CHAPTER 6

PROTECTION OF WAGES
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Malpractice in wage payments is a common feature in underdeveloped countries. Prevalence of the malpractice may be due to weak bargaining power of employees or lacunae in the law. The very purpose of laying down a machinery for evolving a proper wage structure will be defeated if malpractice in payment of wages is not checked. The need for protection of wages was felt at the international level also. A Convention was adopted by the International Labour Organisation in 1949. Even before the adoption of the Convention, India had passed legislation to check malpractices in wage payment.

**Legislative Measures**

The Royal Commission on Labour appointed in 1929 to enquire into and report on the conditions of labour in industrial establishments and plantations in India examined the question of wages in detail. The investigation revealed that there were several malpractices in wage distribution. Unjustifiable deductions were being made from wages. Deductions were common on account of fines imposed for disciplinary reasons. Deductions on account of damage to articles and towards the cost of materials and other facilities provided by the employer were also common. The Commission suggested legislative intervention. The Payment of Wages Act 1936 was passed to regulate payment of wages to certain classes of persons employed in industry.

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4. The Commission, popularly known as the Whitley Commission, was appointed by the British Government in 1929. The Commission submitted its report in 1931. A series of recommendations on all aspects of labour problems including the question of delay in wage payments, imposition of fines, deductions and fixation of wage periods, were made in the report.


6. Hereafter called in this chapter as 'the Act'.

7. See the long title of the Act.
Payment of Wages Act 1936

Imposition of fines as a mode of punishment had given rise to a number of abuses. The Commission, therefore, discussed the possibility of abolishing this method of punishment. Alternative punishments like suspension, dismissal or threat of dismissal being more harsh, the Commission concluded that in the case of adult workers the punishment of fine may be retained and in the case of children it has to be prohibited. The Commission however felt that imposition of fines has to be properly regulated.

8. This view of the Commission is reflected in the legislation. The Act prohibits imposition of fines on children. See the Payment of Wages Act 1936, S.8(5).

9. The Commission suggested that the legislation should be based on the following four broad principles,

i) The payment of fine should not be spread over too long a period and the maximum period should be one month from the date on which the fine was imposed.

ii) Fines should not constitute more than a fixed amount out of the worker's wage.

iii) The sums collected by fines should be used for a purpose beneficial to the employees as a whole and approved by the recognised authority.

iv) There should be adequate safeguards against arbitrary imposition of fines.

were incorporated in the Act. 10

Deductions on account of damage or loss suffered by the employer differ in nature from deduction on account of fines imposed. The principles of natural justice must be followed while imposing a fiduciary penalty. 11 The aim of the penalty of fine is to  

10. The Payment of Wages Act 1936 provides:

(i) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed S.8(6). Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed. [S.8 (7)]

(ii) The total amount of fine which may be imposed in any one wage period on any employed person shall not exceed an amount equal to half an anna in the rupee of the wages payable to him in respect of that wage period. [S.8 (4)].

(iii) All fines and all realisation thereof shall be recorded in a register to be kept by the person responsible ... and all such realisation shall be applied only to such purposes beneficial to the persons employed in the factory or establishments as are approved by the prescribed authority [S.8 (8)].

(iv) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with previous approval of the State Government or of the prescribed authority may have specified by notice. [S.8 (1)].

11. The Managing Director, Mining and Allied Machinery Corporation Ltd. v. R.K. Bhattacharyya and Others, (1971), Lab. I.C. 1339 (Cal.). Many workers of the company stopped work for an hour on account of some grievance. The Management decided to deduct the contd...
maintain discipline. It is only one of the aims in
the case of deductions on account of damage; partial
realisation of the loss sustained by the employer is
also aimed at in such deductions.\textsuperscript{12}

For avoiding delay in wage payment the Royal
Commission recommended that the largest wage period
allowable shall be one month. Accordingly, the Act
fixed\textsuperscript{13} one month as the largest wage period.

To ensure better observance of the law, the
Commission suggested that adequate penalty should be
imposed for violation of the legislative provisions.
Hence the Act prescribes\textsuperscript{14} the person responsible for

\textit{f.n. contd...}

wages for the period of non-performance of duty. This
decision by the Management, with reasons in support,
was published on the notice board. It remained there
for about a month. None of the employees raised any
protest. Subsequently the wages were cut. The
employees then challenged it. Though the court agreed
that hearing was necessary, it was held that publica-
tion of the notice was sufficient in the circumstances
to justify the action.

12. Payment of Wages Act 1936, S.10. It provides that
the deduction shall not exceed the amount of damage.
The realisation is partial at times, because it may
not be possible to compensate the entire loss.


14. \textit{Id.}, S.3. It provides that every employer shall be
responsible for the payment, to the persons employed
by him, of all wages required to be paid under the
Act.
payment of wages, makes it his duty to see that wages are disbursed without unauthorised deductions\(^{15}\) and provides penalty for violations.\(^{16}\) Payments made by the employed person to the employer are deemed to be deductions\(^{17}\) under the Act. The Act specifies the items for which deductions can be made.\(^{18}\) The maximum deduction that can be made in a wage period is also prescribed.\(^{19}\) These limitations do not, however, bar the right of an employer to realise from wages, any amount under any law for the time being in force.\(^{20}\)

The possibility of arbitrary deductions from wages is prevented by the Act. The general purpose of the Act is to provide the employed persons with their wages in a particular form, at regular intervals and without any unauthorised deductions.\(^{21}\) To realise any amount other

\begin{itemize}
\item \(^{15}\) Id., S.7.
\item \(^{16}\) Id., S.20.
\item \(^{17}\) Id., S.7 (1), Explanation I
\item \(^{18}\) Id., S.7 (2).
\item \(^{19}\) The maximum amount of deduction can be 75 percent of the wages in case of payment towards co-operative societies and in all other cases 50 percent. \textit{Id.}, S.7 (3).
\item \(^{20}\) Id., S.7 (4)
\item \(^{21}\) \textit{Arvind Mills Ltd. v. K.R. Gadgill}, A.I.R. 1941 Bom. 26.
\end{itemize}
than that provided under the Act, the employer should have recourse to ordinary civil procedure and get an order to that effect from a court or other authority competent to make such an order.\(^{22}\)

An employer transfers an employee to an area where the minimum wage payable is less than what was drawn by the employee. Does that action amount to deduction from wages? In *Sri Ramdas Motor Transport Private Ltd. v. Authority under the P.W. Act*,\(^{23}\) such a situation arose. The employer while transferring an employee to a mofussil area, made a reduction in the wages of the employee, taking into account the prevailing rates of minimum wages in that area. The court held\(^{24}\) that such a reduction in wages

\(^{22}\) Such an order will be covered by s. 7 (2) (b) of the Act. The relevant portion reads,

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

(b) deductions required to be made by order of a Court or other authority competent to make such order . . ."

\(^{23}\) (1967-68) 32 F.J.R. 293 (A.P.). The court relied on the award of the All India Industrial Tribunal (Bank Disputes), wherein it was stated that no employee should be provided with a reduced basic pay by being transferred to an area where the lesser pay scale exists.

\(^{24}\) Id., p.298 per Gopalrao Ekbote, J.
will amount to an unlawful deduction within the meaning of the Act. If, by a transfer, an employee who was receiving high wages is posted to a place where the wage packet is less, according to this decision he should get the same high wage, which may be much more than the wages of other employees placed in similar positions. This may disturb the economic balance existing in a particular locality and hence may not be advisable. A way out is to fix the basic wage on a general standard of living of the workers and to allow variation in the amount of allowances. In this practice, the basic wage for a similar employments may be fixed at the same rates. Allowances may be made to fluctuate so as to keep the economic balance in a locality.

The Act does not prohibit an employer to terminate an existing contract with an employee and enter into a fresh contract on a lesser wage rate. What is prohibited

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25. See Chapter 3.

26. This basic wage need not necessarily be a national minimum wage. The same wage may be given by an employer to all his employees engaged in same or similar employments.

27. "... should an employer terminate his existing contract with a servant, but offer to re-employ him on a lower rate of pay, there appears to be nothing in the payment of Wages Act against it, and no question of deduction under the Act would arise". Mir Mohamed Haji Umar v. Divisional Superintendent North Western Railway, A.I.R.1941 S.C.193 per Weston, J.
is only deduction from wages not authorised by the Act. If the wages becomes lesser by reason of a fresh contract, there is no deduction from the wages within the meaning of the Act. Similarly, deduction for absence from duty is permissible, provided, the absence is voluntary and not forced absence by circumstances created by the employer. In Anant Ram v. District Magistrate, a railway employee was served with a charge sheet and was removed from service. Subsequently the order of removal was set aside. The employer, treating the period between the removal and reinstatement as period of leave without pay did not pay wages for the period. Representation was filed by the aggrieved employee to the Railway Administration, which did not grant any relief to the employee. Thereafter, an application was filed before the Authority under the Act. It was dismissed as barred by time. As a last resort, the employee invoked the writ jurisdiction of the High Court. One of the questions raised before the High Court was the justifiability of the deduction of wages for a period between dismissal and reinstatement. Examining the validity of the action taken by the railway,

the High court held that the absence was not a voluntary act on the part of the worker and therefore, the employer could not validly deduct any amount from the wages of the employees. 30

According to the general principles of contract 'wages' is the consideration for services rendered. Therefore, where no services have been rendered by an employed person, there is no duty on the part of the employer to pay wages. During strike this rule generally applies and employees who go on strike are not generally entitled to 'wages' for the period of strike. Once there is a breach of contract, the employer may rescind the contract. The employer may therefore, terminate the services of the employees. However, in a welfare state there are bound to be deviations, in these matters, from the strict principles of the law of contract. So the contract of employment is not terminated as such by a strike, it is only suspended. The reason behind taking

30. Chief Justice Wanchoo observed at p.150,
"We are clearly of opinion that the deductions cannot be made from their salary on the ground of absence from duty, for such absence must be voluntary, and without the permission of the employer".
this attitude is that a strike does not mean that the employees have abandoned their employment, but have temporarily ceased to do work.\textsuperscript{31} Such absence of the workers, according to the Supreme Court, could not be treated as abandonment of employment.\textsuperscript{32} However, the

\textsuperscript{31} Express Newspapers (P) Ltd. v. Michael Mark, A.I.R. 1963 S.C.1141. Employees of the company went on strike on the failure of the management to grant their demands. The management published notices to the effect that the employees contravened the provisions of the Industrial Disputes Act and that the workers who did not resume work before a specified time, would be deemed to have no interest in continuing in the employment. Steps were taken to fill up the vacancies. Subsequently, the strike was called off. However, all the employees could not resume work because their vacancies had been filled up. One of the workmen filed an application under S.15 of the Payment of Wages Act, in which he claimed 30 days' wages in lieu of notice, 20 day's wages in lieu of leave and two months wages as compensation. The Authority granted the first two requests. Against this a writ petition was filed in the Bombay High Court, which was allowed. In the light of this decision about 116 similar claims pending before the Authority were dismissed. Most of the aggrieved parties preferred writ petitions before the High Court of Bombay, which were allowed. Against this, the company filed appeal before the Supreme Court.

\textsuperscript{32} The Court said,

"All that we want to say is, that where the employees absent themselves from work because they have gone on strike with the specific object of enforcing the acceptance of their demands they cannot be deemed to have abandoned their employment".

\textit{Id.}, p.1143, \textit{per} Mudholkar, J.
employees have no corresponding right to claim wages for the strike period. The Act authorises employers to refuse wages to the workers who absent themselves from duty. However, Industrial Tribunals while adjudicating on industrial disputes may pass orders directing payment of wages for the period of strike.

If a strike turns out to be illegal and is intended to paralyse the industry, the workers cannot claim wages for the strike period. When a strike is both legal and justified, the employer is duty bound to pay wages for the period of strike. The test of justifiability of strike, in deciding whether wages are payable or not for a strike period, was recognised by the Labour Appellate Tribunal in Dalmia Cement Ltd., v. Dalmia Cement Workers' Union and Others. On the facts of the case,

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33. Supra, n.28.

34. (1957) II L.L.J. 56 (L.A.T.) Services of temporary workmen employed in the packing department of the Company were terminated on the installation of an automatic packing machine. Workmen went on a stay in strike demanding absorption of such workers in other departments. The packing machine could not be put into operation due to the strike. The Labour Appellate Tribunal found that the discharge of the workers was proper and justified, and therefore, the strike was unjustified. The decision of the Industrial Tribunal that the workers were entitled to wages during the strike period was set aside by the Appellate Tribunal.
the Labour Appellate Tribunal concluded that the strike of the workmen was not in accordance with law and therefore was not justifiable. Hence they were not entitled to wages.

The justifiability test in awarding wages for the strike period was retained by the Supreme Court in subsequent cases. *Churukulam Tea Estate (Pvt.) Ltd., v. Its Workmen*, 35 is an instance. The Management failed to attend a Conference held by the Labour Minister in consequence of the failure of conciliation proceedings. As a mark of protest some of the workers went on strike. The Management argued that the strike was illegal. The Supreme Court held that the strike was not directly connected with the pending dispute, and hence not illegal. The Court held that it was not unjustified. Therefore, the workers were held entitled to wages for the period of strike. 36

An extension of this principle will entitle workers to wages if they are illegally prevented by the employers from attending to the work. For instance, if

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36. Id. at p.415
the employers discharge workmen and the discharge is found to be illegal and unjustified, the employer cannot escape liability of paying the wages. In Hindustan Tin Works v. Its Employees, the Supreme Court held that if the management on some illegal and unjustifiable grounds, prevents the workers from attending to work, they are entitled to full wages.

The same view was upheld by the Supreme Court in Gujarat Steel Tubes Ltd. v. G.S.T. Mazdoor Sabha.

37. A.I.R.1979 S.C.75. Here, the management served 43 workmen with notice of retrenchment. Reasons stated were non-availability of raw materials, power-cut and mounting cost of production. The Labour Court came to the conclusion that these were not the real reasons for the retrenchment. Retrenchment was due to the annoyance felt by the management consequent on the refusal of the workmen to agree to the terms of a prior settlement, in an earlier industrial dispute. In the circumstances, the court held that the retrenchment was illegal.

38. The Court held,

"Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule". Id., p.78 per Desai, J.

39. (1980) I L.L.J.137 (S.C.) The management was making large profits. The workers who were being paid only starving wages demanded for more pay and other facilities. Employers refused those demands and a strike ensued. A settlement was arrived at, but, again a dispute arose and some of the workers were dismissed or discharged. The dispute was referred to arbitration. Against the award, a writ was filed in the High Court. The matter came up before the Supreme Court in appeal from the decision of the High Court.
The Supreme Court went on to explain the legal requirements to be complied with before inflicting punishments on a worker for participating in an illegal or unjustified strike. If the requirements are not satisfied, the action taken by the Management, adversely affecting the employees will amount to an illegal act. The series of formalities, according to the Court amounted to a set of mandatory procedures which should be adhered to.

Can employees claim wages for a period in which they have not fulfilled their part of the contract? When workers go on strike, they cease to fulfil the express or implied terms of their employment. If duties

40. The Court said,

"The short position is this. Is there a punishment of any workman? If yes, has it been proceeded by an enquiry? If not, does the management desire to prove the charge before the tribunal? If yes, what is the evidence against whom, of what misconduct? If individuated proof be forthcoming and relates to an illegal strike, the further probe is this, was the strike unjustified? If yes, was the accused worker an active participant therein? If yes, what role did he play ...? Then alone the stage is set for a just punishment."

_Id., p.167 per Krishna Iyer, J._

41. _Ibid._

42. 'Strike' means cessation of work or refusal to continue to work or accept employment by workmen. See _Industrial Disputes Act 1947, S.2 (9)._ 

43. _Industrial Disputes Act defines 'wages' to mean "all remuneration capable of being expressed in terms of money which would, if terms of employment expressed or implied, were fulfilled, be payable to a workman in respect of his employment or work done in such employment... ." _Id., S.2 (r). See also Chapter 2._
as provided under the terms of employment are not performed, it should disentitle the workmen from claiming any remuneration by way of 'wages'. Though on principles of social justice some monetary benefit may be awarded, it should never be given the colour of 'wages'. The justifiability test and legality test must be limited to this extent. The situation where workers are prevented, by the employers, from performing their duties, must, however, be viewed in a different perspective.

The Act provides the maximum wage period to be one month. 44 The Act prescribes the time within which wages due should be paid 45 and stipulates that it should be paid in the current coin of the realm. 46 This specification is to ensure that the employer does not exploit the employee by late payment or by giving some thing which is inadequate in return for the work rendered.

It would be absurd to lay down as a strict rule that every wage must be paid in cash and absolutely nothing should be given in kind. It may be noted that some

44. Payment of Wages Act 1936, S.4.
45. Id., S.5
46. Id., S.6. It reads, "All wages shall be paid in current coin or currency notes or in both ... ."
of the fringe benefits given to employees may amount to payment in kind. The purpose of the legislation is only to enable the employed person to use his wages according to his wishes. The only precaution to be taken is that the system of payment should never be developed into the old truck system.47

Implementation machinery

For the effective implementation of the Act, inspectors with power to supervise the payment of wages are appointed.48 The inspectors are expected to examine and enquire whether the provisions of the Act are being complied with.49 They have to supervise the payment of wages to the employees coming within the purview of the Act. Inspector of Factories51 is usually appointed as Inspector under the Act.52 Depending upon the number of

47. Formerly there existed a system of payment of wages in kind, popularly known as the truck system in the U.K.

48. Payment of Wages Act 1936, S.14. If the inspector finds out any irregularity, he can initiate action to prosecute the employer who makes any unauthorised deductions from wages or delays the payment of wages, [S.15 (2)]. An inspector is also vested with the powers of search and seizure, [S.14 (4) (e)].

49. Id., S.14 (4) (a)

50. Id., S.14 (4) (c)

51. The Factories Act 1948, S.8(1)

52. Payment of Wages Act 1936, S.14 (1).
the Establishments under the jurisdiction of an Inspector, his work load may vary. Most of the inspectors are overburdened with work and, therefore, are unable to do justice to their duties. 53

For deciding complaints about unauthorised deductions from wages or about delay in payment of wages, the Government has appointed an authority 54 under the provisions of the Act. The authority has jurisdiction to look into all aspects of the case before it. 55 Though the jurisdiction of the authority is limited to the claims arising out of deductions from wages and delay in payment of wages, it can examine the contract of employment to see whether the person is an employee to determine the terms relating to wages and to decide the extent of liability of the employer to pay wages in accordance with

53. This information was gathered in the course of personal discussions with some of the inspectors.

54. Payment of Wages Act 1936, S.15. There are four limitations on the scope of the Authority, namely, limitations as to the person, pecuniary jurisdiction, nature of the claim and territorial jurisdiction. See, Jerry Sebastian Pareira v. Badshah and Others (1960) II L.L.J. 99.

55. The words 'all matters incidental to such claims' in S.15 gives the Authority wide jurisdiction. See Mahesh Chandra, Commentary on the Payment of Wages Act 1936 (1972), p.156.
the contract. The authority is free to determine what the contract is but in the case of different contracts relied on by the parties, the authority has no jurisdiction to decide which is the actual contract. In such an event, the remedy is to approach a civil court for a finding as to which contract is to be followed. This may be a hindrance to an expeditious disposal of wage disputes. All the same, this is inevitable, because, the authority has jurisdiction only to order proper wage payment in accordance with a valid contract. It was rightly pointed out by the Supreme Court in A.V.D 'Costa v. B.C. Patel that though the Authority may direct the employer to pay wages to the employee in

56. B.B. and C.I. Railway v. B.C. Patel, (1951) II L.L.J. 188 (Bom.) Chagla, C.J. observed, at p.191,

"It is certainly competent to the Authority to construe the terms of the contract of employment in order to determine what wages are to be paid, and even if the contract of employment has been terminated, it is open to him to construe its terms in order to determine whether any sums are payable by reason of the termination. It will also be open to him to determine whether a person has been employed or not, because the question of contract of employment and the terms of the contract can only arise provided the person seeking relief was employed."


58. A.I.R. 1955 S.C. 412. For further details of the case see Chapter 2.
accordance with the contract, it cannot ask the employer to pay wages on the basis of some extraneous considerations. 59

Nevertheless, in practice, the functioning of the machinery is rather unsatisfactory. Out of the large number of pending proceedings, hardly a handful is disposed every month. The following tables bring to light this fact.

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59. The Court said,

"The Appellant is responsible to pay the respondent only such wages as are shown in the relevant register of wages presumably maintained by the Department under the provisions of the Act, but he cannot be directed to pay the respondent higher wages on the determination by the Authority that he should have been placed on the monthly wage scheme."

_Id., p.416 per Sinha, J._
### TABLE XII
The Number of Cases Filed and Disposed off Under the Payment of Wages Act 1936 in the State of Andhra Pradesh in the year 1978.*

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<td>193</td>
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TABLE XIII
The Number of Cases Filed and Disposed off under the Payment of Wages Act 1936 in the State of Andhra Pradesh in the year 1979*

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<td>1</td>
<td>No. of cases pending at the beginning of the month.</td>
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<td>285</td>
<td>382</td>
<td>378</td>
<td>498</td>
<td>499</td>
<td>493</td>
<td>500</td>
<td>503</td>
<td>504</td>
<td>495</td>
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<tr>
<td>2</td>
<td>No. of cases filed during the month.</td>
<td>193</td>
<td>130</td>
<td>40</td>
<td>141</td>
<td>14</td>
<td>18</td>
<td>22</td>
<td>30</td>
<td>20</td>
<td>45</td>
<td>30</td>
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<tr>
<td>3</td>
<td>No. of cases disposed off during the month</td>
<td>36</td>
<td>33</td>
<td>44</td>
<td>21</td>
<td>13</td>
<td>24</td>
<td>15</td>
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<td>19</td>
<td>54</td>
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</tr>
<tr>
<td>4</td>
<td>No. of cases pending at the end of the month.</td>
<td>285</td>
<td>382</td>
<td>378</td>
<td>498</td>
<td>499</td>
<td>493</td>
<td>500</td>
<td>503</td>
<td>504</td>
<td>495</td>
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*Source: Commissioner of Labour, Labour Bulletin (1979), Vol.VIII, Nos.1-4 Table 5.1
Though the Payment of Wages Act has been in existence since 1936, even today, employers are conveniently evading many of its provisions. For instance in three Districts in the State of Andhra Pradesh, the Inspector could find out 386 irregularities in 38 inspections in the year 1983 and 2020 irregularities in 119 inspections during the year 1984. Such irresponsibility and non-co-operation on the part of employers defeat the purposes of any legislation. The problem arises probably because the employers are well aware of the fact that any violation of the provisions of the Act will entail them to a fine \( \text{\$500/- or so, which is only a meagre amount.} \) Non-compliance with the provisions of the Act calls for a more stringent punishment having a deterrent effect.

Nevertheless, the Act has been a significant step forward in ensuring prompt payment of wages, without improper deductions. However, further modifications in the law are called for. Changes in the law on the lines suggested, would no doubt help to protect and better the interests of employees.

60. This information is gathered from the records of the Labour Enforcement Officer (Central), Vijayawada. These numbers relate to the inspections in various mines in the districts of West Godavari, Krishna and Guntur in the State of Andhra Pradesh.

61. S.20 of the Act. However, S.20(5) provides that if any person who has been convicted of any offence punishable under the Act again contravenes the same provision, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to \( \text{\$1000/- or with both.} \)