CHAPTER-2
REVIEW OF LITERATURE

2.1 Introduction

The key notes have been expressed by various legal experts in their Articles of National and International repute focusing on different causative factors affecting industrial relations of employer and employees. Some examples have been quoted of National and foreign countries where industrial disputes took place. Therefore it is necessary here to take glimpse of different situations including literature review by the researcher-

2.2 Articles

THE EVOLUTION OF LABOUR LAW IN INDIA: AN OVERVIEW AND COMMENTARY ON REGULATORY OBJECTIVES AND DEVELOPMENT

The article depicts various features of labour laws such as about healthy social security, employment, industrial disputes, trade union’s role etc. The Article throws light on various labour laws in India and their actual achievement of goals. There are extensive legislations. It is suggested in the article that a new approach is warranted to secure the labour up to the expected goal. Yet Mahatma Gandhi National Employment Guarantee Schemes are best to provide minimum income to very poor.

HRD PRACTICES AND PHILOSOPHY OF MANAGEMENT IN INDIAN ORGANIZATIONS

HRD department is very important in modern era. This article reflects the assertion that in govt. institution, there is less coordination between HR Department, Management but good relation in private sector.

LEVERAGE AND TRADE UNIONISM IN INDIAN INDUSTRY: AN EMPIRICAL NOTE

The article reflects the study on the bargaining role of Trade Unionism with the Management in India. The study search that sometimes trade unions pressurizes the management to increase the wages, bonus and other benefits and facilities without bothering financial position of the industry. Leverage here means

\[13\] Anil Kumar Singh, University of Delhi, Vikalpa, Vol. 30, No. 2, April-June 2005
\[14\] Saibal Ghosh, Munich Personal RePEc Archive, MPRA Paper No. 26400, posted 4 November 2010 18:28 UTC
that like a lever which uplifts the weight, in the same way, the trade union by using its unlawful powers, do compel the management to admit the undue demands of the labour.

A STUDY OF INDUSTRIAL RELATIONS – ISSUES TODAY AND TOMORROW
A CASE STUDY OF CHANDRA BEVERAGES LTD., SOLAPUR

The present article bears the picture of industrial relations. The article has much importance, highlighting the problems of future. Various objectives of study were discussed for instance, to investigate health position of the company. The findings under study are that insufficient health facility is provided in Chandra Beverages Ltd., Solapur. The factory may arrange glazed window unit, lighting, drinking water facility may be provided grievance cell should be established. Much emphasis was given to HRM which is work with the honest and sincerity can get better result.

THE CHANGING ROLES OF TRADE UNIONS IN INDIA: A CASE STUDY OF NATIONAL THERMAL POWER CORPORATION (NTPC) UNCHAHAR

This article shows that trade union is playing good role for establishment and for labour as well. Due to good rule, labours do not leave such trade union and do not join other trade union. By this way, there can be check on much room of trade unions unnecessarily; hence a trade union can get its goodwill by its deeds.

GLOBAL AUTO WORKERS’ CONCERNS AND PERSPECTIVES

This article bears a topic where difference of situation between workers under trade union and workers under subcontractors/outsourcing, has been discussed. The study says that workers are most safe when they have trade unions because trade union succeeds in collective bargaining against the employer whereas the workers working under subcontractors are unsecure because they are paid low wages and their work always remains of temporary nature. Therefore this article suggests that for ‘decent work for all’, the welfare of the employees shall have to be kept at top priorities in the era of globalization.

THE IMPACT OF EMPLOYMENT OF FOREIGN WORKERS: LOCAL EMPLOYABILITY AND TRADE UNION ROLES IN MALAYSIA

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15 Dr. R.L. Laddha, Principal, Sambhaji College, Murum, Mr. Rupesh S Shah, Research Scholar, Solapur University, Solapur, Review of Research (March 2012) Vol.1, Issue VI/March 2012.
This article is the research on the impact of employment of foreign workers in an industry where there is local workers are also working. Also what is role of trade union in the Malaysia? The study reveals that foreign workers are beneficial for industrial growth but simultaneously employment of local workers are adversely affected because local workers are not prepared in this situation therefore Govt. should regulate this problem. It is unfair also that native of Malaysia is getting low wages in comparison with foreign workers. Incoming of foreign workers has given progress in establishment but the nation become unsecured and crime prone as it increase unemployment.

**IMPACT OF EMPLOYER BRANDING ON EMPLOYEE ATTRACTION AND RETENTION**

The periphery of this article is that how a branded employers casts impact on employees. In other words good branded employer attracts the employees because there is well probability of retention of its employees in industry. Here branded employer means who has much goodwill and who has growing economic position, who has human resources most suitable to its employees. In fact there is competition among various institutions and employees are fleeing on the attraction of their wages and facilities. Hence the branded employer succeeded in getting talented employees. He has also retention power. The employer should have care of its employees in terms of their wages, working conditions etc.

**A MORAL/CONTRACTUAL APPROACH TO LABOUR LAW REFORM**

This article shed light on very good area whereby the labour and capital will have sweet industrial relation. Here it is suggested that the employer should deal the labour with moral values and he should make contract with labour to give welfare, protection etc. to them instead of battle with the employees by taking legal contentions. In short it is suggested by this study that employer should winover the trust of the employees by using sincere and honest methods and should not considered them as enemies. The real enemies are global competition, diminishing natural resources, environment concerns, high standard of living.

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18 Ramesh Kumar Moona Haji Mohammed, (Phd Candidate), School of Distance Education, 11800, University Sains Malaysia, Charles Ramendran SPR, Faculty of Business & Finance, UTAR, Peter Yacob, Faculty of Business & Finance, UTAR, International Journal of Academic Research in Business and Social Sciences October, 2012, Vol. 2.


AUTHENTIC LEADERSHIP DEVELOPMENT: GETTING TO THE ROOT OF POSITIVE FORMS OF LEADERSHIP

This article sheds light on the importance of authentic leadership and also about development of such leadership. Here such authentic leadership has been termed as the root of position from of leadership. In fact good leadership has been emphasized in the study which always results into best. The study reveals that how good leadership plays role in fruitful results. Authentic leadership has positive impact on its follower. Ethics has been given due place in authentic leadership. Self awareness of such leader has also been emphasized. In that the authentic leadership makes trust in the mind of followers and accrues good result.

IMPACT OF AUTHENTIC LEADERSHIP AND PSYCHOLOGICAL CAPITAL ON FOLLOWERS’ TRUST AND PERFORMANCE

The study tried to establish what a automatic leadership can change the rich atmosphere of the establishment and can glow exemplary heights. Also can motivate the employees as well management. The study examines good impact of authentic (i.e. proper and sincere) leadership on the workers (i.e. the followers) and in response to it the workers repose the trust and they give best performance as expected by their leader. Simultaneously management is also suggested in the same way that best leadership paves the way of success in an industry.

ORGANIZATIONAL CHANGE AND DEVELOPMENT

This article emphasis on the impact of change in a organizational and also discusses the impact over development of an organizational change. The article shows the importance of constant change in the establishment, change in concept of product, change in managerial staff, change in welfare facilities, change in administration, change in getting co-operation from employees, changes bring good results.

GLOBALIZATION AND INDUSTRIAL RELATIONS OF CHINA, INDIA AND SOUTH KOREA: AN ARGUMENT FOR DIVERGENCE

This present article sheds light on mutual industrial relations among South Korea, India and China inter-ra and also the industrial relations between employer and employees of each country has been discussed in this study. Really the article is of

21 Bruce J. Avolio T, William L. Gardner
23 Karl E. Weick and Robert E. Quinn, Annu. Rev. Psychol. 1999, 50:361.86
24 Mohammad A. Ali, University of Rhode Island
great importance touching the impact of globalization on the industrial relations among various countries. In fact great impact is seen between developed countries and under developed countries. Multinational companies are working with the participation of employees of various countries. Many issued automatically emerge viz. salary, bonus, living standard facilities etc.

**TRADE UNIONISM: DIFFERENCES AND SIMILARITIES – A COMPARATIVE VIEW OF EUROPE, USA AND ASIA**

This article shows the impact of Globalisation on functioning of trade unions in USA, Europe and Asia. Reality it is realised that now globalisation is affecting role of trade union very much. Therefore it seems that at one aspect the trio is similar and at another aspect the trio is at difference. In fact the local situation affects the working of Trade Unions.

**EFFECTS OF PUBLIC EXPENDITURE ON INDUSTRIAL SECTOR PRODUCTIVITY IN NIGERIA**

This article shows that there is no good result of public expenditure on industrial growth. Many reason were expressed for this sorry state of affairs viz lawlessness, unfriendly environment. Unethical atmosphere is prevailing everywhere that is why public expenditure could not bring the desired result. Corruption is existing in the Governmental and in system of industry. The real purpose of public expenditure has been seized due to the above factors. Therefore the conclusion is drawn that good schemes bring good result in good environment. Public expenditure gives opportunities to politicians and influential persons to earn unethically and by using corruption they can get undue benefit to themselves and undue loss to the country.

Because the research topic is based on legislative provisions and judicial approach therefore it is necessary here to do literature review on the relevant Acts and judicial approach thereon about various issues which affect industrial relations.

**2.3 Disputes-Settlement and Industrial Relations**

Industrial Disputes Act, 1947 is fundamental law regarding labour-matters. To emerge dispute between the employer and employees is the old

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25 By Carsten Stroby Jensen, Department of Sociology, University of Copenhagen
26 Tawose Joseph, Ph.D. ACA, Department of Economics, Faculty of the Social Sciences, Ekiti State University, Ado-Ekiti, Nigeria, Canadian Social Science, Vol. 8, No. 1, pp 204-214
phenomenon. This Act provides provisions to end this conflict. The Act has its main object the settlement of dispute by Conciliation and if Conciliation fails by the adjudication fair wages have also been insured. It is thought while passing the Act that the relations of employers and employees should be sweet. Necessity and role of trade union was realised that is why proper place has been given to the trade union to represent the employees. Arrangement has been made to move the industrious life with the attitude of mutuality not in confrontation with. The Act has splenetically described the concept of strike and lockout. What are legal, strikes and what are legal lockouts. The act has also provided that how strike and lockout will be regulated.

The Act has given space for collective bargaining. Such collective bargaining can be held by trade union repsecuting the aggrieved employees or by group of employees. In fact it is the most successful method of dispute resolution. It is a method where lesser time is expensed and relations remain normal with the employer.

The phrase “appropriate Government” has been used in the Act which means the Central Govt. or the State Govt. as the case may be. Here industrial dispute has been defined which does not mean a dispute between employer and employees rather a dispute between employer and employer, employee and employee. The dispute is generally relates with terms of the employment or the conditions of employment.

For settlement of dispute, a system of conciliation has been established through which a conciliation officer has been appointed in the area. He will try his best to settle the dispute amicably, if he remains failure, he sent his failure report to the Govt. Govt. then refers the matter to the Labour Court or Labour Tribunal by way of reference under. Govt. can establish a court of enquiry which will submit a report to the Govt. after making deep inquiry in the matter of dispute. The time limitation for submission of such report is 6 months. The adjudication system provided under the Act is that the appropriate Govt. may establish labour Court and Labour Tribunal. The Central Govt. is to establish National Tribunal so that the dispute of National importance can be decided by it. It is the appropriate Govt. who will decide that which tribunal or Court the matter is to be referred by considering the nature of subject matter. The decision pronounced by these bodies is called award because, these bodies are not judicial bodies is true sense.
As regards right to strike, the Act has given the right to strike to the employees but on any reasonable grounds. It is not the discretionary power of the trade union to make strike on every issue. The right of strike deserves its power from Article 19 i.e. freedom of speech and expression of the constitution. Stoppage of work has been rightfully authorised to the employer in the name of lay-off. These can be reasonable ground of lay off for instance budgetary problem of an industry or unsafe factory building.

In these situation employer also does retrenchments of employees. Retrenchments may be legal or illegal. It depends upon the nature of situations. Retrenchment may be rightful, when thus is shortage of work of the industry. It can be unlawful also for instance just to reduce the workforce to save the liability of huge salary. This type of retrenchment by ill-will is effected generally when automatic machines are installed in the factory and the employees are ousted in the name of retrenchment.

There is a chapter in the ID Act of unfair labour practice. As per this concept the employer and employees both have been prohibited from detracting their legal path. Both have to use fair methods in dealing with their counterpart. The employees will not take any unfair steps to cheat or cause loss to the employer, simultaneously the employer will not take any unfair practice which may cause loss to the employee i.e. loss to mind, body, reputation or property. Such prohibition has been provided under Section 25T and 25U of the Act which are restrictions on both employer and employees.

So far as Trade Union Act 1926 is concerned, there is long history of the passing of the Trade Union Act. In fact it was the voice of workmen which had been considered the dominated party. There were many incidents when dominating class i.e. employer had exploited the labour. But by passing of this Act, had created a hope and prestige in the minds of employees that they are also enjoying equal legal right in respect of their right relating of wages, hours of work etc. Trade Union has its name for its identity which can be a registered or unregistered body. Registered body has more powers than unregistered. There shall be executive body of the Trade Union, it is the managing committee of the trade union. It consists of office bearer. The executive committee represent the trade union before Govt. offices, Courts and society in general. There can be a individual dispute and Trade Dispute, individual disputes means a dispute of one employer but trade dispute mean a dispute affating
employees at general. The Appropriate Government appoint a Registrar who will register the trade unions. There will also be Deputy and Additional Registrar for the assistance of Registrar.

As regards recognition of trade union, recognition means when a trade union is recognised by that industry in which maximum number of members of that trade union are employees. Whenever new trade union is applied for registration, the application must be subscribed by at least 7 members. Name, address, occupation of these members are supplied in such application. Name of the trade union and its proposed head office is also mentioned. Registrar, registers the trade union. The office bearers can declare a legal strike but if the office bearers are involved in crimes, then they can be punished.

Recognition to the trade union can be revoked by the employer but with the permission of the registrar showing some justified grounds. Labour court can also grant recognition where members of such trade union are securing in a particular industry. By giving opportunity of hearing to the above mentioned particular industry, the labour court can order the recognition of the trade union. Such situation appears when the employer does not give recognition to a trade union after passing 3 months. Single application can be given for recognition by single industries or group of industries. Ultimately the labour court send the order of recognition to the appropriate Govt. which will be notified in Official Gazette. When a trade union gets recognition, it displays a notice in the premise of the concerned industry and that industry also provides a place where trade union opens its office. Recognition of the trade union can be withdrawn by the employee or by the registrar by applying in the labour Court. Such application is given when the trade union is guilty of unfair labour practice, did not file returns.

Collective bargaining is allowed under the Act. Such bargaining is exercised by trade union or group of employees with the employer. The issues under bargaining are hours of work, leave, gratuity, wages allowances, bonus etc. the recognised trade union succeeds easily in getting their demands accepted. Here attitude and preconceived assumption play the role in solving the disputes. It both sides are of democratic and justful views the issues are settled amicably otherwise the attempts remain failure. An advisory body i.e. a third party can be helpful is coming to the compromise. In most of the countries such advisory body is working. Such advisory body acts as linkage between the employer and employees. In some country
statutory bargaining is directed by the statute. Compulsory sitting of employer and trade union have been advocated within statutory intervals.

(i) THE INDUSTRIAL DISPUTES ACT, 1947

Salient features of the Act-

The act was with the object that disputes between the employer and employees be settled.

Fair wages should also be given to the employees.

These should be good relations between the employer and employees.

Trade union should play role of help in representation of the employees while settling a dispute.

The act can help in avoidance of strikes and lockouts.

The Act also provides provision of collective bargaining by the employees with the employer in respect of any matter of dispute.

The phrase “appropriate Government” used in the Act means the Central or the State Government.

Industrial dispute means- any dispute among these categories with each other- Employer, employees, workmen

The dispute should relate with employment terms or labour’s conditions.

There will be a conciliation officer to make his effort to arrive at a compromise (i.e. to council) between employer and employees.

Appropriate Government may establish a Court of Inquiry which will investigate a dispute and to report within 6 months to the Government (Section 6).

The Appropriate Government may also establish as many as Labour Court to adjudicate the dispute (Sec. 7).

The Appropriate Govt. may also constitute labour Tribunals also to decide a industrial dispute. It depends upon the subject matter of industrial dispute which is referred to either Labour Court or Labour Tribunal (Section 7A).

The Central Government can establish a National Tribunal which will decide the dispute of National importance (Sec. 7B).

The Appropriate Government when satisfies itself that a industrial dispute exists and the same is fit to be decided by the adjudicating authorities, then the same is referred to these adjudicating authorities viz. Board, Labour Court, Labour
Tribunal to decide the dispute. Such is called ‘reference’ under Section 10 of the Act.

The decision pronounced by the Labour Court, Labour Tribunal are called awards. Functions of these bodies are not called Judicial. These bodies are not Court in true sense.

The employees shall have right to strike but not on illegal issues. This right has roots in fundamental rights of speech and expression.

The employer shall also have right of lockout but on some legally rightful issues (Section 22).

The Act also tells us about lay off. Layoff means when the establishment faces the budgetary problem, then the employer declare lay off in the establishment hence the stoppage of work happens. But it is not the arbitrary power of the employer rather on some genuine grounds and proof the employer exercise this power.

Under the Act the employer when face the financial problem, the employer can retrench the employees. Retrench means ending the employment temporarily or permanently of the employees. This power of the employer is not arbitrary rather the fact of financial crisis must exist in reality.

Unfair labour practice is prohibited under section 25T and 25U of the Act unfair labour practice can be exercised by employer and employee both. Unfair labour practice means when any partly do some misconduct detracting from its expected duties.

The industrial Dispute Act is a progressive measure of social legislation aiming at the amelioration of the conditions of workmen in industry.  

The I.D. Act has many definitions, out of which most important definitions are produced here which are relevant and necessary do discuss here -

Section 2 - Definitions

In Tata Memorial Hospital Workers Union v. Tata Memorial Centre and Another, Application was filed by the second respondent union for cancellation of recognition of appellant and substitution of recognition of the second respondent union. These applications were held maintainable by the Industrial Court and High

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28 (2010) IV L.L.J. 830 (S.C.)
Court saying that the appropriate government for the first respondent (i.e. Employer, Tata Memorial Centre) was State and not the Central Government. The appellant union being the recognised union was aggrieved by the decision which led by implication to the denial of status as a recognised union. The S.C. held that deciding basis who has the management and contract of the hospital.

Award includes final as well as an interim determination. The tribunal can grant only such interim awards which they are competent to grant reason being the relief not vested with tribunal has no right to grant at the time of final determination, shall be outside its authority at any stage of the proceedings.

Board means Board of Conciliation

Closure means permanent closing of the establishment.
Conciliation Officer – an officer under this Act.
Conciliation Proceeding – proceeding to council.
Court – Court of Inquiry.

The expression “of any person” appearing in the last line of Section 2 (k) means that the person may not be a workman but he may be some one in whose employment, any terms of employment, conditions of labour have a true and interest substantially.

Section 6 – Court of Inquiry – if any matter is referred to a Court by the Appropriate Government, it shall inquire and make a report within a period of 6 months from inquiry. Section 6(1) points out that if “occasion arises” the Appropriate Government may constitute a Court of Inquiry. The Court shall not inquire into the industrial dispute itself.

The scope of an adjudication proceeding is mentioned in Section 10(4). Where an order making the reference of any industrial dispute to any authorities as mentioned in this section had been made and wherein the points of dispute for adjudication are specified the adjudication shall be confined only to those points and the matters incidental thereto.

Appropriate Government is authorised under Sub-section 10 (5) to include in litigation of interested parties. The Appropriate Government may arrive at such a conclusion either on an application being made to it or otherwise.
In Bangaigaon Refinery and Petrochemicals Ltd. v. Samijuddin Ahmad, the respondent was recruited by the appellant company under a benevolent employment scheme of employment to candidates whose land has been acquired by the company. He got his job by concealing the fact that his two brothers had already been given employment by the company. This fact became known before joining of respondent and therefore his appointment was cancelled and joining was refused.

**STRIKES AND LOCK-OUT**

In cases where strikes and lockout take place, the relations between employer and employee become tenseful. The I.D. Act provides solution to this situation.

Strike means to stop the work of establishment to bring pressure upon those who depend on the sale or use of the products of work. Ludwig Teller opines that the word ‘Strike’ in its broad significance has reference to a dispute between an employer and his worker, in the course of which there is a concerted suspension of employment. Because it is an expensive weapon the strike is generally labour’s last resort in connection with industrial controversies.

Employer has unique remedy of Lock-out against labour strike in the armoury of workmen used for pressurising the employees to accepts the wishes of the employer. In lock-out an employer does the a view to dictate his own terms to them. Shuting down the business centre to pressurise the employees.

Section 22 – This Section prohibits strikes as well as lockout in that industry who is having public utility service. Strike or lockout in this section is not absolutely prohibited but certain requirements shall have to be completed by both employer (in case of lockout) and employee (in case of strike). Conditions laid down in Section 22(1) are to be fulfilled in case of strike in any public utility service and conditions as laid-down in Section 22(2) are to be fulfilled in case of any lock-out by the employer carrying on any public utility service. The intention of the legislature in laying down these conditions was to provide sufficient safeguards against a sudden strike or lock-out such establishment who is carrying in public utility services lest it would result in great inconvenience not only to the other party to the dispute but to the general public and the society.

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29 (2001) II L.L.J. 1149 (S.C.)
Before strike, notice of strike before 6 weeks is not necessary where there is already a lock-out in existence. Notice may be given by the Trade Union or representatives of the workmen elected to do so. A notice of strike shall not be effective after 6 weeks from the date it is given. So, the strike must be commenced within that period.

Thus strike can take place only when 14 days have passed but before 6 weeks have expired after giving such notice. This minimum period of fourteen days after notice within which workmen are prohibited to go on strike is prescribed with a view to give some time to the employer to look into the charter of demands of the workmen and also to give time to the labour department of the Government to intervene so as to avoid strike by finding out some compromise formula. Neither the employee is restrained from going on minimum conditions before striking or locking out are required to be fulfilled, otherwise the stoppage of work in a public utility concern may result in inconvenience to the society. Therefore these safeguards were necessary to be provided by the Legislature.

Supreme Court decided that the settlement according to Section 18(3) will bind not only those workmen who are members of this Union but to all workmen working in the establishment. Therefore, if the proceeding relates to a matter concerning all the employees its pendency would be a bar against all the employees.

LAY OFF AND RETRENCHMENT

The Act was again amended on 6th June, 1961 and two new Section 25-FF and 25-FFF were substituted for old Section 25-FF. By this amendment provision was made for compensation for retrenchment of workmen on transfer of a business or on closing down of an industrial concern. These two sub-sections have again been amended in 1964. These amendments have curtailed the common law rights of the employer and he has now been burdened to pay compensation in cases of lay-off, retrenchment and bona fide transfer or closure of the undertaking.

240 days work in a calendar year – In P.K. Kumaran v. Idukki Jilla Motor Mazdoor Sangh (BMS) and another, the tribunal considered the evidence given by the employee that it is the usual practice that a conductor and driver in a bus will work only 15 days in a month and according to the evidence of the employer they

31 Ram Nagar Cane and Sugar Co. Ltd. V. Jain Chakravarty and others, (1961) I L.L.J 244 (SC).
32 (1995) I L.L.J. 323 (Kerala)
will work for 20 days in a month and their duration of working house in a day is 10 to 12 hours. They are not paid any overtime wages. Although a bus crew will work only for 20 days they were paid wages for one month on the assumption that they had worked for the whole month. In the light of above finding the Industrial Tribunal rejected the contention of the employer. That till date of retrenchment the employee had not done work for 240 days.

UNFAIR LABOUR PRACTICES

There are the practices where employer or employees malafidely take steps of mischief, which is against ethics and is violation of S.25T and 25U. there is no definition of unfair labour practice yet a list is available to knows which act comes under Unfair Labour Practices.

(ii). THE TRADE UNIONS ACT, 1926

This Act is a revolutionary Act which created the rights of workmen and reposed confidence in the minds of workman that they are dignified citizens of the country equivalent to the employer. Salient features of the Act are-

There will be a Union of workmen a registered body with a name as its identity.

The Act provided safety, security and tenure of service of the employees in other words voice of the employees was given a chance of due hearing.

In the absence of which the workmen had been passing their lives as slaves.

Executive body of Trade Union means the Managing Committee (i.e. the office bearers of the Committee) who will represent the Trade Union before the offices, Courts or Society in general.

Individual dispute and trade dispute are not identical. Individual dispute is that which affects a employee or a group of employee whereas trade dispute affects employers in general and such trade dispute is sponsored by the trade unions.

The appropriate Government of a State appoint a Registrar for registration of trade unions alongwith Deputy and Additional Registrars.

Registered and recognised trade union enjoys more power in comparison with unregistered trade union. Here recognised means when recognised by the industry where the employees of such trade union do employment in that industry.

Application for registration must be subscribed by atleast 7 members. Such application should bear name, addresses and occupations of the applicants, address of the head office, and title of trade union etc. information are mentioned
in the application. If that application is found correct and filled up according to the requirements of the Act, she is registered.

Office bearers of the trade union cannot be held liable for declaring strike but they can be held for criminal conspiracy (Section 17).

The office bearers also enjoy immunity against civil suits.

The office bearers do not enjoy immunity against threats, violence or other illegal means as happened in Maruti Suzuki plant in Gurgaon because all the above acts are crimes.

Recognition to a trade union can be given by agreement between employer and office bearers of a trade union. Yet any party can revoke it by applying before the registration justifiable ground (Sec. 28C).

By order of Labour Court also a trade union can be recognised but on the following conditions (Section 28)-

i. Ordinary members of such trade union must be the employee of such industry.

ii. Such Trade Union is the representative of all the employees working in that industry.

iii. Such trade union has provided rules followed for strike if any in future.

iv. There should be provision of meeting of Executive Committee in every 6 months.

When a Trade Union is not recognised by the employer within three months from the date of application, the applicant can go to Labour Court.

A single application is given for recognition, to the employer or group of employers.

Labour Court can demand any information from employer or Executive Committee of Trade Union which is necessary for recognition.

Labour Court will satisfisishly about the preconditions to be fulfilled by such trade union as per Section 28D of the Act.

If the Labour feels satisfied about all the pre-requisite of getting recognition, then the Labour Court will order for recognition, which shall have to be obeyed by the employer or group of employers as the case may be.

Such order of the Labour Court is sent to the Appropriate Government which will be notified in Official Gazette.

After resolving the dispute relating to recognition trade union, the information to this effect is sent to Registrar for information.
After getting recognition to trade union, the executive committee of trade union will display notice in the premises where its members are employer and the employer shall provide necessary facility for example office etc. to that recognised trade union.

Recognition of trade union can be withdrawn by employer or the registrar by applying to the Labour Court in the following circumstances-

i. When executive or the general members of trade union has been indulged in unfair labour practices under Section 28J but within 3 months of such unfair labour practice.

ii. When the trade union has been failed in submitted return as per 28-I.

iii. The Labour Court after giving reasonable opportunity to the trade union upon any blame on it, if satisfied that such blame is true against such trade union, shall derecognise the trade union and will sent a copy of order to the appropriate Government to be published in Official Gazette.

‘Collective Bargaining’ is a technique to remove any dispute by any body or trade union of employees doing discussion with the employer. It is successful way of presenting the grievances before the employer the grievances may relate to hours of work, gratuity, wages, bonus, allowances and privileges. After negotiation, if settled, then it proves the best method of dispute resolution.

Collective bargaining is better than the adjudication by Labour Court or Tribunal because it saves time, money and particularly the saved relations. It is an amicable settlement of dispute.

In modern time collective bargaining has proved the most successful method of dispute resolution. Because in day to day life, disputes emerged and necessity is to settle them as early as possible.

Yet the employer can negotiate with unregistered trade union also or even with a group of employers but if there is registered trade union then the situation is better on the part of the employees.

The difference between unregistered and registered trade union is that a registered trade union can represent employees in Labour Court or Tribunal under the Trade Union Act, 1926.

For collective bargaining, it is necessary that the employees must act in organised manner. Whenever there is diversity of opinion among employees, they do not
succeed in getting good result in collective bargaining because another group of employees opposes the move.

For successful result of collective bargaining, these should be stable and strong trade union because in case of unstable trade union, the office bearer live in insecurity of their tenure. Therefore, they will proper to keep safe their offices rather to concentrate on any industrial dispute.

Secondly, strong officer bearers of a trade union get very good result. It is the mental element of the office bearers which play a role. Therefore personality factor of the office bearers has much importance.

Recognition of trade union also gives strength to the Trade Union. Therefore for more successful result of collective bargaining the trade union which have taken the step to negotiate must be a recognised union to that mutual faith already existing between employer and employee can help in settling the industrial dispute.

Attitude of the employer and employees also play an important role in settlement of industrial dispute. If the employer and executive body of trade union are having a justful attitude and give proper opportunity of hearing, then both parties can come to the compromise but if reversely, both parties are having rigid stands then the situation can be fruitless.

In most forward countries, advisory body is also working who advises both the parties i.e. employer and employees for reaching to the amicable settlement. In fact such advisory body works as a linkage between the two.

There are some countries like USA, UK where there is statutory bargaining which means that it is statutorily obligatory for employer and employees to sit together on a table within statutory intervals and to settle all the issues of disputes. Whereas in the absence of such statutory guidelines, the bargaining is called non-statutory.

Initially, collective bargaining was used for wages-disputes only but later on it proved a best method of dispute resolution where all types of industrial disputes may be settled.

The Act is the gradual process of awakening among the workers that there is necessity of a ‘Union’ moreover of registered nature, such a dream was completed by passing of the above Act in 1926. The Act brought vital change in the
security, safety of the life and tenure of service of the employee. Here important
definitions and relevant provision will discussed which determined the balanced
relations between employer and the employees.

Appropriate Government – The expression ‘Appropriate
Government’ has been defined in relation to the objects of the Trade Union.

(a). Executive – Executive denotes the body to whom of management
of a Trade Union is entrusted. By what name the managing body is known, is
immaterial. Thus the only requirement for any body to be executive under this clause
is that it must discharge the duty responsible of Trade Union. Where the executive
committee of the Union constituted for management of the Union, and execution of
its policy resolved to espouse the cause of an individual employee it was held that the
objects of the committee are wide enough to cover this resolution. 33

(b). Office Bearers – member of executive representing the Trade
Union.

(d). Registered Office – head office of a Union which has been
registered.

(e). Registered Trade Union – which has been registered as per Act.

It is not necessary that a dispute supported by all or majority of the
workmen but it should have the support of substantial section of workmen of the
establishment. It is not the arithmetical majority of the workmen but the substantiality
of their number taking up the cause, which is to be considered. It does not matter that
the dispute is not raised by a majority of the workmen. 34  An industrial dispute may be
raised by a group of workmen who may not represent all or even the majority of
workmen, and if such dispute comes before Industrial Tribunal and an award is made,
it binds all parties governed by the award. 35

It is the primary object of an association which determines its nature. A
society consisted of authors, publishers and other owners of copyright and was
formed for the protection of copyright in music and songs. There were also certain
rules which could be regarded as imposing certain restrictions on the trade of the
individual music publishers who became members of the association. The society was
declare already by the House of Lords as not a Trade Union because the principal

34  Sisir Kumar Shah v. J.N. Majumdar, AIR 1955 Cal. 309.
35  Associated Cement Companites Ltd. V. their workmen, AIR 1960 SC 777.
object of the society was the protection of the copyright. It was further held that to come within the statutory definition, restrictive conditions imposed must be in respect of trade or business in general and imposition of such conditions on particulars members of a trade or business will not suffice.

Section 18 (1) In this sub-section emphasis is on the word only which means the protection is a little and a registered union, its members or office bearers shall be liable for any act not covered by this clause. There shall be no immunity if threats, violence or other illegal means are employed.

It was held in Ram Singh and others v. M/s Ashoka Iron Foundary and others, restraining the workmen not to indulge in unfair labour practice is a case of civil nature. Therefore, where the court has barred the workmen from holding meeting, dharna and interfering in the rights of a company, such a restraint does not curtail the just trade union activities of the workers. It cannot be construed as unjust and the workmen are at liberty to carry on legitimate trade union activities peacefully.

RECOGNITION OF TRADE UNION

In 1947 amendment was incorporated in Indian Trade Union Act, 1926 by inserting section 28A to 28I in Chapter IIIA. But these provisions have not been put into operation so far and have thus remained a dead letter on the status book. Section 28-A deals with the definition of the Appropriate Government section 28-B makes provision for the appointment, constitution, powers and procedure of Labour Courts, Section 28-C to 28-I deal with the law relating to recognition of Trade Unions.

In all India Port and Dock Workers’ Federation and others v. Union of India, the petitioner union represented third largest membership from amongst Unions. It was held that the Union of India is not justified in refusing to recognise the petitioner in the matter of negotiating (terms and conditions) Port and Dock workers, such refusal is against law and justice.

In Tamil Nadu Elec. Board Union v. Tamil Nadu Elec. Board, the Electricity Board granted recognition to the petitioner Union. Later on the Union changed its name whereupon the Electricity Board withdrew the recognition. The

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36 Performing Right Society v. London Theatres of Varieties, 1924 AC
37 Ibid.
40 (1980) II L.L.J. 246 (Mad.)
question was whether withdrawal of recognition was valid. It was held that the composition of the union may be changed both in its name and the content because it does not change or enlarge its representative capacity. However, the representative capacity will be only in respect of ministerial staff, excluding peons, bill collectors and store-keepers because these categories of workers were not members of the union when recognition was granted. It was further held that a union cannot be prevented from changing its name. By enlarging its coverage so as to include all categories of employees who fall under the definition of ‘workmen’ under section 2(i) of Industrial Employment (Standing Orders) Act, 1946 neither in fact not in law, did it want to enlarge the coverage relating to representative capacity or bargaining power.

**COLLECTIVE BARGAINING AND TRADE DISPUTES**

It’s nature has been changing from its beginning till now and has taken different form. It was quite different that what it is today. It has covered a long journey since the early days of trade unionism. It has been changing with the changing industrial scenario. In early days the employer negotiated with a single trade union in a simple and informal way. Now-a-days it has assumed a complex nature because of multi-trade unionism.

Before 100 yrs. Ago as per I.L.O, collective bargaining means negotiation between employer and representative organisations on behalf of workers.

**The word ‘collective bargaining’ was first used by Beatrice Webb. Many other**

authors have also defined collective bargaining in their own way but all of them contain similar essential requirements. Any way now it is not difficult to understand its meaning now-a-days. The use of the word has become so common that the word is frequently used by both the Labourers organisation and that of employers.

There can be four ways are here on the basis of which terms and conditions of employment can be ascertained. (1) They may be unilaterally dictated by an employer; (2) They may be imposed by Union; (3) They may be regulated by Government; or (4) They may be determined by joint negotiation between employer and workers or their union. In the early days of industrialisation almost all industries or other establishments such as railways, factories, mines were run by autocratic managers whose words were law. This method, known an employer regulation was in vogue for quite a long time till the birth of trade union. The unions took some time to establish their foothold. The second method of determining conditions of employment i.e. unilaterally by trade unions has not yet arrived nor it is expected to arrive in near
future. The reason is obvious because the labourers need employment to earn their livelihood to feed their family. The third method i.e. regulation by government is possible and in most of the countries including ours it has come into existence. Now the state has started intervening in industrial relations by enacting labour and industrial laws governing various aspects of employment relations either in one establishment, in an industry or through-out the country. These laws may prescribe rates of wages, minimum wages, hours of work, health, safety and welfare measures etc. In India legislations have been made in respect of most of them and the process is still continuing with the growth of industrialisation. The last method by which representatives of labour and management negotiate or mutually settle the terms and conditions of employment is called collective bargaining. This method of negotiation between elected representatives of workers and management may not be a perfect system but has come in use and is considered as the best method ever devised by free men.

Terms and conditions regarding employment negotiated on the part of employees may take two forms. First negotiation may be done individually which is called individual bargaining or it may be done collectively through their unions or association. The latter is know as collective bargaining. But as we have discussed in the beginning individual bargaining does not serve the interest of labourers because of weaker bargaining power of workers. Therefore, the latter is preferred. This can be done by organising a trade union and doing bargaining on behalf of the workers. The agreement arrived at between the employers and trade union has a regulative effect. It imposes limitations on the employer’s freedom of action in their relations with all their employees covered by the agreement i.e. not only those who are member of trade union but others as well. These limits are accompanied by various sanctions including the power of labourers collectively to withhold their labour. The process is collective because the bargaining is done collectively on behalf of the employees represented by their bargaining agent generally known as union or association.

The principle of collective bargaining presupposes the right of workmen to be represented collectively by a Trade union. This right has received statutory reorganisation. But a Trade Union cannot represent a workman who is not its
member. \(^{41}\) A workman can either himself represent his case or his case can be sponsored and represented by a Trade Union.

**Unregistered Trade Union’s rights are different than registered**

Trade Union. The employer can negotiate with an unregistered Trade Union. The management will be bound to recognize any trade union which has enrolled a majority of its employees as its member. A union whether registered or unregistered commanding allegiance of a majority of the workmen has a better claim to negotiate with the employer on behalf of its workmen in preference to a that union which is registered but has minority of workmen. To accept a principle other than this would, in the opinion of the Madras High Court, give room for abuse and lead to inconvenient results. \(^{42}\)

Unregistered trade union cannot representatives members as per I.D. Act 1947 rather registered union is fully authorised to protect the interest of its members under I.D. Act, 1947. A worker/member of unregistered Trade Union can be represented by Regd. Trade Union provided there is an authorisation to represent in prescribed manner.

Forms of collective bargaining – The process of collective agreements normally takes one or the other of the forms, namely, negotiation, mediation and arbitration, voluntary or compulsory.

Negotiation is the process of setting the differences by face to face round table talks between the representatives of the employees and employers. In case of failure of the negotiating machinery to resolve the difference by mutual discussion and understand a third party intervention to secure settlement of labour disputes by way of mediation if often resorted to. The mediator functions not as a judge, but assists the parties in dispute to reach an agreement by persuading them to resume or continue their bargaining efforts. Arbitration is an act of setting labour dispute through a third party who is a neutral. The parties to a dispute may either agree amongst themselves to submit for settlement by a third person and abide by his award or a dispute might be submitted to arbitrator under the provisions of a statute. In the former case it is voluntary arbitration, in the later it would be compulsory arbitration. In case of voluntary arbitration the selection of arbitrator entirely rests with the parties.

\(^{41}\) *Ibid.*
\(^{42}\) *Ibid.*
to the dispute. A ward is to be obeyed by both parties compulsory and can be enforced by the Court.

Essential conditions for collective bargaining – Following are the conditions:

(1). Right to organise – The success of collective bargaining in any country depends upon the right of the workers to organise themselves and bargain. Workers and employers organisation should be free and strong and must also be relatively equal in strength.

If the above two freedoms are not enjoyed by workers effectively or they are restricted the success of collective bargaining becomes doubtful.

(2) Stable and strong trade unions – The second essential and important condition is that the trade unions must be stable and strong. The more the organisations or unions or workers are strong the more effective role they will be able to play at the bargaining table. The more industrialised a country is, the more strong will be the trade union. In developing countries also the strength of trade unions widely varies. The unionisation of trade union in a country has an important impact on the growth and development of collective bargaining. Strong and stable trade unions help in the success of collective bargaining and weak union or union that suffers from intra union rivalries hinder the progress of collective bargaining because they do not find themselves in a position to take a firm stand on the talking table. For example, in our own country (i.e. India) which too is a developing country where right to form associations has been admitted as fundamental rights under Constitution of India, proliferation of small organisations is clearly visible which is evident from the fact that at the end of 1983 there were more than 38000 registered trade unions. The multiplicity of small trade unions not only hinders proper growth of collective bargaining but creates many other problems as well for the employers and the state.

(3) recognition of Trade unions – Unless the trade union is recognised by employers, the union will face lot of problem before going to negotiating table with the employer. If the employer refuses to recognise the worker’s trade union the bargaining collectively will be useless.

Recognition, if it is left at the sweet will of the employer he may recognise or refuse to do so. In some countries a compulsory procedure of recognition is provided while in others it is voluntary. In some developing countries the
recognition is not voluntary and they have introduced a lengthy procedure for recognition.

Attitude of employers and trade unions – In addition to the above factors on which the success of collective bargaining depends on the positive or negative attitude of employer and employees. If they are rigid and non-compromising it may create problem for collective bargaining. On the contrary if parties are compromising and are ready to give and take, they may achieve at least something by collective bargaining. If the parties talk on the table with open mind and show willingness to understand and appreciate each other viewpoint that may result in some achievement for both the parties. If they do not look to the problem with this angle they can only put their viewpoints and arguments in their favour but that may lead to a good deal of discussion and argument between the parties but may not collectively achieve something fruitful.

Suitable framework – Collective bargaining can work smoothly only if there are established bodies and procedures for bargaining and other supporting measures such as official-labour management relations advisory service etc. In most of the developing countries either there are no such bodies or they are rudimentary. In the absence of above the problems to be discussed are so numerous that collective bargaining almost results in failure.

Therefore the most important thing for the success of collective bargaining is to set up well organised negotiating bodies. Such bodies are established in many developed and developing countries. But they vary in their form from country to country. Such rules of procedure or machineries can be established either by legislation or by mutual agreement of the parties.

Statutory and non-statutory bargaining – Collective bargaining in some countries is regulated by legislation while in some others it is voluntary depending on the initiative of the parties. Thus it is of two kinds. One where it is regulated by statute that is called statutory and it is non-statutory where is depends on the initiative of parties. In those countries where parties are required to negotiate under law it is called statutory bargaining. Thus, in some countries the law requires the parties, i.e. both parties must sit together to settle various disputed issue relating to terms of employment. for example U.S.A. Ethiopia, Philippine. U.K. and France, et.c. make it obligatory for parties to bargain in good faith. There are some other countries where
law does not directly require the parties to bargain but merely require that the parties must meet whenever necessary at the statutory intervals.

In case of those countries where statutes make it obligatory to negotiate non performance of the obligation invites penalty, such as in U.S.A. failure to carry obligation is treated as unfair labour practice. While in some other countries failure by the employer to negotiate is resolved through the usual procedure for settling labour disputes.

In case of non-statutory collective bargaining the parties are free to make their own arrangement for collective bargaining. They are free to decide the period for which the agreement shall remain in operation. In India parties were required to recognise a union under the Code of Discipline in Industry. But now the Indian Trade Union Act prescribe the procedure for recognition and registration of Trade Unions

In non-statutory collective bargaining there may be three types of possible situations. (i) Parties may mutually agree to follow the collective bargaining for resolving their differences; (ii). Secondly the Government may prescribe a code or other similar device requiring parties to settle their difference by mutual negotiation. This is voluntary in nature; and (iii) Thirdly a consensus might have merged to follow collective bargaining in the tripartite bodies working at the national level.

Whether it is done by legislation or is voluntary, the main idea behind it is to create an institutional framework under which collective bargaining could function smoothly and effectively.

**Purposes of collective bargaining** – Collective bargaining serves two purposes: namely (i) as a means of regulating wages and conditions regarding employment; and (ii) also regulating labour management relations.

(i) In the beginning collective bargaining was used only to wages and some other issues but development of trade unions gradually it covered matters relating to hours of work, bonus, cost of living allowance, annual leave, better working conditions etc. It is mainly noticeable in industrially developed countries. Collective agreements have also been concluded in socialist countries and in some developing countries.

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Now in addition to wages and hours of work it has become a forum for discussing matters such as job security, vocational training, retirement benefits and unemployment insurance, improvement of productivity and criteria and procedure for dismissals.

Besides the matters to be raised by trade unions and the order of priority to those matters would be changing with changing economic conditions and the expectations of the working class. This kind of change is already evident in many developed countries. In these countries the emphasis is on better working environment, elimination of health hazards and lessening of accident risks and many such other problems that may arise with the changing society.

(ii) As a means of regulating labour management relations: The second object of collective bargaining is regulation of labour-management relations. Although initially it was not the object of collective bargaining but gradually with the change in outlook collective bargaining is now used as an important method for regulating labour-management relations. Although this kind of phenomenon has been more apparent during post World War period but it has started showing its signs even before the Second World War under the title of basic agreements in some European countries, like Sweden, Norway and Denmark. After 1972 the trend in many developing countries like India, Kenya, Fiji, Malaysia etc. has been to adopt Labour Relations Charter or Industrial relations code of practice on either bipartite or tripartite basis. These documents reflect the will of the parties to settle their problems as far as possible amicably by mutual dialogue. This lessens the chances of occurrence of strikes, holiday of lock-outs and establishes a mutual understanding of problems and the readiness to work and live peacefully. The Code of Discipline in Industry in our own country shows determination of both the labour force and the management to settle their problems mutually and amicably. This is all due to the growing interest all over the world in participation of decision making process. Thus participation of both the labour and management in decision making shows that those concerned shall be informed and consulted. In this process they also endorse the decision taken.

2.4 Economic-Security and Industrial Relations

In reality, economic factor is always important in affecting the situation in either way. Industrial relations get disturbed whenever the wages are not given proper to the employees. It is seen frequently that due to improper wages,
strikes processions are seen on roads. Therefore these in direct relation of economic factors with industrial relations. If the employee feel insecure about his wages, his attention will remain permanently on wages hence he will not be sincere to his duties and he will be willing to raise voice against the management.

Therefore for maintaining the feeling of security in the minds of employees, The Minimum Wages Act, 1948 was passed which tells the employer that how much amount of wage is to be given to his employee as minimum and simultaneous make aware the employee his right of minimum wages so that he can seek justice from the Court if in case a lessor amount is given to him. The act was passed with the view that the general public may get knowledge that an employee should get wage atleast at minimum scale. At no pretence the employer can not escape from his duty to pay such wage. In fact this Act has created a revolutionary change in the industrial area where employees were regularly exploited since centuries. Thus exploitation was prohibited. Yet the Act is applied on the employments which are indicated in the schedule of the Act. Although Appropriate Govt. can apply the Act on other employment also.

The Schedule appended with the Act has two parts viz. part I and part II. Part I contains the employments as under-

1. Making of woollen carpet and where shawl weaving work is done in an industry.
2. Where rice mill is running, where floor mill is running and lastly where dal mill is working.
3. Where manufacturing the tobacco material such as bidi etc.
4. Plantation works such as growing the following items such as tea, rubber, cinchona and coffee.
5. Where oil mill is working.
6. Under local authority, all employment are governed by the Act.
7. Where either construction of building, in going or work of maintenance is going on or where.
8. Where stone braking or where stone crushing is undertaken in any establishment.
9. Manufacturing of lac in undertaken.
10. Where mica work in carried on, the Act is applied.
11. Where public motor transport is carried on. The Act is very useful in this employment. There was need of the Act in this type of employment.

12. Where tanneries is carried on and manufacturing of leather is undertaken.

There are few employments which have been covered under Part II. First in the agriculture sector that mean any type of farming is the subject matter of the Act. For instance cultivation and where tillage of the soil is done. In addition to it dairy farming is also included in it. In agriculture and horticulture commodity where harvesting, growing or cultivation work is done. Where live-stock is raised such employment and any other practice where production of bees and poultry is performed. Where forestry or where timbering operations are undertaken. In addition to these employments, where delivery to storage is given including marketing of farm products.

Another significant Act was also passed to provide economic security to the employees i.e. the Payment of Wages Act, 1936. As per the Act, the purpose was to secure the payment of the actual wages accrued from the employer. There was apparent exploitation about payment of the wages prevailing. Therefore this Act was for enacted to nab the abuse. The Act was to secure the actual amount of wage due towards the employer. The employers were used to take many pretences such as decrease in production or sale or increase in price of raw material. Sometimes various losses are told to the employees and ultimately less amount of wages were given to the employees. Yet after passing of this Act the exploitation has been controlled but still the exploitation is continue in any form. The malpractice is still going on but in a controlled situation. There are establishment where labour officers and inspectors conspired to do this malpractice on the part of the employer.

This Act is applicable on all factories. The ‘factory’ has been defined under the Factory Act 1948 as under-

(i) When minimum 10 persons are working in a factory and under common roof ginning and saw mill is working provided the work is done by locomotive power.

(ii) Any establishment where working or finishing work of any thing (Article) is carried on including sale thereof.

(iii) Where process of manufacturing is going on for instances godowns, machine rooms, sheds or yards.

(iv) A railway workshop.
Where ground nuts are dried at yard.

Another such Act is The Payment of Bonus Act 1965. The Act has the purpose to give the employees some additional amount more than the wage in the name of the Bonus. In fact bonus is given when a factory or establishment earns a profit in its business and the employees are in a sense given the incentive in token of the profit. There is a set criteria of fixing rate of bonus to be given to the employees.

Another such Act is the Payment of Gratuity Act, 1972. The purpose of the Act is to give reward to the sincere, honest and unblemished employee at his retirement. In another words, some specific period is necessary to be served by the employee. Really the Act is a law of welfare and economic security given to the employees. An employee is realised that by giving a decent service, he will not only get wage rather at retirement he will be rewarded for the service. As per provisions of the Act, service of 5 years atleast is needed to be awarded gratuity. It is immaterial that the service might have been discharged prior to the passing of the Act or after enactment of the Act.

THE MINIMUM WAGES ACT, 1948

It brought significant changes in the life of the employees by providing the minimum wage, so that employee may not be exploited by the employer.

The salient features of the Act are:

- It is applicable throughout India.
- Yet the Act is applied on the employments which are indicated in the Schedule. Appended with the Act. Yet the appropriate Govt. may apply the Act on other employment also.
- The Act is not applicable on the teachers serving in Private Educational Institution.

In Regional labour Commissioner, Bangalore and others v. T.K. Varkey and Co. and another some workers were employed by the contractor in construction of staff quarters for railways. The workers were given the rate of minimum wages as permitted by the State Government, whereas the Labour

Enforcement Officer’s view was that they should have been paid the rates mentioned by the Central Government. If difference is there in 2 rates was made which has been

contested. It was held that the place where the employment is carried on and for whose benefit the employment is carried on and under whose control the work connected with the employment is carried on are the deciding factors in finding out which is the appropriate Govt. In the instant case, the employment has taken place in the place belonging to the Railways and the employment or the work carried on was to construct staff residences for the benefit of the Railways.

A managing agent is an employer. Private engineering contractor engaged on Government contract or work is an employer of the drivers of the lorries which are hired out to him with drivers at agreed rates.

In Robert Toppo v. State of Jharkhand and others, the petitioner is the Principal of the School in which a hall was being constructed and the labourers were working in that constructed work. On the report of the Labour Enforcement Officer the order was passed to pay minimum wages to labourers. It was contended by the petitioner that labourers were guardians of some students and they were helping the school by “Sramdan” (donation of labour), therefore the school was not their employer. It was also contended that the order under section 20(2) was bad as no witnesses were examined.

The H.C. held that the petitioner is employer under the Act of 1948, engaging workers in a scheduled employment. The orders were also not bad for non-examination of witnesses as there was no mandate for such examination under the Act or the Rules. However, the penalty of 5 times was reduced to 3 times in the circumstances of the case.

The following are scheduled employment as provided in the Schedule. The schedule is divided in two parts.

The mica mines was filed. The question was whether workmen working in mine were working in scheduled employment.

It was held that in Schedule item no. 10 of part 1 belong to employment in any ‘mica works’ are different, it would not be reasonable to read ‘mica mines’ in the expression ‘mica works’. Thus ‘mica mines’ is not included in the schedule and as the inclusion of an employment in the schedule is a condition precedent for issuing any notification by the appropriate Government the notification fixing minimum wages is ultra virus.

46 (2003) III L.L.J. 810 (Jhar.)
In Ahmedabad Panjrapole Sanstha v. Miscellaneous Mazdoor Sabha and other, the petitioner Sanstha is engaged in the activity of taking care for sick and lame cattle and the maintain them. The Sanstha has other objects such as raising of cattle improving the breed, caring for the cattle, to run a dairy farm in order to supply good milk and ghee in the interest of public and to grow grass to cut it or have it cut and to buy or sell the same. It has lands in different villages and it earns rental and other income and also agricultural income besides income earned by sale of wood, wool, manure etc. it has its branch at Vastrapur where cattle are put for treatment. It was decided that considering the activities of the Panjrapole Sanstha, it is a ‘commercial establishment’ attracting minimum Wages Act. The Vastrapur branch of Sanstha is not a separate establishment and the fact that the other branches have not demanded minimum wage will not affect the right of the workmen.

In Prema Sahyog v. Authority Under Minimum Wages Act and others, on receiving a complaint refusal to give wages, the Authorities under Act, 1948 directed the payment of eight times of wages as compensation. The Apex Court decided that the amount of compensation was too more and hence it was reduced to equivalent of wages awarded to the workman.

In management of Ram Krishna Pharmaceutical, Hyderabad v. State Authority under Minimum Wages Act, 1948 and Joint Commissioner of Labour, A.P. Hyderabad and another, a G.O. was issued fixing basic wages and the first respondent directed the petitioner to deposit certain amount towards the difference in minimum wages payable under the G.O. and actual wages being paid by the management. The petitioner company impugned the order of the Authority directing it to deposit the difference in minimum wages payable under G.O. and the actual wages paid. The High Court quashing the impugned order observed that the petitioner and the second respondent (employees) had come to settlement and as the total pay packet thereunder was higher in comparison minimum wages directed as per G.O., the impugned order could not be sustained. It was not open to the second respondent employees to separate one component, namely, minimum basic wage and contend that the basic wages are less than the wages prescribed under the G.O.

(II) THE PAYMENT OF WAGES ACT, 1936

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47 (1987) II L.L.J. 291 (Guj.)
49 (2002) II L.L.J. 1075 (A.P.)
**Introduction** – The Act was passed because at that time the wages were not given or less amount were given by the employer in the pretence of default of absence, non-payment of loan or by not showing the profit in the industry, establishment. There malpractices were prevalent around the world. The Act was enacted in India to remove the malpractices.

In Baboo Husain v. N.P. Nopany, the petitioner was employed as boiler attendant and he had to keep himself available during all the three shifts. It was held that when a serious responsibility is cast on the employee and he has by and large, to remain on or about the premises of the employer throughout and make himself available to meet the demands which can or may arise the employee cannot properly attend to any of his private work or leave the premises or consider himself free to do what he likes as if he were off duty. Such an employee would be considered as being on duty even if he may not actually be working.

In K.L. Garg v. New India Assurance Co. Ltd. And others the petitioner an employee of the New India Assurance Co. Ltd. was dismissed from service. He instituted an application as per 15(2) (Payment of Wages Act) for the recovery of Rs. 1350/- as an ex gratia in lieu of bonus along with interest amounting to Rs. 1267/- i.e. a total of Rs. 2617/-. He also claimed compensation at ten times the wages. The wages deducted i.e., a sum of Rs. 2617.

It was held in S.R.T. Corporation v. Industrial Court that anything agreed to be paid in kind in the circumstances contemplated by the definition of wages is covered by the expression means money but as required by Section 6, it has to be converted into money according to its value and then paid in coins or currency notes. If this course is adopted there would be no contravention of Section 6 and Section 23 would not apply unless the contract or agreement expressly forbids such conversion into cash.

**Absence from duty (Deductions) –** Deduction an account of absence from duty is allowed as per Section 7(2) clause (6).

In the Bank of India, Bombay and anothers v. T.S. Kelawala Bombay and others, the Bank employees demanded wage revision and pending acceptance of demand decided to go on 4 hours strike daily, Bank issue a circular deducting wages

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50 (1979) I L.L.J. 103 (Guj.)
52 AIR 1971 MP 54.
of one day of employees on strike. It was held that strikes and demonstrations are legitimate forms of protest and they are not banned in this country. By an administrative circular the legitimate strike is not illegal work.

It was further held that payment of Wages Act is regulatory. Section 7 & 9 of the Act provides the circumstances under which and the extent to which deduction can be made. It is only when the employer has right to make deduction, resort should be had to the Act to ascertain the extent to which the deduction can be made. No deduction exceeding the limit provided by the Act is permissible even if the contract so provides. There cannot be any contract contrary to or in terms wider than the import of Sections 7 and 9 of the Act. Therefore wage deduction cannot be made (See Sec. 7(2) of the Act) if there is no such power to the employer under the terms of contract.

In Surendranathan Nair and others v. Senior Divisional Personal Officer (Rlys.) some of the railway employees had applied for casual leave for participating in an agitation against the Railway Administration. The management deducted the wages treating the period of leave applied for as absence from duty. It was held that the leave rules to the railway employees are contained in the Railway Establishment Code and the rules made thereunder. The code derives its authority under the delegated power (See Art. 309). These rules are applicable on non gazetted Railway servants. Refusal of leave under such circumstances was legal and proper. Absence from duty, especially for the purpose of participation in an agitation against the management is unauthorized. An unauthorized absentee has no right to compel payment of wages for the period of unauthorized absence.

In Mineral Miner’s Union v. Kudremukh Iron Ore Co. Ltd. it was held by H.C. of Karnataka that deduction of wages for the strike period is justified provided strike was illegal.

Section 115-A was introduced in October 1976. Therefore, prior to that date the Corporation had no power to call upon the employer to deduct professional tax.

In Baldeo Pandey v. Presiding Officer and another, the petitioner was in the service of respondent No. 2, Tata Iron and Steel Co. Ltd. (TISCO) and his

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service was dismissed on account of sentence in criminal case. Later on he was acquitted of the charges by the High Court. He then made a demand and raised industrial dispute with the prayer of reinstatement along with full backwages, which was allowed by Labour Court. He was reinstated but was not paid consequential benefits including arrears of salary. The petitioner then made claim application which was also allowed under payment of wages Act. For these claims the Act which was opposed by respondent TISCO. The applications were ultimately disposed of by the Labour Court whereby certain claims were allowed while others were rejected. Hence, the petitioner filed this writ petition.

The plea of res Judicata was taken by respondent. Rejecting this contention the High Court observed that the Act of 1936 concerns with deducted or delayed wages only and Labour Court has not entertained other claims which were not covered by this Act. Hence the claim for other benefits under the Industrial Disputes Act is not barred by res judicata.

It was further observed that it was surprising as to how the Labour Court without evidence decided that the petitioner would have incurred medical expenditure and allowed the same. Therefore, the award of medical benefit was set aside and the findings of Labour Court in respect of other benefits were affirmed.

(III) THE PAYMENT OF BONUS ACT, 1965

Introduction – This is the Act which provides economic sport to the workmen more than their wages. The Act is really an attempt to give feelings to the workmen that profit in this factory has concern with the workmen in the form of right to get bonus.

The present Act is the result of Tripartite Commission’s recommended actions. The Commission was to apply its mind on question of payment of bonus. The recommendation of the Commission was received by the Government on January 24, 1964. On September 2, 1964 the Government implemented the recommendations, subject to some modifications.

The prime purpose of the Act is give payment of bonus and related matter.

57 (2003) II L.L.J. 309 (Jhar.)
58 Ibid.
59 The ords o the asis of profits or o the asis of produ tio or produ tiy appeari g i the long title or prea le of the A t of 1 after the ord esta lish e t a d efore the ord a d have been omitted by an amendment (Act No. 43 of 1977) in 1977.
Planning of the Act is 4 dimensional:\(^{60}\)

**Definition of ‘Factory’ will be taken as provided in the Factories Act,**

1948 has been made applicable to this Act also. **‘Establishment’ has also not been** defined under the Act. Establishment means the place in which one is personally fixed for business with necessary equipment, may be or business place. Later on if strength is reduced in number of employees would not make the Act inapplicable to an establishment.

In Maharashtra Veej Mandal Kamgar Sangh v. Maharashtra State Electricity Board and others,\(^ {61}\) it was held that Income Tax Officer is the competent authority to determine the correct amount of depreciation allowable as per Income Tax Act but under right to appeal or revision from his order. Therefore when correctness of orders if not challenged that the correct amount of depreciation is other than that allowed by the I.T.O., one fails to see why that amount should not be regarded as correct. Therefore the Tribunal would be correct in accepting the amount of depreciation allowed by ITO in calculating the allowable surplus under the Payment of Bonus Act.

In Corporation Employees, Co-operative Bank Ltd. V. Co-operative Bank employees Union,\(^ {62}\) a co-operative society was carrying on banking business. Section 2(8) defines a banking company as including any Co-operative Bank Item 2 Schedule III applied to an employer which is a banking company and item 4 applied to an employer which is a co-operative society. In this case co-operative bank being a banking company item 2 of Schedule III is specifically applicable and not the mere general category of co-operative society specified in item 4.

In UCO Bank Employees Association, Madras v. Union of India and others,\(^ {63}\) due to change in ceiling limit of salary/or wage for purpose of bonus certain employees who were earlier getting bonus became ineligible for bonus. Some employees who were earlier eligible for bonus had become ineligible after enhancement or ceiling limit of wages. The High Court decided that State has final authority in economic matters.

Interest paid by one office of the company to its another office on advances received from that office has to be disallowed in calculating gross profit of

\(^{60}\) Jalan Trading Co. v. mill Mazdoor Sabha, AIR 1967 SC 691.
\(^{63}\) (2003) I L.L.J. 20 (Mad.)
the office even if such expenditure is accepted as a proper expenditure by auditors. Presumption under Section 23 of the Act is not available to justify such deduction.

An adjudication and an award for bonus be decided as per periphery of the Act. After ascertaining the gross profits it is duty of the Tribunal to work out the available allocable surplus as per sections of the Act. The assessment of the amount of gross profits should not be a gross work but must be based on relevant materials.

(IV) THE PAYMENT OF GRATUITY ACT, 1972

Introductions – The Act is with welfare object as it provides a economic reward in lieu of rendering of service with no blemish. This reward is given to a retired workman in the form of gratuity which will help a workman in his future life.

Thus it is clear from the above provisions that the Act covers organised sector relating to industry and commerce. In relation to its application to shop or establishment, in view of clause (b) of Section 1(3) it applies establishment or shop. It has been held in B.N. Sarda (Pvt.) Ltd. V. Kishan K. Borade, that there is no justification whatsoever to qualify the words any law by introducing a qualification that the law should be either a Central Law or a State Law.

In Head Mistress (Mrs. P.D’Souza), Fatima Devi English High School and 2 others v. Smt. Nymphia Pereira and 2 others, the three respondent teachers of the petitioner school having put in more than 34 years of service superannuated on different dates. They claimed payment of gratuity and on failure of the petitioner to pay they approached next controlling authority. It appears that the controlling authority computed the gratuity amount of each of the three on the basis of circular of the Bombay Municipal Corporation. But the teachers claimed entitlement under the Act and were not satisfied by the order of controlling authority and hence they appealed before the appellant authority. They contended that the Act of Payment of Gratuity will prevail upon the circular issued by the Bombay Municipal Corporation for their entitlement. The appellate authority computed and directed the petitioner to pay gratuity according to the Payment of Gratuity Act with 10% interest on the amount payable. Hence this petition by the employer.

65 S.B. Stores V. Industrial Tribunal II. U.P. AIR 1972 SC 1902.
66 1981 Lab IC 911.
67 (2003) I L.L.J. 619 (Bom.)
The High Court held that as per notification circulated under S.I. (3) (c) of the Acts the Act covers educational institutions. Therefore the petitioners cannot escape from the applicability of the Act and they cannot avoid the liability to pay gratuity to their teachers under the Act. It has been statutorily declared by the Legislature that teacher is an employee and so he has certainly a right of gratuity.

In Dorab Pirojsha Siganporia v. The President and Appellate Authority of Industrial Tribunal, Bombay, 68 the question for determination was whether a firm of solicitors is a commercial establishment for the applicability of the Act. In this case a firm of solicitor was dissolved in August 1977 and the staff employed was taken over by a new firm. The staff taken by the new firm claimed gratuity. Following the ratio in the case of R.S. Deshpande and another v. Municipal Corporation of Greater Bombay, 69 it was held that the office of an advocate is not a commercial establishment. The definition of commercial establishment as per the Amending Act No. 64 of 1977 was already been struck down in the case of Narendra Kesharichand Faladi and another v. State of Maharashtra, 70 is so far as the amendment related to establishment of legal practitioners. Therefore, the pre-amendment definition has to be applied and the same does not include an advocate or solicitor’s office. When the staff of a firm is taken over consequent upon the dissolution of the earlier firm and employees are continued by the new firm only the management has changed without affecting the terms and condition of service of employees. Consequently the Payment of Gratuity Act has no application to such office.

It was held in Unni Mannu Haji v. State of Kerala, 71 that the Payment of Gratuity is applicable where there is shops and establishment having 10 or more persons as employers. The State Act with respect to gratuity applies only to such establishments excluded by the Act of Central. Also held that one year service as pre condition for gratuity is not illegal.

In Chairman, Governing Body SMVM Polytechnic, Tanuku (W.G. Dt.) v. Govt. of Andhra Pradesh & others, 72 the question for consideration was whether a physical Director of Polytechnic is eligible to claim gratuity under the Act. It was held that unless an educational institute is not a commercial establishment.

68 (1986) II L.L.J. 501 (Bom.)
69 (1975) II L.L.J. 45
70 (1985) II L.L.J. 24
71 (1989) II L.L.J. 493 (kerala)
72 (1989) II L.L.J. 95 (AP).
In Bharat Pump and Compressors Ltd. V. Regional Labour Commissioner (Central) and others, the respondent No. 3 was an employee of Bharat Pump and Compressors Ltd. Naini, Allahabad. The services of the respondent workman was terminated on May 24, 1986. He preferred an appeal before Managing Director but he was dismissed on April 4, 1987. Later on taking a humanitarian approach corporation gave re-employment to the respondent. Later on he made an application for payment of gratuity to the State authority which was objected by the employer on the ground that the petitioner corporation was wholly owned by the Central Government and only Central authority was legally authorised for passing the order of payment of gratuity. Later on the respondent employee approached the Central Authority which ordered payment of Gratuity. The petitioner company challenged the order of Central Authority to pay gratuity to its employee. The High Court did not agree with the petitioner that the third respondent employee having earlier invoked the State authority could not approach the Central Authority. Hence the Central Authority being the competent authority its order could not be challenged.

In Anand Bazar Patrika (P) Ltd. V. Their Workmen, it has been held if mainly discharge of duty was of clerical nature, cannot be considered of supervisory nature merely on account of incidentally discharged duty of supervisory nature.

Similarly, in Eastern Motors Pvt. Ltd. V. State of Assam, an employee who was doing mainly clerical work such as typing, keeping of accounts, correspondence and was also doing some managerial work such as operating bank account and taking legal actions against defaulter was held an employee as per Section 2(e) because managerial work was only incidental as against his substantive clerical work.

In United India Insurance Co. V. H.K. Khatau & others, it was held that the field workers of General Insurance Co. are employee under the Act. These field workers were performing the manual work and the clerical work for the Insurance Company. They were held entitled for the benefit of the Act. It is wrong assumption that the scheme for payment of gratuity which provides for payment to other three categories of employees on the development side deliberately intended to

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73 (2003) II L.L.J. 732 (All.)
74 1969 (18) FLR 186 (SC).
75 1981 Lab IC 230 (Gauhati).
exclude workers at the bottom from the advantage of gratuity. Even a trainee was declared a employee under the Act.

In Satyawati Malhota v. The State Warehousing Corporation, Haryana & another, 77 an employee with managerial function drawing more than Rs. 1000/- as salary died on December 16, 1982 after rendering 18 years service. His widow claimed gratuity. Verdict was the demand of gratuity has to be decided in accordance with law prevalent as on the date of death and subsequent amendment made in 1984 will not be applicable. Since the employee was not covered by the definition of employee as it existed when he demised then his widow is also debarred for the claim of gratuity.

In Duncan Agro Industries Limited v. Subanna B., 78 the question involved for determination was whether the workmen come claim gratuity for the period of service rendered before implementation of this Act. It was held that gratuity is payable to an employee who has given not less than five years as continuous service and continuous service in view of provision of Section 2(c) which defines ‘continuous service’ as service which might have discharged before the commencement of the Act or such service might have been performed after the commencement of this Act. There is no difference. Only point is to be seen is whether such employee has continuously discharged 5 years of his service, if yes then he/she is entitled for gratuity.

2.5 Welfare of Child, Woman and Industrial Relations

In factories, not only adults do work rather woman and children also do work. The situation had been worst where woman and children were working in the factories. There was no human approach towards women and children rather the factory owners preferred to keep then on employment because they were to be treated in the way the employer liked. Very low wages were given on the basis that the woman does not work equal of the man. Also the children were given very low wages by saying that children does not work even half of the work as the adult employee does.

As the women were in need of some special treatment being women but no special treatment was given and children were also in need of some special treatment but the situation was the same. Even the pregnant employee was not given

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78 (1984) I.L.L.J. 96 (AP)
due rights and privileges, no leave rather their services were suspended or discharged when she was unable to come on duty due to pregnancy or delivery.

Keeping in view all the above malpractices by the employers, some social welfare Acts were passed which are necessary here to discuss. In violation of the Acts, the industrial relations between employer and employees come on stake. The first Act is the Factories Act 1948, which provided some welfare provisions such as there should be fencing around the dangerous machines so that an employee may not be victim and particularly women and children may be protected. Secondly, the woman and young person is prohibited to clean, adjust or lubricate the moving machine.

As regards work by young persons on dangerous machines, the Act says that necessary instructions be given to the young person, in addition to it the young persons must do work under some adult employee and if feel necessary training should also be given to them.

A chamber where fume, gas, dust or vapours are emerged, the entry is prohibited unless required manholes are erected. Labour Inspector can send a notice to such employer whose factory is in dangerous condition where an incident can take place at any time due to depleted condition of building or the machinery so that such employer can take necessary step to save any undesired incident in the factory.

Washing facility for male, female employees be provided. Where atleast 250 employees are working a facility of canteen should be provided. Suitable rooms be provided for woman having little children and also be equipped with light, ventilation. The little children of the woman be look after by the incharge of such place where little children are kept in a room.

As regards hours of working of adults, the Act says that not more then 48 hours the employer can not take work from an adult worker. If the employee wants work on working holidays then he shall have to take permission from the inspector first then he can take work from employees on weekly holidays, if the employer does not do so, he will be liable for penalty.

About young persons, the Act says that a young person below the age of 14 is prohibited to do work in a factory. After attaining 14 years a certificate of fitness is required from the surgeon, then he will be entitle to do the job. Such surgeon, after due inquiry about the nature of the proposed job, his age, health etc. the fitness certificate is issued which shell be valid for 12 months only. Once the
certificate issued can be cancelled by the surgeon on justifiable grounds. The surgeon takes fee from the employer in lieu of issuance of fitness certificate. After getting fitness certificate, the young person will be entitled to do work but for not more than 4½ hours day. There are some other limitations such as the young person will work in night hours and also cannot do work in two or more factories in a day. If the young person is a female, her working hours will be 8 AM to 7 PM.

About child labour, Indian Constitution also provides few provision for instance the State shell provide free education up to the child of 14 years. Yet in universal declaration of human rights, some welfare provisions about young person have been passed. In Indian Constitution part IV contains welfare provisions for young persons but part IV is not improvable. Under part III of the Constitution (i.e. fundamental Rights) the prohibition of traffic in human beings and forced labour has been given place. Also the Constitution authorise the State to make some special provisions for women and children under article 15 of equality i.e. some reservations can be created for these categories.

There is another welfare Act for the woman namely maternity benefit Act. As per this Act, during the last stage of pregnancy, miscarriage (voluntary or natural) and after delivery, she can not be deputed for work, rather leave will be provided to her. This provision is in welfare to babies, during the period (i.e. 6 weeks from her expected delivery) she can not be deputed on any hazardous or dangerous work. In addition to this Act, there is Equal Remuneration Act, 1976 which has the ideal of paying equal remuneration to a woman as is given to male employee. In other words principle of equality has to be followed by the employer. Really this Act has brought welfare of the women in terms of earnings. Now no employer can discriminate the women on the ground of sex. There is statutory compulsion on the employer to obey the law of equality in terms of remuneration. Yet it does not mean that just on the ground of female the unequal salary shall have to be given in every circumstance. If the qualification of a male employee is better then his colleague female then the male employee may be given better salary, irrespective of in fact that posts are same of male and female employees. The Act also provides scope of reservation for the employees of Scheduled Caste and Schedule Tribes. Even ex-servicemen and retrenched employees can be treated as independent classes while deciding the quantum of salary given to them.
THE FACTORIES ACT, 1948

Introduction – The Act is the result of many legislative developments, took place during reign of Britishers in pre independence Era. Service conditions were improved and ensured by this Act. This Act is a large legislative instrument covering many aspects of service conditions.

The Factories (Amendment) Act, 1954 – Ratification by India of International Labour Convention relating to prohibitory provisions of young persons in night hours. A new chapter filled as Annual leaves with wages was replaced in place of chapter VIII of the Act. A prohibition against employment of women and young persons during night has been enacted by this Act. No women or young person can be employed for cleaning, lubricating or adjusting running machinery of dangerous nature, if such work is likely to expose them to risk of injury.

It is a social enactment to achieve social reform.

A person, if he comes in the definition of worker, need not necessarily receive wages. Therefore, a person working on any manufacturing process in a factory is a worker even though he does not receive wages. The expression ‘whether for wages or not’ used in this sub-section means whether the person receives wages as remuneration for his service or such person is an apprentice learning work or is an honorary worker. Is was held in In re K.M.P. Kodar Moideen V. State,79 that a watchman will be a worker only if the duties actually discharged by him sufficiently show that he is employed in any kind of work. In a case, where ‘A’ was the owner of a ginning factory, certain men were engaged in putting the ginned cotton into bojhas.

These persons were engaged not by ‘A’ but by merchants who owned cotton, and their names were not shown in the attendance register of the factor owned by ‘A’. as the filling of the cotton into bojhas within the compound of the factory was a work.

The phrase ‘premises including precincts’ means ‘both there premises which are with precincts and those which are without precincts’. When a premise is a building it would include precincts also, but where premises are lands, they would not have precincts. Thus both buildings and lands are covered by the above expression. It

79 AIR 1953 Mad 406
was held in State of Bombay v. Ardeshir Hormosji Bhiwandiwala, that lands in which the process of manufacturing salt is carried on is a factory.

There was a slate quarry extending over a large open space of about 300 acres. The work was carried on in the open air, shed was the only building. In the quarry more than 50 persons were employed for splitting the rock into slates and shaping them for sale. It was held that the quarry was not a factory for, if it is an open space, it cannot constitute a factory.

Though the words ‘shall be securely fenced’ in clause (iv)(c) of Section 21(1) says that while the machine is working, there should be fencing compulsorily. When the statute says that occupier is duty bound to keep guard on working machine.

Where, therefore, the prosecution establishes the default of not fencing the dangerous part of a machine while in motion, the occupier or the manager has to show that he has done everything to carry out his duty to see that the guard was kept in position when the machine was working. The onus to prove that is on him because his defence depends on it. Where he simply pleads that he did not know who removed the guard provided for the machine he fails to discharge the onus on him and is liable under Section 92 of the Act for having failed to carry out the terms of Section 21(1)(iv)(c). totally the defence that some one has removed the fence is not a defence at all on the part of the employer.

Where the statute provides that the occupier shall have to depute guards on working machinery and when it appears that he has failed to do so, it will then be for him to establish that notwithstanding this he is not liable. Therefore, where the prosecution establishes the default of not fencing the dangerous part of machine while in motion the occupier or the manager has to show that he has done everything to carry out his duty to see that the guard was kept in position when the machine was working. The onus to prove this is on him because his defence depends on it. It was held in Caroll v. Andrew Barelay and Sons Ltd., that the duty under Section 21 is not only confined to shutting off the employee from danger, but includes shutting in the machinery so that it cannot fly out and strike the workman if it breaks.

SAFETY MEASURES

81 (1949-50) I FJR I.
Section 21 tells us about fencing of machinery as under-1. Prime mover and flywheel should be fenced.

2. Fencing should be to headrace and tailrace in case of waterwheel and water-turbine.
3. Fencing should be of stock bar in case of lathe.
4. Fencing should be to electric generator, rotary converter and a motor. 5. Transmission machinery be also fenced.
6. Any other dangerous part of a machinery.

State Govt. is also authorised to provide direction to the factories about safety measures to be adopted (S. 21(2)).

Safety measures when machinery is in motion (S.22)-

1. When lubrication is necessary or adjusting operation is to be effected, shipping of belts etc. This work will be done specially trained adult male employee will do the task and his name should be shown in the register.

2. This worker will handle the belt when it is 15 cm. in width (while in motion).
3. Belt joint should be laced or flushed with belt.

4. Reasonable clearness should be between fixed plant and pulley. 5. Operator be provided secure foothold and secure hand hold.

6. If ladder is necessary, it should be either fixed or hold by other person while working on a machine.

7. Woman and young person is prohibited to clean, adjust or lubricate the moving machine.

8. The appropriate Govt. may also pass any direction for safety of the workers.

9. Yet on dangerous machines, young person can be permitted to do the work but after giving them necessary instructions. If necessary, training should be given to them, also young person will work under active supervision of some adult worker.
Safety measures against dangerous fumes, gases etc. (S.36)-
Entry is prohibited to enter in a chamber where any fume, gas, dust, vapours are present unless sufficient manhole is available.

Safety Measures against dangerous building and machinery (S.40)
Inspector can issue a notice to occupier of such building or machinery to take necessary steps within given time against dangerous building or machinery for safety of workers.

It is assessed after focussing on various dimensional aspects of the chapter in hand that welfare of child, woman not only improve the progressive standard of the establishment rather, it is in the interest of humanity also. It in undoubtedly an admitted fact that since long time work is done by child as well as woman in industrial establishments, if their living conditions are secured and improved, the establishment will get better results and it will be a step in the welfare of children and female employees.

Ratification by India of International Labour Convention prohibiting young employees to work in night hours a new chapter was introduced as “Annual Leave with wages” in place of Chapter VIII of the Act. A prohibition against employment of women or young persons during night has been enacted by this Act. No women or young person can be employed for cleaning, lubricating or adjusting any transmission machinery or prime mover while they are working, if such work is likely to expose them to risk of injury.

In kumbakonam Milk Supply Co-operative Society represented by its Secretary v. Regional Director, ESI Corporation, Madras, it was held that preserving any article for instance milk amounts to factory.

A person, if he comes in the definition of worker, need not necessarily receive wages. Therefore, a person working on any manufacturing process in a factory is a worker even though he does not receive wages. The expression ‘whether for wages or not’ used in this sub-section means whether the person receives wages as remuneration for his service or such person is an apprentice learning work or is an honorary worker. Is was held in In re K.M.P. Kodar Moideen V. State, that a watchman will be a worker only if the duties actually discharged by him sufficiently show that he is employed in any kind of work. In a case, where ‘A’ was the owner of
a ginning factory, certain men were engaged in putting the ginned cotton into bojhas. These persons were engaged not by ‘A’ but by merchants who owned cotton, and their names were not shown in the attendance register of the factor owned by ‘A’. as the filling of the cotton into bojhas within the compound of the factory was a work.

**WELFARE**

Section 42 – Washing Facilities – The importance of washing facilities was emphasized by the Royal Commission in the following words: -

‘The provision of suitable washing facilities for all employees is desirable, and here many factories are deficient. We recommended that for workers engaged in dirty process, the provision for washing place and water should be made obligatory’.

Following are important welfare provisions to be followed by the employer-

1. Suitable washing facility be provided for workers.
2. Screened facility for both male and female employees should be given.
3. The such facility should be in very good condition.
4. State Govt. can issue direction for maintenance of above facilities.
5. Where 250 or more workers are working, a canteen facility be provided (S.46).

Welfare provision for children under 6 years of age-

1. Where more than 30 women are employed and are having children below the age of six years, provision of suitable rooms for such children.
2. These rooms shall have adequate light, ventilation and should be under the inchargeship of a woman trained in this respect to look after children.

It is true, where the staff canteen has to be provided in pursuance of this section it must be run on a no profit basis as prescribed by sub-rule (2) of Rule 85. But a contractor who conducts the canteen not out of any philanthropic considerations but for profit carries on a trade of keeping a catering establishment, for which he must obtain a licence, if provided under the relevant statute.
It was held by the Madras High Court in Elangovan M. and Others V. Madras Refineries Ltd., that the employees of a canteen run in compliance to statutory duty are workmen of the establishment running the canteen for object of Factories Act, 1948.

Section 48 – Crèches – The Royal Commission stressed upon the desirability of amenity of crèches as follows:

‘Crèches are not uncommon in factories employing women. In many of the factories employing women in substantial number, no crèches have been provided. As a result of their absence, infants are taken into the mills and found lying on sacking, in bobbin boxes and other unsuitable places, exposed to the noise and danger of moving machinery and a dust laden atmosphere.’

WORKING HOURS OF ADULTS

Section 51 – Weekly hours – Section 51 say that not more than 48 hours of work will be done by an adult worker. Section 51 does not prohibit requiring an employee working 42 hours a week to work 48 hours after a departmental transfer and he cannot claim overtime wages for those additional six hours. As per section 52 if the employer wants to give work to the employees on weekly holidays then he shall have to take permission from inspector of factories first. In breach of the above condition, both employer and manager will be liable for penalty as per section 52.

Young person and their employment (S.67-71) -

1. Those young persons having age below 14 will not be allowed to do work in a factor.
2. Even after completing 14 years a fitness certificate if needed by a surgeon.
3. Surgeon shall satisfy himself all the physical-mental capabilities, then will issue the certificate.
4. Surgeon will also know the place of working and the nature of work, then he/she will issue such certificate.
5. Such certificate, shall be valid for only 12 months.
6. Surgeon may re-examine such certificate before expiry of 12 months.

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82 (2005) II L.L.J. 653 (Mad.)
7. If surgeon feels the young person unfit for the job, he can cancel such certificate.
8. Surgeon shall have to write reasons of such cancellation.
9. Surgeon will recover his fee for certificate from the employer only.

Children’s working hours (S.71)

1. Should not exceed four and half an hour in a day.
2. No work should be taken in night.
3. A child cannot work in two factories in a day.
4. Female child will not be compelled to do work beyond the period i.e. 8 AM to 7 PM

(II). THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

Introduction – like other countries, India has also given due importance to childhood against exploitation and safety. There are many legislations covering many aspects of childhood e.g. child marriage restraints Act. Present Act provides protection to the child against any hazardous Act and unhealthy environment. Indian Constitution contain many provisions to this effect.

RIGHTS OF CHILD AND THE INDIAN CONSTITUTION-

It is true that at almost same period the Indian Constitution was drafted when universal declaration of Human Rights came into existence. Human Rights which are enforceable are existing in Part III of the Indian Constitution whereas which are not enforceable are placed in Part IV of the Indian Constitution up to the age of 14, the State is directed to provide free and compulsory education.

International standards regarding child labour have been prescribed by U.N. Covenants and Conventions and more detailed conventions have been adopted by the International Labour Organisation. Steps have been taken to implement these conventions in our country through various labour Acts of Parliament, Acts of State Legislatures, Regulations made in pursuance to the statutes and memoranda of guidance addressed to local authorities and public agencies.

(III) THE MATERNITY BENEFIT ACT, 1961
Introduction – The act is honour to woman workers along with ensures economic protection while pregnancy and after delivery of a baby, as the Act provides leaves and wages during and after pregnancy.

The Act’s really welfare Act which provides that the women employee

will continue to get wages when in her pre-delivery days and after delivery of baby. There are some valuable provisions under this Act for the safety and welfare of the woman affected under maternity period-

1. During 6 weeks of delivery or miscarriage of termination of pregnancy (medically), she cannot be deputed on her job.
2. During 6 weeks immediately leading to her expected delivery, following work will not be taken by her-
   i. Arduous nature work.
   ii. Standing position for long hours.
   iii. Which interferes in her pregnancy or affects adversely foetus.
   iv. She is entitled her normal wages up to 6 weeks from the date of delivery.
   v. But work should have been done by her 12 month in that factory before the date of such delivery, then she is entitled for the benefit of 6 weeks wages.
   vi. Laid off period, if any during 12 months will not be treated as absence.
   vii. Such women is entitled for benefit in total as 12 weeks wages. (viz. 6 weeks prior to delivery and 6 weeks after the delivery).
   viii. In case of death of a women during the above 12 weeks, her wage benefit will come to an end on that day. No wage on her behalf will be given to any other person.

(IV) THE EQUAL REMUNERATION ACT, 1976

Introduction – This Act gives equal honour to woman in comparison with men in context of the remuneration. Also, this Act advocates the fundamental right of equality while deciding the quantum of remuneration among workmen of equal cadre. The Act provides natural principle of equality in wages, the industrial
relation remain sweet if there is equality of remuneration otherwise there will be chaos and conflicts.

Equal pay for equal work principle is embodied in in the Directive Principles of State Policy. In a case\(^{83}\) it was held that especially when the different scale of pay have been fixed by Pay Commission or Pay Revision Committees, having persons as members who can be held to be experts in the field and after examining all the relevant material. Till the claimants satisfy on material produced, that they have not been treated as equals within the parameters of Article 14, Courts should be reluctant to issue any writ or direction to treat them equal, particularly, where a body of experts has found them not to be equal.

In State of M.P. & another v. Pramod Bhartiya and others,\(^{84}\) the respondents are lecturers working in High Secondary Schools in the State of Madhya Pradesh. Conditions of their service are governed by Madhya Pradesh Non-gazetted class-III Educational Service (Non-Collegiate Branch Service) Recruitment and Promotion Rules, 1973. In the State of Madhya Pradesh there is another set of schools called ‘Technical Schools’. These are also Higher Secondary Schools and in these lecturers. The conditions of service of lecturers in these schools are governed by M.P. Education Department (Technical) class III (Non-Ministerial) Recruitment Rules, 1980. It was held that when duties are not similar equal pay can not be granted. Though the Equal Remuneration Act, 1976 is mainly directed against discrimination against workmen and is not applicable to respondents or establishments to which they belong, yet relevance of the said definition cannot be denied.

Equal pay for equal work – In M.P. Rural Agriculture Extension Officers Association v. State of M.P. and Anothers,\(^{85}\) the appellant Association espoused the cause of Village Level workers who were later on designated as Rural Agriculture Extension Officers who were only matriculates. They complained that they were not given same salary as given to graduates under the rules. The Supreme Court observed that a policy decision had been adopted by the State that the post of Extension Officers should be filled up only by graduates. A different scale was provided by the State for the non-graduates with a view to avoid any discrimination between the new recruits and the serving employees who possessed the graduate

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qualification, the State granted a higher scale of pay also for the existing degree holders. In making such grant, the state could not be said to have acted illegally, the Supreme Court said.

In was held in Government of West Bengal v. Tarun K. Roy, 86 that the principle is in applicable when qualification of education and other considerations such as source of recruitment and nature of work done vary between two classes of employees, although nature of work done is the same.

In State of Punjab v. Talwinder Singh and others, 87 daily wagers claimed parity of pay scale with those on regular basis. The Supreme Court observed that the claim to the extent of granting minimum in regular pay scale only was valid.