudication. It also tried to enforce the awards compulsorily. Pending adjudication, the strikes were made illegal. The Government passed comprehensive legislation, after the attainment of independence known as the Industrial Disputes Act, 1947. The Act introduced several provisions of the Defence of India Rule with certain modifications. The main purpose of the Act is to minimise the conflicts between labour and management. There are several provisions for the prevention and settlement of industrial disputes, under the Act. A judicious balance has been attempted between the claims of the employers for a fair return on the capital invested by them in the industries and interest of the employees for a reasonable return for the labour put in by them in the industry where they happened to be employed. The principal objects of the Act as laid down by the Supreme Court in the case of workmen of Dimakuchi v/s Management of Dimakuchi Tea Estate are as under:

i) The promotion of measures for securing amity and good relations between the employer and workmen;

ii) An investigation and settlement of industrial disputes between employers and employers, employers and workmen or between workmen and workmen with a right of representation by a registered trade union or federation of trade unions or association of employer or a federation or association of employers;

iii) The prevention of illegal strikes and lockouts;

iv) Relief to workers in the matters of lay-off and retrenchment.

The Industrial Disputes Act has been described as the latest mile-stone in the historical development of industrial law in India. With the passage of this Act, a number of new principles relating to Industrial relations had been introduced in the country, such as:

First, a permanent machinery (conciliation) has been set up for the speedy and amicable settlement of industrial disputes. To expedite conciliation proceedings, maximum time limit has been prescribed within which the machinery must be set in motion. The deadline is fixed from the date of notice of strike. Secondly, compulsory arbitration in public utility services including the enforcement of arbitration awards has been recognised. Thirdly, strikes and lock-outs during the pendency of conciliation and arbitration proceedings and the arbitration awards enforced by the Government order are prohibited. Fourthly, specific time limits for various stages of conciliation and arbitration to eliminate delays are prescribed. Fifthly, an obligation on employers to recognise and deal with representative trade unions has been imposed. Sixthly, Works Committees to provide machinery for mutual consultation between employers and employees have been set up. Seventhly, the industrial disputes may be referred to an Industrial Tribunal where both parties to any industrial disputes apply for such reference or where the appropriate Government considers it expedient to do so. In case a dispute actually exists or is apprehended, it can be referred to a Tribunal by the appropriate Government.

The Industrial Disputes Act was amended in 1982 and called the Industrial Disputes (Amendment) Act, 1982. It has not yet come into force due to opposition of workers, employers, and the
unions. However, it shall come into force from such date as the Central Government may, by notification in the Official Gazette, declares.¹

Some of the important highlights of the Industrial Disputes (Amendment) Act, 1982 are:

(i) It has empowered the Central Government to refer an industrial dispute to a Labour Court or an Industrial Tribunal where the dispute in relation to which the Central Government is the appropriate Government.

(ii) The term "Industry" has been defined widely in the light of the Supreme Court decision in the case of Bangalore Water Supply Company.

(iii) It shall cover under the term "Workmen" even the supervisory staff whose wages do not exceed Rs. 1600/- per month.

(iv) It has made provision for setting up of a time-bound grievance redressal procedure in establishments employing 100 or more workers by inserting a new Chapter II-B.

(v) It stipulates a time limit for deciding industrial disputes both individual and collective and also for disposal of claims, applications and other references by the Labour Court the Industrial Tribunal or the National Tribunal with a view to secure speedier justice to workmen.

(vi) It provides for the continuation of industrial disputes proceedings in the case of death of a workman by the heirs, etc.

(vii) It has inserted a new Section 17-B providing for payment of full wages, etc. to the workman, if the employer prefers an appeal

to the High Court or to the Supreme Court over the decision of the Labour Court, Tribunal or National Tribunal regarding reinstatement of any workman.

(viii) A new provision for lay-off in mines on various grounds had been incorporated.

(ix) Chapter V-B has been made applicable to industrial establishments employing 1000 or more workmen.

(x) A new chapter V-C has been added dealing with unfair labour practices by both employers as well as workmen, and also by trade unions and also periods for the imposition of penalties, etc.

The new amendments seek to achieve the above objects and to provide for certain other consequential and clarificational changes in the Act.

One of the important features of the Act of 1947 was the introduction of Works Committees in the industrial establishment employing 100 or more workers. The Committee is expected to secure good relations between the employers and employees. It was deemed to consist of representatives of the employers and employees. The functions of the Committee include conditions of work, amenities, safety and prevention of accidents, administration of welfare and other funds, educational and recreational activities and promotion of thrift and savings. The Committee works only in advisory capacity. The Act provides the conciliation machinery too. It provides for the appointment of Conciliation Officer, Board of Conciliation and Court of Enquiry. The disputes are referred to the Conciliation Officer, compulsory only in case of Public Utility concerns. In other concerns they can apply to such officers if both the parties agree. The Act makes successive steps. First, the case has to be referred to the Conciliation
Officer, and on his failure, it will be referred to the Board of Conciliation. When the Board too is unable to decide the disputes, it will have to be referred to Industrial Tribunal. The Act was amended in 1950 to make provision for the establishment of Labour Appellate Tribunal. But its working was severely criticised. Therefore, by the Industrial Disputes (Amendment) Act 1956, a three-tier machinery has been established with a view to bring about settlement of disputes in industries. This machinery consists of (a) Labour Courts, (b) Industrial Tribunals, and (c) National Tribunals. Each of these has separate jurisdiction and is required to function separately.

The amended Act also provides that where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred to a Labour Court or Tribunal or National Tribunal, by a written agreement, signed by the parties, refer the dispute to arbitration and the reference shall be to such person or persons as an arbitrator or arbitrators as may be specified in arbitration agreement. The Act authorises the appropriate governments to prohibit the continuance of any strike or lockout if the dispute has been referred to a board of Tribunal. The Act declares strikes and lockouts, in public utility service, to be illegal if they are commenced or declared (a) without giving notice in a prescribed manner or (b) during the pendency of conciliation proceedings before a conciliation officer and 7 days after the conclusion of such proceedings. All strikes and lockouts in any industrial establishment are deemed to be illegal if commenced or declared during the pending period of (a) conciliation proceedings before a board and 7 days after the
conclusion of such proceeding; (b) proceedings before Labour
Court, Industrial Tribunal or National Tribunal and two months
after the conclusion of such proceedings; (c) during any period in
which a settlement or award is in operation in respect of any of
the matters covered by the settlement award.

The Act also makes provisions for lay-off compensation and
retrenchment compensation. The Industrial Disputes (Amendment)
Ordinance provided that retrenchment compensation would become
payable in the event of 'bonafide' closure or transfer of
undertaking. In case of change of ownership, the workers shall
not be entitled to compensation if they are re-employed on the
terms and conditions not less favourable to them. On account of
closure due to circumstances beyond the control of employers, the
maximum compensation payable to workmen has been limited to their
average pay for three months. The Ordinance was replaced by
Industrial Disputes (Amendment) Act, 1957 containing the above
provisions. The Industrial Disputes (Amendment) Act 1976 makes it
obligatory upon employers in factories, mines, and plantations
employing 300 or more workers to seek prior approval of the
prescribed officer or appropriate government for retrenchment, lay
off or closure. The Act has been amended several times: in 1949
(by Act No. 54); twice in 1950 (by Act No.35 and Act No.48);
twice in 1951 (by Act Nos.40 and 65); in 1952 (Act No. 18); in
1953 (Act No.43; in 1959 (Act No.38); in 1961 (Act No.47); twice
in 1963 (Act Nos. 10 & 52); twice in 1964, (Act No.38); in 1965
(Act No.35); twice in 1970 (Act Nos. 5 & 51); in 1971 (Act No. 45);
in 1972 (Act No. 32); and in 1976 (Act No. ...32); and so on.
6.1.10. Other Labour Legislation

6.1.10 (i) Shops and Commercial Establishments Act.

There have been legislative measures relating to workers in shops and commercial establishments. The Government of India first examined the question of granting protection to the workers employed in shops and small commercial establishments in connection with the ratification of the I.L.O. Convention, 1930, but the Convention was not ratified. The lead in the matter was given by the Bombay Government which passed an Act on the subject in November 1940. Similar Acts were subsequently passed in other States and were in force in 25 States before re-organisation. Now such Acts are in force in all the States and the Union Territories which have either their own Acts or have adopted or applied to their areas the Acts passed by other States. There was also a Central Act known as the Weekly Holidays Act, 1942 which provided only for the grant of a weekly holiday to persons employed in shops and commercial establishments, etc. The Act is permissive in character and was operative in only few States, which notified its application to their areas. The States Acts apply to shops and commercial establishments, including insurance and banking firms, restaurants, hotels and places of amusements, including theatres and cinemas in certain selected urban centres, but the Government can extend their scope. These Acts regulate, inter alia, the daily and weekly hours of work, rest intervals, opening and closing hours of establishments, payment of wages, over-time pay, holidays with pay, annual leave, employment of children and young persons, etc. In many States, the Acts have been revised, consolidated and amended from time to time and in some replaced by new Acts.
As regards hours of work, they differ in different States. There are also provisions in respect of opening and closing hours, rest intervals, spread-over, overtime rates, etc., in the Acts. Provisions for holidays and leave have been mentioned. As regards employment of children and young persons, their minimum age have been fixed at 12 years in all States except in Andhra Pradesh, Himachal Pradesh, Kerala, Tamil Nadu, Punjab, U.P., Pondicherry and Chandigarh where it is 14. In Haryana it is 18 years. Night work for them has been prohibited and hours of work have been fixed at 7 per day in Andhra Pradesh, Tamil Nadu, Tripura, Pondicherry, and West Bengal; 6 per day in Gujarat, Maharashtra, U.P., Jammu and Kashmir and Delhi; 5 per day in Madhya Pradesh, Himachal Pradesh, Haryana, Karnataka, Orissa, Chandigarh, and Punjab; 3 per day in Rajasthan; and 5 per day for children and 7 per day for young persons in Bihar, with a rest interval of one or half an hour at most places. In West Bengal, there is no restriction on the employment of children and in Assam and Kerala hours of work have not been fixed.

Besides, all the Acts contain provisions for regulating the payment of wages to employees. In U.P., Andhra Pradesh, Tamil Nadu, Bihar, Punjab, Kerala and Delhi, the wage period should not be more than a month. In Assam, it is one month. The wages must be paid within 10 days in West Bengal and Assam; 7 days in U.P., Punjab, and Delhi; and 5 days in Tamil Nadu and Andhra Pradesh. Provisions have also been made for overtime work and for deductions and fines. All the Acts provide that overtime work should be paid at twice the ordinary rate of wages, except in Rajasthan and West Bengal and for places of amusement in Maharasstra, where it is one and a half times. Most of the Acts
provide that a notice of one month should be given in case of termination of services or a month's wages should be paid. Chief Inspectors of Shops and Commercial Establishments have been appointed in West Bengal, U.P., Andhra Pradesh and Punjab for the administration of the Acts, and in some States, Inspectors of Factories have been appointed for the purpose. The U.P., Bihar, Madhya Pradesh, Rajasthan, Karnataka, Andhra Pradesh and Dehli Acts provide that the provisions of the Workmen's Compensation Act will also apply to the employees of a shop or commercial establishment. The Maharashtra, Madhya Pradesh and Rajasthan Acts empower the respective State Governments to apply the provisions of the Payment of Wages Act to all or any establishment or class of employees. The Madhya Pradesh Act contains provision relating to provident fund, and Orissa and Rajasthan Acts about maternity benefits. In few States, the Acts also contain provisions relating to cleanliness, ventilation, lighting, safety, etc.

The working of these Acts in various States shows that they have not been enforced properly due to inadequacy of inspecting staff, and there is generally non-compliance with the provisions of the Acts about holidays, etc., and in certain States, where the Acts have been revised only recently, like U.P. and Tamil Nadu, the employers and the employees do not even know all the provisions. Cases are common when the workers are called on weekly holidays, over-times are not paid, no record is kept, and wages are not paid regularly. Hence, strict enforcement of these Acts is required. It is also proposed to have a Central enactment for shops and commercial establishments laying down the standards to which the States should conform.
The main object of the Apprentices Act, 1961 is to provide for the regulation and control of training of apprentices, i.e., persons undergoing training in pursuance of a contract of apprenticeship, in trades and for matters connected therewith. Industries have been specified under the Act and a number of trades have been designated. The minimum age of an apprentice has been fixed at 14 years. Under the Act, it is obligatory for all employers in the specified industries to engage apprentices as per the prescribed ratio in the designated trades. An apprentice is required to enter into a contract of apprenticeship with the employer which should be registered with the Apprenticeship Adviser. There are provisions for the standards of education and physical fitness of apprentices, their period of training, termination of contract, payment of stipends at prescribed rates, etc. The rate of stipend per month is Rs. 230 in the first year of training, Rs. 260 in the second year, Rs. 300 in the third year and Rs. 350 in the fourth year. For engineering graduates for post institutional training it is Rs. 450 and for diploma holder Rs. 320 per month (for sandwich courses, it is Rs. 320 for the students from degree institutions and Rs. 250 for those from Diploma Institutions). If the contract is terminated, before the period is over, by either party, then in case of employers, compensation has to be paid to the employees. The health and welfare provisions of the Factories Act of 1948 and the Mines Act of 1952 have been made applicable to apprentices in factories and mines. The Workmen's Compensation Act of 1923, has also been extended to them. Hours of work, holidays and leaves have also to be prescribed under the Act. Overtime work has been prohibited except
with the approval of Apprenticeship Adviser. The Central Government can fix the number of workers. In establishments where there are 500 or more workers, arrangements for the training of apprentices will be made by the employer and where there are less than 500 workers training will be imparted by institutes set up by the Government. For the administration of the Act, the following bodies have been set up: (a) the National Council; (b) the Central Apprentices Council; (c) the State Council; (d) the State Apprenticeship Council; (e) the State Apprenticeship Adviser; and (f) The State Apprenticeship Adviser. Penalties have been provided for contravention of the provision of the Act. This Act repeals the old Apprentices Act of 1850. Apprenticeship Rules have been framed under the Act which have been revised several times. The Act was amended in 1967 liberalising the provisions of the training period. The Act was again amended by the Apprentices (Amendment) Act of 1973 to cover graduate engineers and diploma holders.


The Act provided for the grant of relief in respect of certain personal injuries sustained during the period of emergency. It empowered the Central Government to make one or more schemes for the grant of relief in cases of (a) personal injuries sustained by gainfully occupied persons and by persons of such other classes as may be specified; and (b) personal service injuries sustained by civil defence volunteers. The Act placed the entire liability for providing relief in respect of personal injuries sustained during the emergency by gainfully occupied persons or civil defence volunteers on the Central Government and for such injuries, employers were exempted to pay compensation
under the Workmen's Compensation Act or the E.S.I. Act. But under this Act the higher paid employees could not get adequate compensation because the relief provided was on a modest and uniform scale. Therefore, in 1963, the Personal Injuries (Compensation Insurance) Act, was enacted to ensure that compensation paid to such worker was of the same level as under the Workmen's Compensation Act. The employers were liable to pay compensation to workmen sustaining personal injuries arising out of enemy action and were required to take out insurance policies from the Government to cover their liability and to pay premia at quarterly intervals. The Act was enforced from 1st November, 1965, and the Scheme and Rules under it were framed. The Life Insurance Corporation has been appointed agent of the Central Government for the purpose. The Act ceased to be operative with effect from January, 1968, when the Emergency came to an end. But after the Emergency was imposed due to Indo-Pakistan War in 1971, the Government again framed the Scheme in 1972 under the Act and enforced it from 3rd December.

6.2 The Acts Amended After Independence.

After Independence, the Government accepted certain laws which were enacted during British period in India, as they were. But at the same time, the Government amended such laws from time to time. Some of the major Acts so amended are discussed as under:

6.2.1 Workmen's Compensation Act, 1923.

The Workmen's Compensation Act is one of the earliest measures adopted to benefit the labour. It was passed in 1923 and enforced on 1st July, 1924.¹ Since then a number of amendments

¹ For details, See, Chapter IV.
have been made from time to time so as to suit the changing needs and conditions of the workmen. The object of the Act was to make provisions for the payment of compensation by employers to their workmen for injury by accidents. The Workmen's Compensation Act is modelled on the British pattern. After independence, the Act was amended in 1959, 1962, 1976 and 1984.

The Act is applicable to all workers employed in railways, factories, mines, plantations, mechanically propelled vehicles, construction work and certain other hazardous occupations mentioned in the Act. The Act exempts the persons employed in clerical or administrative capacity or in armed forces or on casual work, or for purpose other than employer's trade or business, and the workers covered under the Employees' State Insurance Act, 1948. Persons employed as masters or as seamen on any power driven ship, or on any ship of fifty or more tonnes, also come under the Act.

The wage limit which was Rs 300/- was raised to Rs 400/- in 1956, to Rs 500/- in 1962 and Rs 1000/- in 1976, has been removed in 1984. Compensation is payable by the employer in case of injury caused by accident arising out and in the course of employment. No compensation is payable if the injury, not resulting in death, is caused by the fault of the worker, e.g., due to influence of drink, drug, wilful disobedience of order, etc. Besides compensation is payable in case of a worker who contracts certain occupational diseases. The amount of compensation payable depends on the nature of injury and the average monthly wage of the worker concerned. Compensation is payable for death, permanent total disablement, permanent partial disablement and temporary disablement. The rates of compensation have been revised by the
amending Act of 1984 which has come into force with effect from 1st July, 1984. The revised rate of minimum compensation in case of death will now be Rs 20,000/- against Rs 7,200 and that for permanent disability will now be Rs 24,000/- against Rs 10,080.

6.2.2 The Trade Unions Act, 1926.

The main object of the Act is to confer a legal corporate status on registered trade unions. The Act provides immunity from civil and criminal liability to trade union executives and members for bonafide trade union activities.¹

In pursuance of certain recommendations of the sixteenth and seventeenth sessions of the tripartite Indian Labour Conferences held in May 1958 and July 1959 respectively, an amending Act was passed in 1960 authorising the appropriate Government to appoint as many Additional and Deputy Registrar of Trade Unions as it thinks fit for registration of trade unions. As a result of the amending Act passed in 1964, the trade unions are required to submit annual returns on a calendar year basis. By an amendment in 1964 and enforced since April 1965, persons convicted of offences involving moral turpitude are debarred from becoming office bearers or members of the executive of a registered trade union.

6.2.3 The Payment of Wages Act, 1936.

The main purpose of the Act is to ensure regular and prompt payment of wages and to prevent the exploitation of wage earner by prohibiting arbitrary fines and deductions from his wages.² The Act was subsequently amended in 1957, 1962, 1964, 1967, 1976 and 1982 in order to extend its various provisions and coverage. By

1. For details, See, Chapter IV.
2. For details, See, Chapter IV.
the amending Act of 1982, the wage limit was raised to cover persons drawing less than Rs 1600/- per month. The Act has gradually been made applicable to workers employed in construction industry, civil air transport services, motor transport services, mines, plantation, oil fields, docks, wharfs or jetties and establishments declared as factories under Section 85 of the Factories Act, 1948.

6.2.4 The Industrial Employment (Standing Orders) Act, 1946.

The Act came into force in April 1946. In order to widen the coverage, the Act was amended in 1961, which empowered the appropriate Government to extend its provisions to industrial establishments employing less than 100 persons, after giving not less than two months notice of its intention to do so as well as to exempt any establishment or classes of establishments from all or any of the provisions of the Act. The amending Act of 1963 provides for (i) applicability of model standing orders framed by the appropriate Government to all establishments covered by the Act until the Standing Orders of the establishment concerned are certified; (ii) powers to the Certifying Officer and the Appellate Authority to correct any clerical or arithmatic error in the orders; (iii) delegation of any of their power to their officers by the appropriate Government.

The Act was amended in 1982 with a view to provide for a payment of subsistence allowance to workmen who are kept under suspension, pending domestic enquiry. The rules regarding payment of subsistence allowance to the suspended workers have also been amended by notification dated 10th August, 1984. According to

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1. For details, See, Chapter IV.
these rules, pending investigations or departmental enquiry, a suspended workman shall now be paid subsistence allowance at the rate of 50 per cent of the wages, which he was entitled to immediately preceding the date of suspension for the first 90 days. He will be paid 75 percent of such wages for the remaining period of suspension if the delay in the completion of the disciplinary proceedings is not directly attributable to his conduct. The employer shall normally complete the enquiry within 10 days. The payment of subsistence allowance shall be subject to the workman not taking any employment elsewhere during the period of suspension.

So, it can be seen that with the advent of independence and the establishment of a popular government, a sympathetic approach to the labour problems has been realised and the measures to promote social justice and rising living standards has been designed for workers. But at the same time, there are also complaints that labour laws are not being properly implemented. The report of Labour Investigation Committee pointed out that though it was more than half a century that State had interested itself in labour legislation, the progress achieved has not been very encouraging. Sh. V.K.R. Menon pointed out in an article on labour legislation, "We have yet to travel a long way on the road to social justice."¹

It becomes amply clear from the above discussion and details that the Indian Government has tried to understand the practical problems of the labour class with a view to provide for them the basic and most essential benefit in case of any foreseen or even unforeseen exigency. The various enactments providing succour

¹ Saxena, R.C., Ibid., p. 746.
during different kinds of emergencies ranging from sickness to pregnancy and from maternity to death have been undertaken to give the problems a human approach and remedy.

Though such compensations, concessions and benefits may not suffice and at times look ridiculous yet at least a platform has been laid in free India which covers nearly all the loopholes. With the revisions of compensatory and other amount from time to time, the whole exercise looks meaningful.

But the coming Government should not sit on the laurels of the earlier Government. There is a great need to keep on revising the different policies in general and benefits in particular for the overall welfare of the workers. More avenues can, in this regard, be located.

Conclusion

The foregoing discussion shows that after independence, the Government has paid much attention to the improvement of the conditions of labour in industry. Since independence, a number of labour legislations have been enacted and both legislation and public opinion have been trying their best for the betterment of the working class. The first major legislation was the Industrial Disputes Act, enacted in 1947 for the settlement of industrial disputes, providing in detail the various authorities, their powers and procedure for settlement of the disputes. It also provided for the prohibition of strikes and lockouts and laid down the circumstances under which an employer could resort to lay-off and retrenchment. Then came the Minimum Wages Act in the year 1948 with a view to protect labour against economic exploitation by the employers and fix minimum rates of wages in certain scheduled
employments. The Act provides for fixing minimum wages where sweated labour is prevalent or where there is a great chance of exploitation of the labour. The legislators also felt a dire need for the introduction of a comprehensive scheme of health insurance for industrial workers. So after much thought, the Government enacted the Employees' State Insurance Act in 1948 which provided certain benefits to employees in case of sickness, employment injury, maternity and other related matters. In the same year, the labouring class saw the famous Factories Act. After overhauling, this Act provided for health, safety and welfare measures and regulated working hours, employment of young persons and introduction of annual leave with wages. With the advent of this Act, the workers found their condition a little better in factories. The Indian Mines Act, 1952 was passed on February 15, 1952 to bring the legislation relating to mine workers in line with that of factory workers. The Act consolidates the law relating to regulation of labour and safety in mines. The Act provides, among other things, for shorter working hours, overtime pay and holidays with pay and generally strengthens the provisions relating to safety and health. Another social security benefit was provided to the workers with the enactment of the Employees Provident Fund Act in the year 1952. A Death Relief Fund has been set up with effect from 1st January 1965 for affording financial assistance to the nominees/heirs of deceased members. A Family Pension Scheme has also been introduced in the year 1971 with the provision of long term financial security to the families of industrial employees covered under the E.P.F. Act of 1952 in the event of their premature death. The Maternity Benefit Act, 1961 was enacted for the relief of working women who voluntarily before birth of child and compulsorily thereafter abstain from work in
the interest of the health of their children and themselves. The Act regulates the employment of woman workers for certain period before and after child birth and to provide for maternity benefit and certain other benefits to such women. In the year 1965, the Government enacted the Payment of Bonus Act which required every employer compulsorily to pay some bonus to his employees. With the passage of this Act, the Government tried to bridge the gap between actual wages and the need-based wages in case of low-paid workers. Then in 1972, the Payment of Gratuity Act was enacted which provided that on superannuation or retirement or resignation on completion of five years continuous service by an employee, he is entitled to gratuity. The gratuity is payable at the rate of fifteen days wages for each completed year of continuous service rendered and would not exceed in all twenty months' salary which was to be calculated on the basis of wages last drawn. The period, after independence, also visualises other labour legislations to protect the less favoured class of the society. These laws are Shops and Commercial Establishments Act, the Apprenticeship Act, 1961, the Personal Injuries (Emergency Provisions) Act, 1964, etc. At the same time, it has been seen that all the laws are amended from time to time with the changing environment in the industrial world. Certain Acts which have been enacted during British period have been accepted by the Government of independent India. These laws are the Workmen's Compensation Act, 1923, the Trade Unions Act, 1926, the Payment of Wages Act, 1936, the Industrial Employment (Standing Orders) Act, 1946, etc. It may be pointed out that the advent of independence and establishment of popular Government have brought a sympathetic approach of Government to the problems of labour.