



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

**SUPPLEMENT**  
**EXECUTIVE PROGRAMME**  
**(Syllabus 2022)**

*for*

*June, 2026 Examination*

*(Containing updates from 1<sup>st</sup> December, 2024 to  
30<sup>th</sup> November, 2025)*

**SETTING UP OF BUSINESS,  
INDUSTRIAL & LABOUR LAWS**

**GROUP 1**

**PAPER 3**

***Students appearing in Examination shall note the following:***

*Students appearing in June, 2026 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI, other related regulatory bodies & Central Government upto November, 2025.*

*The students are advised to acquaint themselves with the monthly and regulatory updates published by the Institute.*

*This supplement is to be read with the SBILL study material (Syllabus 2022) updated up to November, 2024.*

## INDEX

| S. No                                      | Lesson   | Page No. |
|--|--|----------|
| <b>PART I: SETTING UP OF BUSINESS</b>      |  |          |
| 1.   | <b>Lesson 2: Corporate Entities - Companies</b>  | 3        |
| 2.   | <b>Lesson 5: Micro, Small and Medium Enterprises</b>   | 4        |
| 3.   | <b>Lesson 13: Various Initial Registrations and Licenses</b>   | 5        |
| <b>PART II: INDUSTRIAL AND LABOUR LAWS</b> |  |          |
| 4.   | <b>Lesson 14: Constitution and Labour Laws</b>   | 6        |
| 5.   | <b>Lesson 15: Evaluation of Labour Legislation and Need of Labour Code</b>   | 21       |
| 6.   | <b>Lesson 16: The Occupational Safety, Health and Working Conditions Code, 2020</b>  | 36       |
| 7.   | <b>Lesson 17: The Industrial Relations Code, 2020</b>  | 60       |
| 8.   | <b>Lesson 18: Code on Wages, 2019</b>  | 110      |
| 9.   | <b>Lesson 19: Code on Social Security, 2020</b>  | 144      |
| 10.  | <b>Lesson 20: The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986</b>   | 225      |
| 11.  | <b>Lesson 21: Apprentices Act, 1961</b>  | 217      |
| 12.  | <b>Lesson 22: The Labour Laws (Simplification of Procedure for furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988</b> | 225      |
| 13.  | <b>Lesson 23: Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</b>  | 228      |
| 14.  | <b>Case laws</b>   | 245      |

## PART I: SETTING UP OF BUSINESS

### Lesson 2 - Corporate Entities - Companies

#### **1. The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2025. (MCA Notification No. G.S.R. 131(E) dated 12th February, 2025)**

MCA notified Companies (Prospectus and Allotment of Securities). Amendment Rules, 2025. As per the amendment, MCA has extended the mandatory DEMAT requirement for Private Companies till 30th June 2025. The extension shall not apply to following companies:

- Producer companies
- Small companies as on 2023 March 31.

*For details:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=uB9cbvrHAgY40CP98CDaNQ%253D%253D&type=open>

#### **2. Companies (Incorporation) Amendment Rules, 2025 (MCA notification G.S.R. 426(E) dated 27th June, 2025)**

In the Companies (Incorporation) Rules, 2014 e-Form INC-22A, shall be substituted with effect from 14th day of July, 2025.

This replaces the current Form INC-22A with a web-based form to simplify the compliance process and enhance the convenience of filing through digitization.

*For details:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=pQY4W5vscHXNU1fuJUyTfg%253D%253D&type=open>

## **Lesson 5 - Micro, Small and Medium Enterprises**

### **1. Ministry of Micro, Small and Medium Enterprises vide Notification No. S.O. 1376(E) dated 25th March, 2025**

In exercise of powers conferred by section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 and read with section 15 of the said Act, the Central Government hereby directs that all companies who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the said Act, shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

(a) the amounts of payments due; and

(b) the reasons of the delay

For details: [https://egazette.gov.in/\(S\(ddl4ri5cl2za5eqcj5dql3n\)\)/ViewPDF.aspx](https://egazette.gov.in/(S(ddl4ri5cl2za5eqcj5dql3n))/ViewPDF.aspx)

### **5. Ministry of Micro, Small and Medium Enterprises vide Notification No. S.O. 1364(E) dated 21st March, 2025**

#### **Revision of Definition of MSMEs**

- A micro enterprise, where the investment in Plant and Machinery or Equipment does not exceed two crore and fifty lakh rupees and turnover does not exceed ten crore rupees
- A small enterprise, where the investment in Plant and Machinery or Equipment does not exceed twenty-five crore rupees and turnover does not exceed one hundred crore rupees
- A medium enterprise, where the investment in Plant and Machinery or Equipment does not exceed one hundred and twenty-five crore rupees and turnover does not exceed five hundred crore rupees

For details: [https://egazette.gov.in/\(S\(ddl4ri5cl2za5eqcj5dql3n\)\)/ViewPDF.aspx](https://egazette.gov.in/(S(ddl4ri5cl2za5eqcj5dql3n))/ViewPDF.aspx)

## **Lesson 13 - Various Initial Registrations and Licenses**

### **1.Revision in Eligibility Criteria for Industrial Entrepreneurs Memorandum (IEM) Acknowledgement dated 1st April, 2025**

As per the Gazette Notification S.O. 1364(E) dated 21st March 2025, issued by Ministry of Micro, Small, and Medium Enterprises (MSME) the eligibility criteria for classification of MSMEs has been revised. This revision marks a significant step towards fostering industrial growth, encouraging higher investments, and strengthening India's position as a global manufacturing hub. In line with this notification, Department for Promotion of Industry and Internal Trade (DPIIT) has updated the eligibility criteria for issuance of Industrial Entrepreneur Memorandum (IEM) acknowledgment.

#### **Revised Eligibility Criteria for IEM**

W.e.f. 1st April, 2025, Enterprises meeting the following revised criteria shall be eligible for IEM acknowledgment:

- Investment in plant & machinery/equipment exceeding Rs.125 crore, or/and
- Annual turnover exceeding Rs.500 crore.

#### **IEM acknowledgment is for:**

- Large-scale industries operating in sectors not requiring compulsory industrial licensing under the Industries (Development & Regulation) Act, 1951.
- Companies having investment in plant and machinery, or/and annual turnover beyond the limits set for MSMEs.

For details: <https://www.dpiit.gov.in/static/uploads/2025/07/38d1fa621d059c5250c04280be3f0273.pdf>

## PART II: INDUSTRIAL AND LABOUR LAWS

### Lesson 14 - Constitution and Labour Laws

*Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.*

#### REGULATORY FRAMEWORK

- Constitution of India

#### INTRODUCTION

The Constitution of a country is the fundamental law of the land. It is under this fundamental law that all other laws are made and executed. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the Constitution and there is no authority, no department or branch of the State, which is above the Constitution or has been vested with unfettered and unrestricted powers by the Constitution.

The trinity of Indian Constitution, the Preamble, the Fundamental Rights and Directive Principles of the State Policy embody the fundamental principles which provide guide to all legislations including the labour legislations.

#### CONSTITUTIONAL BEARING ON INDUSTRIAL LAWS AND INDUSTRIAL RELATIONS

Industrial relations affect not merely the interest of labour and management, but also the social and economic goals to which the State is committed to materialise. Therefore, it develops within the province and function of the State to regulate these relations in society desirable channels.

The extent of State control or intervention is determined by the stage of economic development. In developed economy, work stoppages to settle claim may not have much impact, unlike in developing economy. Countries like the U.S. and England, etc. with advanced and free market economy only lay down bare rules for observance of employers and workers giving them freedom to settle their disputes. In the U.S., States intervention in industrial dispute is eliminated to actual or threatened workers' stoppages that may imperil the national economy, health or safety.

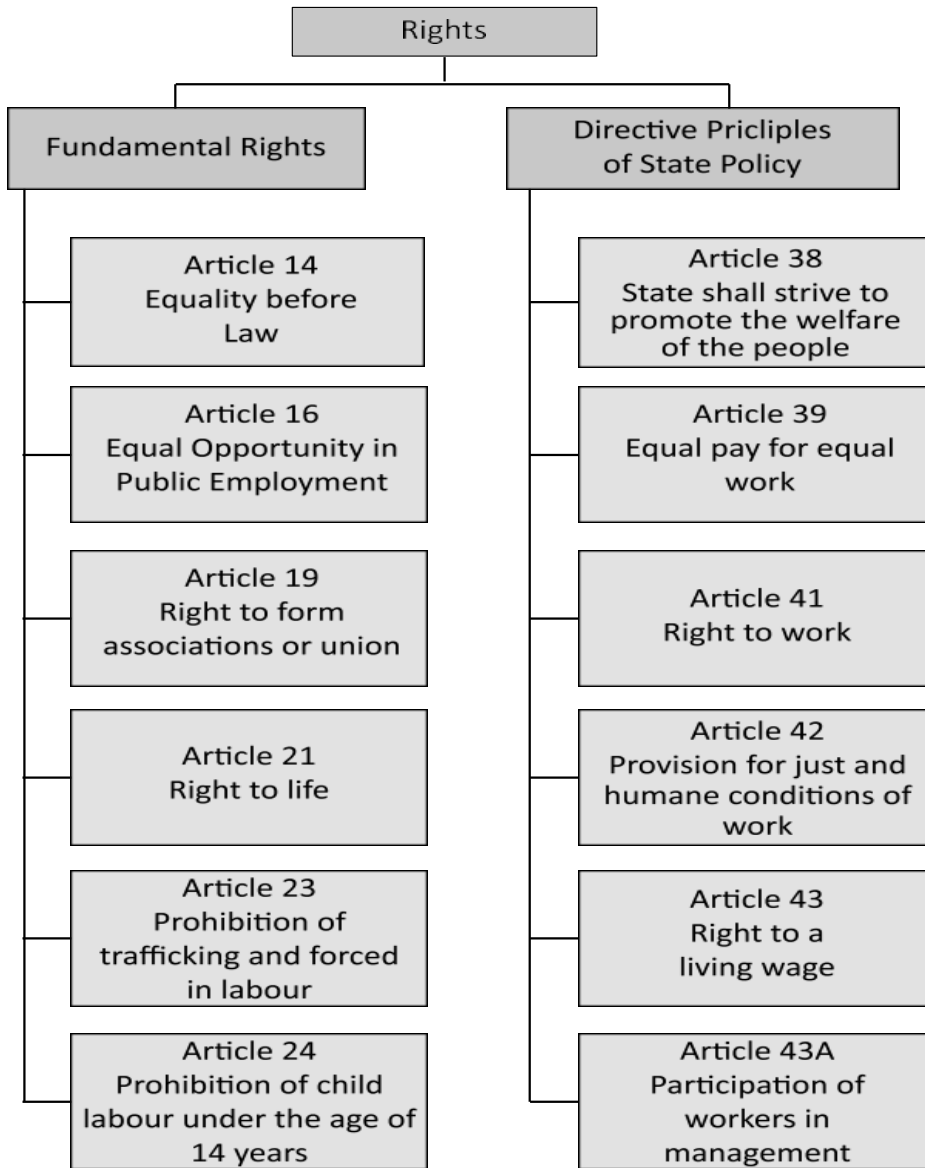
However, in developing economy, the States rules cover a wider area of relationship and there is equally greater supervision over the enforcement of these rules. This is emphatically so in developing countries with labour surplus. It is a concern of the state to achieve a reasonable growth rate in the economy and to ensure the equitable distribution thereof. This process becomes more complex in a country with democratic framework guaranteeing fundamental individual freedoms to its citizens. Hence, a state in a developing country concerns itself not only with the content of work rules but also with the framing of rules relating to industrial discipline, training, and employment and so on.

The founding fathers of democratic Constitution of India were fully aware about these implications while they laid emphasis to evolve a welfare state embodying federal arrangement. Entries about labour relations are represented in all the three lists in the Constitution. Yet most important ones come under the Concurrent list. These are industrial and labour disputes, trade unions and many aspect of social securities and welfare like employer's liability, employees' compensation, provident fund, old age pensions, maternity benefit, etc. Thus, the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, etc. come under the concurrent list. Some States have enacted separate amendment Acts to some of the above legislations to meet local needs. Such amendments are recommended either with the assent of the President of India or by promulgating rules pursuant to the powers delegated by the Central Act. Under the rule making powers delegated by the Centre, the States have often been able to adopt Central Act to local needs without the President's assent. The Central acts often delegate such powers. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective. Similarly, Section 29 and Section 30 of the Minimum Wages Act and Section 26 of the Payment of Wages Act delegated the rule making power to the State. In pursuance to this, several States have promulgated separate minimum wages rules and payment of wage rules. The Factories Act also contains similar provisions and they have been similarly availed of.

Further, the goals and values to be secured by labour legislation and workmen have been made clear in Part IV, Directive Principles of the State Policy of the Constitution. Thus, the State shall secure a social order for the promotion of welfare of the people and certain principles of policy should be followed by the State towards securing right to adequate means of livelihood, distribution of the material resources of the community to sub serve the common good, prevention of concentration of wealth via the economic system, equal pay for equal work for both men and women, health and strength of workers including men, women and children are not abused, participation of workers in management of industries, just and humane conditions of work and that childhood and youth are protected against exploitation against exploitation and against moral and material abandonment.

By and large industrial and labour legislations have been directed towards the implementation of these directives. Factories Act, 1948, ESI Act, 1948, Employees' Compensation Act, 1923/OSHC Code, 2020 are focused to the regulation of the employment of the women and children in factories, just and humane conditions of work, protection of health and compensation for injuries sustained during work. Minimum Wages Act, 1948 and the Payment of Wages Act, 1936/ Code on Wages, 2019 regulate wage payment. Payment of Bonus Act, 1965 seeks to bridge the gap between the minimum wage and the living wage. However, the directives relating to distribution of wealth, living wages, equal pay for equal work, public assistance, etc. have not been generally implemented as yet.

## Constitution and Labour



## **SOCIAL JUSTICE AND INDUSTRIAL LAWS**

The Preamble of the Constitution highlights the concept of socio-economic justice, being the main objectives of the State required by the Constitution. Article 38 of the Constitution provides the concept of social justice by providing that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, social order in which justice, social, economic and political shall inform all institutions of the national life. Further, Article 39 says that it shall be the duty of the state to apply certain principles of social justice in making laws.

“The concept social and economic justice is a living concept of revolutionary import, it gives sustenance to the rule of law, meaning and significance to the ideal of the welfare state.” (*Justice Gajendragadkar in the State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923*). In the economic sphere, social justice means opportunities in greater measure to the poor and the needy for the betterment of their social and economic conditions. “It does not mean making rich man poor in order to make poor men rich. It does not mean that all wealth should be shared equally provision of basic minimum to all in response to life and living facilities for promoting one’s own values and manner worth are the essential contents of social justice.” (*K.N. Bhattacharya, Indian Plans, A Generalist Approach, (1963) p. 97*). It is the responsibility of both the State and the citizens to work hand in hand for achieving social justice. “The State has constitutional responsibilities and the citizens have moral responsibility and the combination of the two types of responsibilities tend to create an ideal society worthy to live in”. (*Chakradhar Jha, ‘Judicial Review of Legislative Acts’ (1974), p. 254.*)

### **Industrial laws are socio-economic justice oriented**

The concept of social justice is so innate and demonstrated in the industrial laws of our country. As proclaimed in the Preamble of the Constitution and the Directive Principles of State Policy, the industrial jurisprudence of the country is founded on the basic idea of socio-economic equality and its aim is to assist the removal of socio- economic disparities and inequalities. The laws particularly the industrial laws of the country revolve on this basic philosophy of the Constitution.

The concept of social justice is though not limited to any particular branch of legislation although it is more prominent and conspicuous in industrial laws and relations. Its scope is comprehensive and is founded to the basic ideals of social economic equality and it aims at assisting the removal of social economic disparities and inequalities of birth and the competing claims especially between the employers and workers by finding a just, fair and equitable solution to their human relation problem, so that peace, harmony and collection of the highest order prevails among them which may further the growth and progress of nations. (*Mahesh Chandra, ‘Industrial Jurisprudence’ (1976), p. 47*)

### **Constitutional Limitations**

The goals and values proclaimed under Part IV of the Constitution are to be effectuated consistent with the fundamental rights enshrined in Part III of the Constitution. The socio-economic reconstruction should not give scope to eat away the existence and worth of man. The fundamental rights are envisaged with the overall object of protecting individual liberty and democratic principles based on equality of all members of society. The State in its ebullience to evolve and streamline socio-economic reforms is bound to respect the dignity and worth of the citizens. Without these fundamental rights, the values of life may be stifled and annihilated. Therefore, the State cannot make laws inconsistent with the fundamental

rights. Any law that contravenes fundamental rights will be void to the extent of inconsistency.

## CONSTITUTIONAL REMEDIES

The Constitution also envisages remedies for violation of fundamental rights. Article 32 and 226 of the Constitution confers writ jurisdiction on Supreme Court and High Courts respectively for enforcement and protection of fundamental rights of an individual. Article 32 is itself a fundamental right. Apart from the writ jurisdiction under Article 32, the Supreme Court is envisaged with discretionary jurisdiction to entertain appeal by special leave under Article 136 from decree, sentence, or order passed by any court or tribunal in India. High Courts are vested with writ jurisdiction under Article 226 and the power of superintendence over all courts and tribunals under Article 227. A person aggrieved by an award of the High Court can appeal to the Supreme Court under Article 132 if any constitutional question is involved or under Article 133 in civil appeal.

### **Can a Trade Union move the High Court under Article 226 to redress the fundamental rights of its members?**

This issue was discussed by the Rajasthan High Court in *Jaipur Division Irrigation Employees Union v. State of Rajasthan and others (1994) 111 JLR 26 Raj*. Here a large number of the employees of the irrigation department were declared surplus. The Union challenged it in this writ petition. The Single Bench held that the petition is not maintainable holding that the fundamental rights of the individual are not the rights of the union. On appeal, the Division Bench reversed it and sent back to the Single Bench for disposal of the writ petition in accordance with the merits of the case.

The traditional concept of *locus standi* underwent sweeping changes in the modern age of public action and public interest litigation. In the famous case of *S.P. Gupta and Ors. v. President of India and Ors. (AIR 1982 SC 149)* the question of locus standi was discussed and it was held that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantageous position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 of the Constitution of India or in the Supreme Court under Article 32 of the Constitution of India seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

## FUNDAMENTAL RIGHTS AND INDUSTRIAL RELATIONS

Articles 12 to 35 of the Constitution pertain to Fundamental Rights of the people. The Indian Constitution guarantees essential human rights in the form of Fundamental Rights under Part III and also Directive Principles of State Policy in Part IV which are fundamental in the governance of the country. Freedom and civil rights granted to all under Part III have been liberally construed by various pronouncements of the Supreme Court. The object has been to place citizens at a centre stage and make the State accountable. Fundamental Rights must not be read in isolation but together with directive principles and fundamental duties. The need for protecting and safeguarding the interest of labour as human beings has been enshrined in Article 14, 16, 19, 21, 23 and 24 giving an idea of the conditions under which labour had to be for work.

## **Article 14: Equality before law**

Equality is one of the magnificent corner-stones of Indian Democracy. Article 14 of the Constitution of India reads as under:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 14 bars discrimination and prohibits discriminatory laws. The said Article is clearly in two parts — while it commands the State not to deny to any person ‘equality before law’, it also commands the State not to deny the ‘equal protection of the laws’. Equality before law prohibits discrimination. It is a negative concept. The concept of ‘equal protection of the laws’ requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.

In the case of the *Air India v. Nargesh Meerza (1981 AIR 1829)* Regulation 46 and 47 of Indian Airlines regulations was in question which provides that an air Hostess will retire from the service upon attaining the age of 35 years or on marriage within 4 years of Service or on first pregnancy, whoever found earlier but the managing director had the discretion that he may extend the age of retirement one year at a time beyond the age of retirement up to the age of 45 years at his option if an air hostess was found medically fit. It was held by the court that the clauses regarding retirement and pregnancy of the regulation as unconstitutional and therefore struck down. The retirement of air hostess on the ground of pregnancy was unreasonable and arbitrary and it was in violation of Article 14 of the constitution law of India.

In *D.S Nakara v. Union of India, (1983 AIR 130)* the supreme court held Rule 34 of the Central Services (Pension) Rules, 1972 as unconstitutional and was struck down on the ground that the classification made by it between pensioners retiring before a certain date and retiring after that date was not depend upon the any rational principal and it is arbitrary and violates Article 14 of Indian constitution.

## **Article 16: Equality of opportunity in matters of public employment**

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State
3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment
4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any

member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC & ST for posts under the State. Local candidates may also be given preference in certain posts.

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14. The concept of equal protection and equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension. Equality is for equals, that is to say, those who are similarly circumstanced are entitled to an equal treatment but the principle of equality under Articles 14 and 16 cannot be carried beyond a point. There is no bar of reasonable classification of various employees and there is no question of equality between separate and independent classes of employees. The court cannot interfere with a promotion policy unless it is vitiated by arbitrariness or discrimination; a court or Tribunal cannot issue directions in this regard.

In the case of *Mewa Ram Kanojia vs. All India Institute of Medical Sciences and Ors.* (AIR 1989 SC 1256), the Court observed: "The doctrine of 'Equal Pay for Equal Work' is not an abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of 'Equal Pay for Equal Work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay.

Commenting on the principle of 'Equal Pay for Equal Work', the court has observed: "While considering the question of application of principle of 'Equal Pay for Equal Work' it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is rounded on unreal, and unreasonable basis it would be violative of Article 14 and 16 of the Constitution.

### **Article 19(1)(c) of the Constitution: Right to form Association & Union**

Article 19(1)(c) speaks about the Fundamental right of citizen to form an associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

In the case of *All India Bank Employees vs. National Industrial Tribunal* 1962 SCR (3) 269, the court held: "The object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with the employers. The necessity for this has arisen from an incapacity stemming from the handicap of poverty and

consequent lack of bargaining power in workmen as compared with employers which is the reason for the existence of labour organizations. Collective bargaining in order to be effective must be enforceable labour withdrawing its co-operation from the employer and there is consequently a fundamental right to strike a right which is thus a natural deduction from the right to form unions guaranteed by sub-cl. (c) of cl.(1) of Art. 19. As strikes, however, produce economic dislocation of varying intensity or magnitude, a system has been devised by which compulsory industrial adjudication is substituted for the right to strike. This is the ratio underlying the provisions of the Industrial Disputes Act 1947 under which Government is empowered in the event of an industrial dispute which may ultimately lead to a strike or lock-out or when such strikes or lock-outs occur, to refer the dispute to an impartial Tribunal for adjudication with a provision banning and making illegal strikes or lock-outs during the pendency of the adjudication proceedings. The provision of an alternative to a strike in the shape of industrial adjudication is a restriction on the fundamental right to strike and it would be reasonable and valid only if it were an effective substitute.”

In the case of *Damyanti Naranga v. The Union of India* 1971 SCR (3) 840, the court observed that: “The right to form association necessarily implies that the persons forming the society have also the right to continue to be associated with only those whom they voluntarily admit in the association. The right guaranteed by Article 19(1)(c) cannot be confined to the initial stage of forming an association. If it were to be so confined, the right would be meaningless because as soon as an association is formed, a law may be passed interfering with its composition so that the association formed may not be able to function at all. The right can be effective only if it is held to include within, it the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association. And, Article 19(4), on the face of it, cannot be called in aid to claim validity for the Act.”

### **Article 21 of the Constitution: Right to Life**

Article 21 of the constitution of India reads as:

“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

Article 21 assures every person right to life and personal liberty. The term ‘life’ has been given a very expansive meaning. The term ‘personal liberty’ has been given a very wide amplitude covering a variety of rights which go to constitute personal liberty of a citizen. Its deprivation shall only be as per the relevant procedure prescribed in the relevant law, but the procedure has to be fair, just and reasonable.

The right to life enshrined in Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which go to make a man’s life meaningful, complete and worth living.

In course of time, Article 21 has come to be regarded as the heart of Fundamental Rights. Article 21 has enough of positive content in it and it is not merely negative in its reach. This liberal interpretation of Article 21 by judiciary has led to two very spectacular results within the last two decades, viz.:

- (1) Many Directive Principles which, as such, are not enforceable have been activated and have become enforceable.
  - a) Right to livelihood
  - b) Right to live with human dignity
  - c) Right to medical care
  - d) Health of labour
  - e) Sexual harassment
  - f) Right to health

g) Economic Rights.

(2) The Supreme Court has implied a number of Fundamental Rights from Art. 21.

In the case of *Olga Tellis & Ors v. Bombay Municipal Corporation*, AIR 1986 SC 180, the Court held: "As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities.

They migrate because they have no means of livelihood in the villages. The motive force which people their desertion of their hearths and homes in the village is that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to Live. Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in *Baksey* that the right to work is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois*, (1877) 94 U.S. 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed"

In the case of *D.K. Yadav v. J.M.A. Industries Ltd 1993 SCR (3) 930*, the court held: "Article 21 of the Constitution clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/ her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice."

In the case of *Paschim Banga Khet Mazdoor Samity v. State of West Bengal (AIR 1996 SC 2426)*, a mazdoor fell from a running train and was seriously injured. He was sent from one government hospital to another and finally he had to be admitted in a private hospital where he had to incur an expenditure of Rs. 17,000/- on his treatment. Feeling aggrieved at the indifferent attitude shown by the various government hospitals, he filed a writ petition in the Supreme Court under Art. 32. The Court has ruled that: "the Constitution envisages establishment of a welfare state, and in a welfare state, the primary duty of the government is to provide adequate medical facilities for the people. The Government discharges this obligation by running hospitals and health centres to provide medical care to those who need them.

Art. 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance.”

In the case of *Vishakha & Ors. v. State of Rajasthan (1997) 6 SCC 241* whereby a woman was assaulted and harassed at her workplace, the Supreme Court observed: “Each such incident results in violation of the fundamental rights of ‘Gender Equality’ and the ‘Right of Life and Liberty’. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim’s fundamental right under Article 19(1)(g) ‘to practice any profession or to carry out any occupation, trade or business’.”

### **Article 23 and Article 24: Right Against Exploitation**

According to Article 23(1), traffic in human beings, begar, and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 23(1) proscribes three unsocial practices, viz., (1) begar; (2) traffic in human beings; and (3) forced labour.

The term ‘begar’ means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration for it.

Withholding of pay of a government employee as a punishment has been held to be invalid in view of Article 23 which prohibits begar. ‘To ask a man to work and then not to pay him any salary or wages savours of begar. It is a Fundamental Right of a citizen of India not to be compelled to work without wages.’ (*Suraj v. State of Madhya Pradesh, AIR 1960 MP 303*).

The expression ‘traffic in human beings,’ commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished.

The words ‘other similar forms of forced labour’ in Article 23(1) are to be interpreted *ejusdem generis*. The kind of ‘forced labour’ contemplated by the Article has to be something in the nature of either traffic in human beings or begar. The prohibition against forced labour is made subject to one exception. Under Article 23(2), the State can impose compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. The State may thus exempt women from compulsory service for that will be discrimination on the ground of sex and this has not been forbidden by Article 23(2).

The Supreme Court has given an expansive significance to the term “forced labour” used in Art. 23(1) in a series of cases beginning with the *Asiad* case in 1982. (*People’s Union for Democratic Rights v. Union of India, AIR 1982 SC 1473*). The Court has insisted that Article 23 is intended to abolish every form of forced labour even if it has origin in a contract. Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to the basic human values.

in *Sanjit Roy v. State of Rajasthan, 1983, SCR (2) 271* case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words ‘forced labour’ under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.

Article 24 of the Constitution of India states that “no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”. Article 24 is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasizes the need to protect the health and strength of workers, and also to

protect children against exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.

In *Peoples Union for Democratic Rights v. Union of India: (AIR 1982 SC 1473)* also known as the Asiad Workers case the Supreme Court observed that though the Employment of Children Act, 1938 did not include the construction work because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Article 24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24 is enforceable even in the absence of implementing legislation.

In *M.C. Mehta v. State of T.N.: (AIR 1997 SC 699)* the Supreme Court directed that the employers of children below 14 years must comply with the provisions of the Child Labour (Prohibition and Regulation) Act providing for compensation, employment of their parents / guardians and their education.

Article 39(f) of the Constitution of India enumerates the importance of protecting children from exploitation and to give them proper opportunities and facilities to develop. These ideas are in consonance with the prohibitions against 'forced labour' and employment of children below the age of fourteen years, which have been laid down under Article 23 and 24 respectively.

#### **LABOUR LAWS AND REFERENCE TO DIRECTIVE PRINCIPLES OF STATE POLICY**

The makers of the Constitution had realized that in a poor country like India, political democracy would be useless without economic democracy. Accordingly, they incorporated a few provisions in the Constitution with a view to achieve amelioration of the socio-economic condition of the masses. Today we are living in an era of welfare state which seeks to promote the prosperity and well-being of the people. The Directive Principles strengthen and promote this concept by seeking to lay down some socio-economic goals which the various governments in India have to strive to achieve. The Directive Principles are designed to usher in a social and economic democracy in the country. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give directions to the legislatures and the executive in India as regards the manner in which they should exercise their power.

The Courts however do not enforce a directive principle enshrined in Part IV of the Constitution unlike rights enshrined in Part III. The reason behind the legal non-enforceability and non-justiciability of these principles is that they impose positive obligations on the state. While taking positive action, government functions under several restraints, the most crucial of these being that of financial resources. The constitution-makers, therefore, taking a pragmatic view refrained from giving teeth to these principles. They believed more in an awakened public opinion, rather than in Court proceedings, as the ultimate sanction for the fulfillment of these principles. Nevertheless, the Constitution declares that the Directive Principles, though not enforceable by any Court, are 'fundamental' in the governance of the country, and the 'state' has been placed under an obligation to apply them in making laws. The state has thus to make laws and use its administrative machinery for the achievement of these Directive Principles. Further, as reflected in its various recent judgements, the court is now more inclined in the integrative approach towards Fundamental Rights and Directive Principles; or that the both should be interpreted and read together. It has now become a judicial strategy to read Fundamental Rights along with Directive Principles with a view as the latter defines the scope and ambit of former. Mostly, Directive Principles have been used to broaden, and to give depth to some Fundamental Rights and to imply some more rights therefrom for the people over and above what are expressly stated in the Fundamental Rights. Articles 38, 39, 41, 42 and 43 have a special relevance in the field of industrial legislation and adjudication. In fact, they are the substratum or rather 'magna carta' of industrial jurisprudence. They encompass the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

## **Social Order Based on Socio-Economic Justice**

Article 38(1) directs the state to strive “to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”

Article 38(2) directs the state to strive “to minimise the inequalities in income,” and endeavour “to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations”.

Article 38 needs to be read along with Article 14. This directive reaffirms what has been declared in the Preamble to the Constitution, viz., the function of the Republic is to secure, inter alia, social, economic and political justice. On the concept of equality envisaged by Article 38, the Supreme Court has observed in *the case Sri Srinivasa Theatre v. Govt. of Tamil Nadu, AIR 1992 SC 999*: “Equality before law is a dynamic concept having many facets. One facet--the most commonly acknowledged--is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the state to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution [viz. Directive Principles]. For, equality before law can be predicated meaningfully only in an equal society, i.e., in a society contemplated by Article 38 of the Constitution.”

Reading Articles 21, 38, 42, 43, 46 and 48A together, the Supreme Court has concluded in *Consumer Education & Research Centre v. Union of India (AIR 1995 SC 923)*, that “right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a Fundamental Right...to make the life of the workman meaningful and purposeful with dignity of person.” Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights of the workmen.

Article 38 is always supplemented and must be read with Article 39 which seeks to lay down the guidelines and principles for achieving such social order.

## **Equal Pay for Equal Work**

Article 39 requires the state, in particular, to direct its policy towards securing:

- (a) that all citizens, irrespective of sex, equally have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal work for both men and women;
- (e) that the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

In the case of *Randhir Singh v. Union of India* (1982 AIR 879) the Supreme Court has held that the principle of "Equal pay for equal work though not a fundamental right" is certainly a constitutional goal. Article 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work. However, the doctrine of 'equal pay for equal work' cannot be put in a strait jacket. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility.

In the case of *Dhirendra Chamoli and Anr. v. State of U.P.* (AIR 1982 SC 879), the Court stated: "The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees."

***National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) vs. Union of India (UOI) and Ors. (19.03.2018 - SC): (2018)5SCC607***

In this case, petition was filed towards the non-implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the BOCW Act) and the Building and Other Construction Workers' Welfare Cess Act, 1996 (the Cess Act) According to petitioner, non- implementation violates the provisions of Articles 15(3), 39(e) and (f) and also Articles 45 and 47 of the Constitution, which impose a primary responsibility on the State to ensure that all the needs of workers are met and that their basic rights are fully protected. Supreme Court held that -

*"There can be no doubt that the BOCW Act and its sister legislation, the Cess Act are social justice legislations. They were enacted keeping in mind the Directive Principles of State Policy, particularly Article 39 of the Constitution which requires the State to direct its policy to secure the health and strength of workers and Article 42 of the Constitution concerning just and humane conditions of work. In addition, Article 21 of the Constitution cannot be forgotten. A life of dignity is a fundamental right given to all persons and that includes construction workers. It is in this background that the two welfare and beneficent legislations must be understood and appreciated. The sanctity of laws enacted by Parliament must be acknowledged- laws are enacted for being adhered to and not for being flouted. The Rule of law must be respected and along with it the human rights and dignity of building and construction workers must also be respected and acknowledged, to avoid a complete breakdown of the BOCW Act compounded by serious violations of Part III of the Constitution guaranteeing fundamental rights."*

***Bandhua Mukti Morcha and Ors. vs. Union of India (UOI) and Ors. (21.02.1997 - SC) : (1997)10SCC549***

In this case, petitioner's main contention was that employment of the children in any industry or in a hazardous industry, is violative of Article 24, Articles 39(e) and 45 of the Constitution read with the Preamble. Court stated that -

*"Court has considered the constitutional perspectives of the abolition of the child labour and the child below 14 years of age in industries. We are of the view that a direction needs to be given that the Government to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in M.C. Mehta's case; to evolve such steps consistent with the scheme laid down in M.C. Mehta's case, to provide (1) compulsory education to all children either by the industries itself or in*

*co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court."*

## **SOCIAL SECURITY PROVISIONS**

Article 41 requires the state, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Social security is guaranteed in our Constitution under Articles 39, 41 and 43. The Employees' State Insurance Act, 1948 is a pioneering piece of legislation in the field of social insurance. The Employees' State Insurance Scheme provides for benefits in cash except the medical benefit, which is in kind. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Maternity Benefit Act, 1961 are also social security measures to help fulfill the objectives of directive principles of our Constitution. The Provident Fund Scheme aimed at providing substantial security and timely monetary assistance to industrial employees and their families. The Maternity Benefit Scheme is primarily designed to provide maternity leave with full wages and security of employment. The object of the Payment of Gratuity Act, 1972 is to provide a scheme for the payment of gratuity to employees employed in factories, mines, oil fields, plantations, ports, railways, shops and establishments. Besides social security benefits, efforts have also been made to provide ample opportunities for employment and for workers' education. The Apprentices Act, 1961 was enacted to supplement the programme of institutional training by on-the-job training and to regulate the training arrangements in industry. Employment exchanges play an important role for the job seekers. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969 has made it obligatory on the employers to notify vacancies occurring in their establishments to the prescribed employment exchanges before they are filled. The voluntary workers education scheme was launched in our country in 1958 to educate the workers in trade union philosophy and methods, and to promote physical awareness of problems, privileges and obligations as workers and citizens.

## **WORKING CONDITIONS**

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief.

Article 42 provides the basis of the large body of labour law that obtains in India. Referring to Arts. 42 and 43, the Supreme Court has emphasized that the Constitution expresses a deep concern for the welfare of the workers. By reading Article 21 with several Directive principles including Art 42, the Supreme Court has given broad connotation to Art 21 so as to include therein "the right to live with human dignity".

## **LIVING WAGE**

Article 43 requires the state to endeavour to secure, by suitable legislation, or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the state is to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work. This provision enunciates the revolutionary doctrine that employees are entitled as of right to certain reliefs.

A 'living wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. Fixation of minimum wage is in public interest and does not impose an unreasonable restriction on the right to carry on a trade guaranteed by Article 19(1)(g). (*Edward Mills Co. v. Ajmer*, AIR 1955 SC 25).

Article 43-A which was introduced by the 42nd Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments.

#### CASE LAWS

***Janapareddy Surya Narayana and Ors. vs. The Municipal Administration and Urban Development and Ors.***  
**(16.04.2021 - APHC) : Writ Petition No. 25434 of 2020**

In this case, petition was filed questioning the proceedings RC. No. 16394/P.O. (Balyam) dated 19.06.2017 as illegal, arbitrary and violative of Articles 14, 16, 21 & 39(d) of the Constitution of India and consequently set-aside the same and directed the respondents to regularise the services of the petitioners. Andhra Pradesh High Court stated that –

*“When part time workers or NMRs are regularized, they are entitled to get minimum time scale of pay prescribed for the post they are discharging their duties for limited office hours, whereas, these petitioners are discharging their duties for eight hours as per the proceedings impugned in the writ petition. When these petitioners are discharging their duties for eight hours, they are entitled to get equal pay in terms of Article 39(d) of the Constitution of India, otherwise, it amounts to discrimination, which is prohibited under Article 14 of the Constitution of India. When the act of the State is arbitrary and exploiting the situation of unemployment by paying meagre amount as salary, engaging the services of these petitioners on outsourcing basis, such act can be described as discriminatory and arbitrary. Therefore, court find that it is a fit case to issue a direction to the respondents to extend minimum time scale of pay to the petitioners who are discharging their duties for eight hours in a day on par with regular employees of the same cadre. Accordingly, the point is decided partly in favour of the petitioners.”*

## **Lesson 15 - Evaluation of Labour Legislation and Need of Labour Code**

### **INTRODUCTION**

The law relating to labour and employment in India is primarily known under the broad category of “Industrial Law”. Industrialization is considered to be one of the key engines to support the economic growth of any country. A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

Reforms in labour laws are an ongoing process to update the legislative system to address the need of the hour so as to make them more effective, flexible and in sync with emerging economic and industrial scenario. The Second National Commission on Labour has recommended that the existing Labour Laws should be broadly grouped into four or five Labour Codes on functional basis. Accordingly, the Government has taken steps for drafting four Labour Codes on Wages, Industrial Relations, Social Security & Welfare and Occupation Safety, Health and Working Conditions respectively, by simplifying, amalgamating and rationalizing the relevant provisions of the existing Central Labour Laws.

### **HISTORY OF LABOUR LAWS**

The need for better working conditions, the right to organise, and employer demands to limit employee rights in numerous groups and keep labour costs down led to the development of labour law. When employees band together to demand better pay, or when laws impose expensive requirements like equal opportunity or health and safety standards, employers' costs may rise. Trade unions and other worker organisations have the potential to become political forces, which some companies may find objectionable. Therefore, the situation of labour law at any one time is both a result of and a component of conflicts between various interests in society.

The labour movement has been instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral to the social and economic development since the industrial revolution.

International Labour Organisation (ILO) is one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I. In Great Britain, the Whitley 4 Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that “industrial councils” be established throughout the world.

India is the founder member of International Labour Organization (ILO) and has been actively contributing to evolution of global policy on labour welfare. International Labour Organization which came into existence in 1919 and has been a permanent member of the ILO Governing Body since 1922. At present the ILO has 187 Members. A unique feature of the ILO is its tripartite character. At every level in the organization, Governments are associated with the two other social partners, namely, the workers and employers.

Even after 75 years of Independence, approximately 90% of workers work in the unorganized sector that do not have access to all the social securities. The total number of workers, comprising of organized and unorganized sectors, is more than 50 crores. Earlier, the working class was entangled in web of multiple labour legislations. The Central Government has taken a revolutionary step in the right direction to provide them freedom in true sense. For this, the Central Government has taken historical step of codifying 29 laws into 4 Codes, so that workers can get security along

with respect, health and other welfare measures with ease.

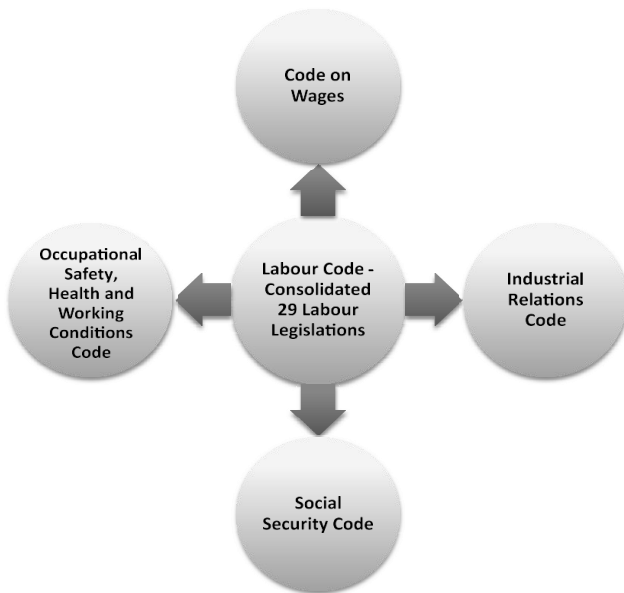
Labour is covered under the Concurrent List of the Constitution. Therefore, rules governing labour can be passed by both the Parliament and state legislatures. The resolution of labour disputes, working conditions, social security, and pay are only a few of the labor-related issues that are governed by more than 100 state and 40 federal laws, according to the central government. Labour Reforms also remained untouched during the economic reforms carried out in 1991.

The Second National Commission of Labour had submitted its report in 2002 which said that there was multiplicity of Labour Laws in India and therefore, recommended that at the Central level multiple Labour Laws should be codified in 4 or 5 Labour Codes namely (a) Industrial relations; (b) Wages; (c) Social security; (d) Safety; and (e) Welfare and working conditions. While discussions were held on it, however, no serious initiative was taken in this direction during the time period from 2004 to 2014.

The brainstorming on Labour Codes were fast-tracked when the GST, as One Nation One Tax, was made applicable in the Country with consensus and aligned with motto “Sabka Sath Sabka Vikas aur Sabka Vishwas”.

By taking forward this progressive thinking, the reforms in Labour Laws were also speeded up. Extensive discussions were held before initiation of Labour Reforms by Ministry of Labour and Employment. Initially, as a part of Government’s pre-legislative consultative policy, the Ministry uploaded all the draft Labour Codes on its website

for stakeholders and public consultation. During 2015 to 2019, the Ministry organized 9 tripartite discussions in which all the Central Trade Unions, Employers’ Associations and representatives of State Governments were invited to give their opinions/suggestions on Labour reforms. All the four Bills were also examined by the Parliamentary Standing Committee which gave its recommendations to the Government.



In order to codify 29 central legislations, the Ministry of Labour and Employment submitted four labour code bills in 2019. While the Code on Wages, 2019, was approved by Parliament, the Standing Committee on Labour was tasked with handling the three other bills. On all three Bills, the Standing Committee delivered its reports. In September 2020, the government repealed these Bills and enacted new ones. They broadly categorized labour codes into 4 different category.

1. Code on Wages
2. Industrial Relations Code
3. Social Security Code
4. Occupational Safety, Health and Working Conditions Code

## **PURPOSE OF LABOUR LEGISLATION**

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles:

- it establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;
- by providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;
- it provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

## **OBJECTIVE OF LABOUR CODES**

For the sake of clarity, standardisation in terminology, and consistency in approach, the Commission emphasised the necessity to streamline and unify labour legislation. Consolidating labour laws would also enable more comprehensive labour coverage because separate labour rules apply to different employment classifications and across different thresholds. The four Codes on wages, industrial relations, social security, and occupational safety were introduced in Parliament as a result of NCL's recommendations.

While the Codes do a good job of combining and streamlining existing legislation, there are several areas where they fall short. For instance, the Codes on Social Security and Occupational Safety continue to include specific provisions from each of the statutes that these Codes replace. For instance, even if the Occupational Safety Code includes provisions on leaves for all employees, sales promotion staff continue to be entitled to additional leave entitlements (such as earned medical leave for 1/18th of the period on duty). Similar to this, even if the definitions of various terms are largely rationalised by the Codes, they are not consistent throughout. For instance, the definition of "contractor" is the same in the Codes on Wages, Occupational Safety, and Social Security but not in the Code on Industrial Relations. Finally, after much discussions only 29 laws have been replaced by the four Codes.

Facilitating employment development while preserving employees' rights is the main problem of labour reforms. The coverage of small businesses, choosing cut off points for prior approval of layoffs, bolstering labour enforcement, enabling flexible forms of labour, and supporting collective bargaining are important topics of discussion. In addition, as time goes on, it is necessary to update and simplify the labour laws in order to include clauses that can accommodate new kinds of employment (e.g., gig work).

## **FEATURES OF LABOUR CODES**

1. Most labour rules are applicable to businesses larger than a particular size (typically 10 or above). Thresholds based on company size could ease the burden of compliance for businesses. One would counter that all businesses should be subject to fundamental protections including pay, social security, and working conditions. Such size-based limits are still present in some codes.
2. Simple and accountable system will simplify the processes. One Registration one License, single return for all the Codes.
3. Government approval is required for establishments that employ 100 or more employees to close, lay off, or retrench. It has been suggested that this has made it harder for businesses to leave and has interfered with their capacity to change their staff to meet production demands. This number is increased to 300 by the Industrial Relations Code, and the government is permitted to raise it further by notification.

4. The complexity of labour laws has led to many compliances, which has increased the burden of compliance on businesses. On the other side, the labour enforcement apparatus has been unsuccessful due to weak enforcement, insufficient sanctions, and inspectors' rent-seeking behaviour. Some of these issues are covered by the Codes.
5. Contract labour is now used more frequently as a result of economic factors and labour compliance requirements. However, fundamental rights like guaranteed salaries have been denied to contract workers. These issues are not entirely addressed by the Codes. Fixed-term employment, however, is a new type of short-term labour that is introduced by the Industrial Relations Code.
6. There are many registered trade unions, but there are no standards by which to "recognise" unions that can formally bargain with employers. Provisions for recognition are created by the Industrial Relations Code.
7. The Codes greatly simplify labour rules, yet there are several areas where they fall short. Additionally, the Code on Social Security has enabling measures to notify programmes for "gig" and "platform" workers; nonetheless, these classifications lack precision.
8. The Codes delegate rule-making authority over a number of significant issues, including the applicability of social security programmes and health and safety regulations. The debate is on whether the legislature or the executive branch should decide these issues.
9. The law forbids discrimination based on gender when it comes to hiring new employees for similar or identical jobs and determining pay. Work of a similar kind is defined as work requiring the same level of expertise, effort, responsibility, and experience.
10. The advisory boards will be made up of the federal and state governments. Employers, employees (equal in number to employers), independent individuals, and five state government representatives make up the Central Advisory Board. State Advisory Boards will be made up of independent individuals, employers, and workers. Women will make up one-third of both the central and state boards' overall membership. The Boards will give their respective governments advice on matters such as (i) setting minimum wages and (ii) expanding possibilities for women in the workforce.
11. The Code outlines punishments for offences committed by an employer, such as (i) underpaying required wages or (ii) violating any Code requirement. The maximum punishment is three months in prison and a fine of up to one lakh rupees. Penalties varies based on the type of offence.

#### **ACTS SUBSUMED BY THE FOUR LABOUR CODES**

| <i>Labour Codes</i>        | <i>Acts being subsumed</i>  |
|----------------------------|---|
| <b>Code on Wages, 2019</b> | <ul style="list-style-type: none"> <li>● Payment of Wages Act, 1936;</li> <li>● Minimum Wages Act, 1948;</li> <li>● Payment of Bonus Act, 1965; and</li> <li>● Equal Remuneration Act, 1976.</li> </ul> |

|   |  |
|---|--|
| <p><b>Occupational Safety, Health and Working Conditions Code, 2019</b></p> | <ul style="list-style-type: none"> <li>● Factories Act, 1948;</li> <li>● Mines Act, 1952;</li> <li>● Dock Workers (Safety, Health and Welfare) Act, 1986;</li> <li>● Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;</li> <li>● Plantations Labour Act, 1951;</li> <li>● Contract Labour (Regulation and Abolition) Act, 1970;</li> <li>● Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;</li> <li>● Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;</li> <li>● Working Journalist (Fixation of Rates of Wages) Act, 1958;</li> <li>● Motor Transport Workers Act, 1961;</li> <li>● Sales Promotion Employees (Condition of Service) Act, 1976;</li> <li>● Beedi and Cigar Workers (Conditions of Employment) Act, 1966;</li> <li>● Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981.</li> </ul> |
| <p><b>Industrial Relations Code, 2019</b></p>                               | <ul style="list-style-type: none"> <li>● Trade Unions Act, 1926;</li> <li>● Industrial Employment (Standing Orders) Act, 1946, and</li> <li>● Industrial Disputes Act, 1947.</li> </ul>  |
| <p><b>Code on Social Security, 2019</b></p>                                 | <ul style="list-style-type: none"> <li>● Employees' Provident Funds and Miscellaneous Provisions Act, 1952;</li> <li>● Employees' State Insurance Act, 1948;</li> <li>● Employees' Compensation Act, 1923;</li> <li>● Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;</li> <li>● Maternity Benefit Act, 1961;</li> <li>● Payment of Gratuity Act, 1972;</li> <li>● Cine-workers Welfare Fund Act, 1981;</li> <li>● Building and Other Construction Workers' Welfare Cess Act, 1996; and</li> <li>● Unorganised Workers Social Security Act, 2008.</li> </ul>  |

### **INTRODUCTION**

The Occupational Safety, Health and Working Conditions Code, 2020 represents one of India's most significant labour reforms. Enacted to streamline and modernise the regulatory landscape, the Code consolidates 13 central labour laws into a single comprehensive statute, making compliance simpler, uniform, and more transparent across the country.

Pursuant to the recommendations of the Second National Commission on Labour and as a part of the Labour Reform Initiatives, 29 Labour Acts are being amalgamated, simplified and rationalised into four Codes viz. Code on Wages, Occupational Safety, Health and Working Conditions Code, Industrial Relations Code and Code on Social Security to make the existing Central Labour Acts in sync with the changing economic and industrial scenario, technological advancements and emerging need for wage security, social security and better working conditions for workers. As 18 Acts out of 29 Central Labour Acts are more than 50 years old and a few of them are even 70 years old, a need was felt to reduce the complexity, provide uniform definitions, minimise multiple authorities under various Acts so as to bring transparency and accountability in the enforcement of Labour Laws.

The Occupational Safety, Health and Working Conditions (OSHWC) Code, 2019 which was introduced in Lok Sabha on 23rd July, 2019 by the Ministry of Labour & Employment after inter-ministerial consultations and suggestions received from the public/stakeholders, incorporates the essential features of the 13 enactments relating to Factories, Dock Workers, Building and other Construction Workers, Plantation Labour, Contract Labour, Inter-State Migrant Workers, Working Journalists and other News Paper Employees, Motor Transport Workers, Sales Promotion Employees, Beedi and Cigar Workers, Cine Workers and Cinema Theatre Workers. The OSHWC Code intends to simplify, rationalise and amalgamate the provisions of the following Labour Laws:

- (i) The Factories Act, 1948;
- (ii) The Mines Act, 1952;
- (iii) The Dock Workers (Safety, Health and Welfare) Act, 1986;
- (iv) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- (v) The Plantations Labour Act, 1951;
- (vi) The Contract Labour (Regulation and Abolition) Act, 1970;
- (vii) The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- (viii) The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;
- (ix) The Working Journalist (Fixation of Rates of Wages) Act, 1958;
- (x) The Motor Transport Workers Act, 1961;
- (xi) The Sales Promotion Employees (Conditions of Service) Act, 1976;
- (xii) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
- (xiii) The Cine Workers and Cinema Theatre Workers Act, 1981.

The Occupational Safety, Health and Working Conditions (OSHWC) Code, 2019 received Presidential assent on September 28, 2020, and was published in the e-Gazette on September 29, 2020. OSHWC Code notified by Central Government on 21st November 2025.

*The Code balances the twin objectives of safeguarding worker rights and safe working conditions, and creating a business-friendly regulatory environment. This will spur economic growth and employment thereby, making India's labour market more efficient, fair, and future-ready.*

#### Preamble

Objectives of the Code is envisaged in the Preamble of the code as “An Act to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.”

#### The Salient Features and Impact of the Code

| Salient Features of the Code   | Impact of the Code  |
|--|---|
| The Code provides basic broad legislative framework with enabling provisions for framing rules, regulations, standards, and bye-laws.  | Reduction of sections in the Code. This would result in simple legislation with flexibility in changing the provisions in tune with emerging technologies and makes the legislation dynamic.  |
| One registration for an establishment instead of multiple registrations.   | Create a centralized data base. Promote ease of doing business. The provisions of online and deemed registration have been incorporated.  |
| The Code is applicable to all establishments employing 10 or more workers except mine and dock where it is applicable on even 1 worker. The offices of Central and State Government have been kept out of the ambit of the Code.   | Enhances the coverage of the safety and health provisions manifold as the establishments in service sector and other establishments would now be regulated by the safety, health and working conditions provisions of the Code.   |
| Definition of Cine worker has been modified to include all audio-visual workers and definition of working journalist has also been modified to include journalists working in electronic media also. Further, the definition of interstate migrant worker has been modified on the basis of suggestions received to include those migrant workers who have been employed directly by the employer besides the migrant workers employed through a contractor. | This would enhance the coverage of the Inter State Migrant Workers for the purpose of benefits like housing, education, etc. There has been continuous demand from various quarters including from the Standing Committee to make the definition of 'cine worker' more inclusive. |
| The definition of a family extended to include dependent grand-parents of the worker.  | Due to increase in life expectancy, the grand- parents who are part of family will also get welfare benefits like compensation in case of death of the workers and under the Plantation Act.  |

|  |   |
|--|---|
| Employers to provide free of cost annual health check-up for employees above prescribed age for prescribed tests. Provision for appointment letter to every employee.  | Employers to provide free of cost annual health check-up for employees above prescribed age for prescribed tests. Provision for appointment letter to every employee.   |
| The multiple committees under five labour Acts have been substituted by one National Occupational Safety and Health Advisory Board. The National Board is of tripartite nature and has representation from employees, employers and State Governments.                   | Reduction in multiplicity of bodies/committees in various Acts. Results in simplified and coordinated policy-making.  |
| Enabling provision for constituting a bi-partite Safety Committee in any class of establishment by appropriate government.   | It will promote safe and healthy working conditions in an establishment. The participatory nature of the committee will encourage implementation of decisions taken by the management.  |
| A part of the penalty (minimum 50 per cent) for contravention of provisions relating to duties of employer leading to death or serious bodily injury to any person may be given to the victim or the legal heirs of the victim by the Court.                             | The part of penalty would help in rehabilitation of injured worker or would provide financial support to the family of deceased.  |
| Presently, different applicability thresholds exist for welfare provisions like crèche, canteen, first aid, welfare officer etc in different Acts. The Code has envisaged uniform threshold for welfare provisions for all establishment as far as practicably feasible. | The revised thresholds are - for canteen 100 employees (earlier ranged from 100 to 250), crèche 50 workers (earlier ranged from 20 to 50 female workers), first aid for all (earlier in selected establishment), welfare officer 250 for factory/ mines/ plantation (earlier ranged from 300 to 500). |
| Women permitted to work beyond 7 PM and before 6 AM subject to the safety, holidays, working hours or any other condition as prescribed by appropriate government subject to taking consent from the woman worker.   | Promote gender equality and is in tune with demands from the various forums. At present, women are prohibited in night for mines, factories, plantation, beedi and cigar.   |
| The concept of a single all India licence with 5 years validity de-linked with work order has been as an option available for contractors who undertake a project or are supplying human resources.  | At present a number of licenses are being obtained by a contractor for each work order. Promotes ease of doing business. Reduces corruption and reduces paper work also.  |
| The provision of one license has been for factory, contract labour and beedi and cigar establishments in the Code.   | One license in place of multiple licenses.  |
| The penalties have been rationalised, graded and the fine amount has been enhanced as an effective deterrent.  | Penalty would act as an effective deterrent which would encourage compliance of the provisions of the Code.   |

|  |   |
|--|---|
| At present, multiple returns and numerous registers have to be maintained under various labour laws, in addition to those returns and registers prescribed by State Government Rules   | Reduces maintenance of Registers and filing of returns. Promotes e-governance.  |
| The inspector cum facilitator may also be assigned of establishment outside his jurisdiction by the appropriate Government through randomised computer system. The inspector may also seek information and documents online from establishments. | Delinking of inspector from certain specific geographical region. Further, the online information sought by inspector cum facilitator may substitute physical inspection. |

## PRELIMINARY

Section 1 of the Code provides for title and applicability of the Code as follows:

This Act may be called the Occupational Safety, Health and Working Conditions Code, 2020.

The Code has vested power in the Central Government for notification w.r.t. commencement of the Code with different dates as may be considered appropriate. In exercise of the powers conferred by the sub-section (2) of section 1 of the Occupational Safety, Health and Working Conditions Code, 2020, the Central Government appointed the 21st day of November, 2025 as the date on which the provisions of the Code, shall come into force.

### Where the Code is not applicable?

Sub section (3) of section 1 provides that the Code shall not apply to the offices of the Central Government, offices of the State Government and any ship of war of any nationality. Proviso of the section makes the Code applicable in case of contract labour employed through contractor in the offices of the Central Government or in the offices of the State Government, where, the Central Government or, as the case may be, the State Government is the principal employer.

## Definitions

Section 2 (1) of the Code defines the following with opening words, **“unless the context otherwise requires”,**—

**“Adolescent”** shall have the same meaning as assigned to it in clause (i) of section 2 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. {Section 2 (1) (a)}

**“Adult”** means a person who has completed his eighteenth year of age. {Section 2 (1) (b)}

**“Agent”** when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of such mine or of any part thereof. {Section 2 (1) (c)}

**“Appropriate Government”** means—

(i) the Central Government in relation to:

- establishments [other than those specified in sub-clause (ii)] carried on by or under the authority of the Central Government or concerning any such controlled industry as may be specified in this behalf by the Central Government or
- the establishment of railways including metro railways, mines, oil field, major ports, air transport service or telecommunication service, banking company or any insurance company (by whatever

name called) established by a Central Act or a corporation or other authority established by a Central Act or a Central public sector undertaking or subsidiary companies set up by the Central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, Central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be,;

Provided that in the case of Central Public Sector Undertakings the appropriate Government shall continue to be the Central Government even if the holding of the Central Government reduces to less than fifty per cent. equity of the Central Government in that Public Sector Undertakings after the commencement of this Code; and

- (ii) in relation to a factory, motor transport undertaking, plantation, newspaper establishment and establishment relating to beedi and cigar including the establishments not specified in clause (i), the concerned State Government where it is situated.

*Explanation.* —For the removal of doubts it is hereby clarified that State Government shall be the appropriate Government in respect of occupational safety, health and working conditions in a factory situated in that State.

{Section 2 (1) (d)}

**“Audio-Visual Production”** means audio-visual produced wholly or partly in India and includes—

- (i) animation, cartoon depiction, audio-visual advertisement;
  - (ii) digital production or any of the activities in respect of making thereof; and
  - (iii) features films, non-feature films, television, web-based serials, talk shows, reality shows and sport shows.
- {Section 2 (1) (e)}

**“Audio-Visual Worker”** means a person, who is employed, directly or through any contractor, in or in connection with the audio-visual production to work as an artist including actor, musician, singer, anchor, news reader, dancer, dubbing artist or stunt person or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise, and his remuneration with respect to such employment in or in connection with the production of audio-visual does not exceed, where remuneration is by way of monthly wages or where such remuneration is by way of lump sum, in each case, such amount as may be notified by the Central Government. {Section 2 (1) (f)}

**“Building or other construction work”** means the construction, alteration, repairs, maintenance or demolition in relation to buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, internet towers, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqua-ducts, pipelines, towers, cooling towers, transmission towers.

This includes such other work and power to notify “other work” has been vested the Central Government, by notification, but does not include

- building or other construction work which is related to any factory or mine and the building or other construction work where such work is for own residential purposes of an individual or group of individuals for their own residence and
- the total cost of such work does not exceed rupees fifty lakhs or such higher amount and employing more than such number of workers as may be notified by the appropriate Government; {Section 2 (1) (h)}

**“Building worker”** means a person who is employed to do any highly skilled, skilled, semi-skilled or unskilled, manual, technical or clerical work for hire or reward, whether the terms of such employment are express or implied, in connection with any building or other construction work, *but does not include any such person who is employed mainly in a managerial or supervisory or administrative capacity*; {Section 2 (1) (i)}

**“Chief Inspector-cum-Facilitator”** means a Chief Inspector-cum-Facilitator appointed under sub-section (5) of section 34; {Section 2 (1) (k)}. The emphasis has been now that the Inspector should facilitate giving guidance to both the employer and the employee for better working relationship.

**“Competent Person”** means a person or an institution recognised as such by the Chief Inspector-cum-Facilitator for the purposes of carrying out tests, examinations and inspections required to be done in an establishment having regard to—

- (i) the qualifications and experience of the person and facilities available at his disposal; or
- (ii) the qualifications and experience of the persons employed in such institution and facilities available therein:

It is provided that in case of mines the competent person includes such other person who is authorised by the manager referred to in section 67 to supervise or perform any work, or to supervise the operation of machinery, plant or equipment and is responsible for such duties assigned to him and also includes a shot firer or blaster. {Section 2 (1) (l)}

**“Contract Labour”** has been defined as a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. The definition also includes inter-State migrant worker.

But the definition of “Contract Labour” has kept outside its purview a worker (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment. {Section 2 (1) (m)}

**“Contractor”**, in relation to an establishment, means a person, who—

- (i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or
- (ii) supplies contract labour for any work of the establishment as mere human resource, and includes a sub-contractor. {Section 2 (1) (n)}

**“Controlled Industry”** has been defined under section 2 (1) (o) to mean any industry the control of which by the Central Government has been declared under any Central Act in the public interest;

The strategically critical industries, especially those involved in the security of the nation has been kept under the regulation of the Central Government. Atomic Power Generation, Defence Equipment Production etc. are such of the examples.

**“Core Activity of an Establishment”** means any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity. It is provided that the following shall not be considered as essential or necessary activity, if the establishment is not set up for such activity, namely: —

- (i) sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;

- (ii) watch and ward services including security services;
- (iii) canteen and catering services;
- (iv) loading and unloading operations;
- (v) running of hospitals, educational and training Institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment;
- (vi) courier services which are in nature of support services of an establishment;
- (vii) civil and other constructional works, including maintenance;
- (viii) gardening and maintenance of lawns and other like activities;
- (ix) housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;
- (x) transport services including, ambulance services;
- (xi) any activity of intermittent nature even if that constitutes a core activity of an establishment. {Section 2 (1) (p)}

**“Day”** means a period of twenty-four hours beginning at mid-night; {Section 2 (1) (q)}

**“Dock Work”** means any work in or within the vicinity of any port in connection with, or required for, or incidental to, the loading, unloading, movement or storage of cargoes into or from ship or other vessel, port, dock, storage place or landing place, and includes—

- (i) work in connection with the preparation of ships or other vessels for receipt or discharge of cargoes or leaving port;
- (ii) all repairing and maintenance processes connected with any hold, tank structure or lifting machinery or any other storage area on board the ship or in the docks; and
- (iii) chipping, painting or cleaning of any hold, tank, structure or lifting machinery or any other storage area on board the ship or in the docks. {Section 2(1)(s)}

**“Employee”**

Section 2(1)(t) of the Code defines “Employee” to mean-

- (i) in respect of an establishment, a person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied; and
- (ii) a person declared to be an employee by the appropriate Government,

***However, any member of the Armed Forces of the Union has been specifically excluded from the definition of employee under the Code.***

With respect to mines, it is provided that notwithstanding anything contained in this clause, a person is said to be “employed” in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not—

- (a) in any mining operation (including the concomitant operations of handling and transport of minerals up to

- the point of dispatch and of gatherings and transport thereof to the mine);
- (b) in operations or services relating to the development of the mine including construction of plant therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations;
  - (c) in operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;
  - (d) in operations, within the premises of the mine, of loading for dispatch of minerals;
  - (e) in any office of mine;
  - (f) in any welfare, health, sanitary or conservancy services required to be provided under this Code relating to mine, or watch and ward, within the premises of the mine excluding residential area; or
  - (g) in any kind of work, whatsoever, which is preparatory or incidental to or connected with, mining operations;

According to section 2(1)(u) of the Code **“Employer”** means a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any Department of the Central Government or the State Government, the authority specified, by the head of such Department, in this behalf or where no authority, is so specified, the head of the Department and in relation to an establishment carried on by a local authority, the Chief Executive of that authority, and includes,—

|   |  |
|---|--|
| (i) In relation to an establishment which is a factory, | The occupier of the factory;   |
| (ii) In relation to mine,                               | The owner of the mine, agent or manager referred to in section 67;   |
| (iii) In relation to any other establishment,           | The person who, or the authority which has ultimate control over the affairs of the establishment and where said affairs are entrusted to a manager or managing director, such manager or managing director; |
| (iv) Contractor; and                                    | -  |
| (v) Legal representative of a deceased employer;        | -  |

**“Establishment”** has been defined on the basis of threshold of workers as —

- (i) a place where any industry, trade, business, manufacturing or occupation is carried on in which *ten or more workers are employed*; or
- (ii) motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation, *in which ten or more workers are employed*; or
- (iii) factory, for the purpose of Chapter II, in which ten or more workers are employed, notwithstanding the threshold of workers provided in clause (w); or
- (iv) a mine or port or vicinity of port where dock work is carried out:

Provided that in sub-clauses ( i ) and ( ii ), the threshold of worker specified therein shall not be applicable in case of such establishment or class of establishments, in which such hazardous or life threatening activity is being carried

on, as may be notified by the Central Government:

It is further provided that notwithstanding any threshold provided in the definition of factory in clause (w), for the purposes of Chapter II, the establishment specified in sub-clause (i) or sub-clause (ii) or sub-clause (iii) shall be deemed to be the establishment within the meaning of this clause though the number of employees employed are ten or more; {Section 2(1)(v)}

**“Factory”** has been defined to mean any premises (*based on threshold of workers*) including the precincts thereof—

- (i) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or
- (ii) whereon forty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mobile unit belonging to the armed forces of the Union, railways running shed or a hotel, restaurant or eating place:

It is provided that where under any law for the time being in force in a State immediately before the commencement of this Code, the number of workers specified is more or less than the number specified in clause (i) or clause (ii), then, the number specified under the law of the State shall prevail in that State till it is amended by the competent Legislature.

Explanation I.—For computing the number of workers for the purposes of this clause all the workers (in different groups and relays) in a day shall be taken into account.

Explanation II. —For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed as factory if no manufacturing process is being carried on in such premises or part thereof. {Section 2(1)(w)}.

**“Family”** when used in relation to a worker, means—

- (i) spouse;
- (ii) children including adopted children of the worker who are dependent upon him and have not completed the age of eighteen years; and
- (iii) parents, grand-parents, widowed daughter and widowed sister dependent upon such worker.

Explanation. —For the purposes of this clause, such dependents shall not be included who are, for the time being, getting such income from such sources, as may be prescribed by the appropriate Government;

*It is to be noted that widowed daughter and widowed sister has also been included in the definition of worker for the sake of ensuring them safety and security. {Section 2(1)(x)};*

**“Godown”** means any warehouse or other place, by whatever name called, used for the storage of any article or substance required for any manufacturing process which means any process for, or incidental to, making, finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal as finished products. {Section 2(1)(y)}:

Section 2(1)(z) defines **“hazardous”** which means involving danger or potential danger;

According to section 2(1)(za), **“hazardous process”** means any process or activity in relation to an industry or plantation specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, hazardous substances, wastes or effluents thereof or spraying of any pesticides, insecticides or chemicals used therein, as the case may be, would—

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution of the general environment;

**“Hazardous Substance”** means any substance or such quantity of the substance as may be prescribed by the appropriate Government or preparation of which by reason of its chemical or physio-chemical properties or handling is liable to cause physical or health hazards to human being or may cause harm to other living creatures, plants, micro-organisms, property or the environment; {Section 2(1)(zb)}

**“Industrial Premises”** means any place or premises (not being a private dwelling house), including the precincts thereof, in which or in any part of which any industry, trade, business, occupation or manufacturing is being ordinarily carried on with or without the aid of power and includes a godown attached thereto; {Section 2(1)(zc)}

According to section 2(1) (zd) of the Code, **“Industry”** means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, —

- (i) any capital has been invested for the purpose of carrying on such activity; or
- (ii) such activity is carried on with a motive to make any gain or profit, but does not include—
  - (a) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic services; or
  - (b) any activity of the appropriate Government relating to the sovereign functions of the appropriate Government including all the activities carried on by the Departments of the Central Government dealing with defence research, atomic energy and space; or
  - (c) any domestic service; or any other activity as may be notified by the Central Government;

**“Inspector-cum-Facilitator”** refers to an Inspector appointed under sub-section (1) of Section 34. In terms of Section 2(1)(ze), the role of the Inspector is no longer confined merely to conducting inspections and imposing penalties for non-compliance. Instead, the emphasis has been shifted towards enabling and facilitating employers in achieving compliance with the law.

**“Machinery”** means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to perform work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy. (Section 2(1)(zg))

**“Manufacturing Process”**: According to section 2(1) (zi) it means any process for—

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing, printing, printing by letter press, lithography, offset, photogravure screen printing, three Dimensional or four-Dimensional printing, prototyping, flexography or other types of printing process or

book binding; or

- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage; or
- (vii) such other processes as the Central Government may notify

### **“Occupier”**

According to Section 2(1)(zs) of the Code, “Occupier” of a factory means the person who has ultimate control over the affairs of the factory.

It is provided that the term *occupier* of a factory shall be construed as follows:

|   |   |
|---|---|
| 1. In the case of a firm or association of individuals  | – Any one of the individual partners or members shall be deemed to be the occupier.   |
| 2. In the case of a company   | – Any one of the directors shall be deemed to be the occupier, excluding any independent director as defined under Section 149(6) of the Companies Act, 2013.   |
| 3. In the case of a factory owned or controlled by the Central Government, State Government, or a local authority | – The person or persons appointed to manage the affairs of the factory by the respective Government or authority, or by such other authority as may be prescribed by the Central Government, shall be deemed to be the occupier |

### **“Principal Employer”**

According to Section 2(1) (zz) the term “principal employer”, where the contract labour is employed or engaged, means—

|   |   |
|---|---|
| (i) in relation to any office or Department of the Government or a local authority, | <ul style="list-style-type: none"><li>● The head of the office or department, or</li><li>● Any other officer specified by the Government or local authority for this purpose.</li></ul> |
| (ii) in a factory   | <ul style="list-style-type: none"><li>● The owner or occupier of the factory, or</li><li>● The person named as the manager of the factory, where such a designation exists.</li></ul>   |
| (iii) in a mine   | <ul style="list-style-type: none"><li>● The owner or agent of the mine.</li></ul>   |
| (iv) in relation to any other establishment   | <ul style="list-style-type: none"><li>● Any person who is responsible for the supervision and control of the establishment.</li></ul>   |

**“Serious Bodily Injury”** means any injury which involves, or in all probability will involve, the permanent loss of any part or section of a body or the use of any part or section of a body, or the permanent loss of or injury to the

sight or hearing or any permanent physical incapacity or the fracture of any bone or one or more joints or bones of any phalanges of hand or foot; {Section 2(1)(zzg)}

**“Standards”, “Regulations”, “Rules”, “Bye-Laws” And “Orders”** respectively means standards, regulations, rules, bye-laws and orders made or declared, as the case may be, under this Code. {Section 2(1) (zzh)}

### **“Wages”**

The term “wages” shall mean all remuneration, whether by way of salaries, allowances, or otherwise, expressed in terms of money or capable of being so expressed, which would be payable to a person employed if the terms of employment (express or implied) were fulfilled, in respect of his employment or work done therein.

#### *Inclusive Components:*

- (i) Basic pay
- (ii) Dearness allowance
- (iii) Retaining allowance, if any

#### *Exclusions*

The term “wages” shall not include:

- (a) Any bonus payable under law, which does not form part of contractual remuneration.
- (b) The value of house accommodation, supply of light, water, medical attendance, or other amenities excluded by order of the appropriate Government.
- (c) Employer’s contribution to pension or provident fund, and accrued interest thereon.
- (d) Conveyance allowance or value of travelling concession.
- (e) Any sum paid to defray special expenses arising from the nature of employment.
- (f) House rent allowance.
- (g) Remuneration payable under any award, settlement, or order of a court or tribunal.
- (h) Overtime allowance.
- (i) Commission payable to the employee.
- (j) Gratuity payable upon termination of employment.
- (k) Retrenchment compensation, retirement benefits, or ex gratia payments made upon termination.

#### *Provisos*

- For calculation of wages, if payments under exclusions (a) to (i) exceed one-half (or such percentage as notified by the Central Government) of the total remuneration, the excess shall be deemed remuneration and added to wages.
- For the purposes of equal wages across genders and for payment of wages, the emoluments specified in exclusions (d), (f), (g), and (h) shall be taken into account.

#### *Explanation*

Where an employee receives remuneration in kind in lieu of wages, the value of such remuneration shall be deemed part of wages, provided it does not exceed 15% of the total wages payable. {Section 2(1)(zzj)}

“**Week**” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector-cum-Facilitator; {Section 2(1) (zzk)}

“**Worker**”

The term “worker” means any person employed in any establishment to perform manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, whether the terms of employment are express or implied, and includes working journalists and sales promotion employees, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who is employed in a supervisory capacity drawing wage exceeding eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time. {Section 2(1) (zsl)}

## REGISTRATION

### Registration of Establishments (Section 3)

- (1) **Obligation to Register New Establishments:** Every employer of an establishment—
  - (a) which comes into existence after the commencement of this Code; and
  - (b) to which this Code applies,shall, within **sixty days** from the date of applicability, submit an electronic application to for the registration of such establishment the registering officer appointed by the appropriate Government (hereinafter referred to as the registering officer). It is provided that the registering officer may accept applications beyond this period upon payment of late fees as may be prescribed by the appropriate Government.
- (2) **Form and Particulars of Application:** Every such application shall be submitted to the registering officer in such manner, in such form, containing such particulars including the information relating to the employment of inter-State migrant workers and shall be accompanied by such fees as may be prescribed by the appropriate Government.
- (3) **Grant of Registration Certificate:** Upon receipt of the application, the registering officer shall register the establishment and issue an electronic certificate of registration in the prescribed form, within the prescribed time and subject to prescribed conditions as may be prescribed by the Central Government. It is provided that if the registering officer fails to act within the prescribed period, the establishment shall be **deemed registered** and under this Code immediately on the expiration of such period and the electronic certificate of registration shall be auto generated
- (4) **Intimation of Changes:** Any post registration change in ownership, management, or particulars furnished in the application of registration shall be intimated electronically to the registering officer within **thirty days of such change** as may be prescribed by the Central Government. The registering officer shall amend the certificate electronically in such manner as may be prescribed by the Central Government.
- (5) **Closing of Establishments:** Within **thirty days** of closure of the establishment, the employer shall—
  - (a) inform the registering officer of the closure; and

- (b) certify payment of all dues to workers employed in such establishment.

Such information and certification shall be sent to the registering officer in such manner as may be prescribed by the Central Government. The registering officer shall, within **sixty days** of receiving such information and certificate, remove the establishment from the register of establishments maintained by him and cancel its certificate. It is provided that the registration certification of the establishment under this sub-section within such sixty days, then, the registration certificate of such establishment shall be deemed to have been cancelled under this Code immediately on the expiration of such period of sixty days and the cancellation of registration certificate shall be auto generated and the responsibility of such failure shall be on the registering officer.

**(6) *Misrepresentation or Fraudulent Registration:*** If an employer of an establishment—

- (a) has obtained the registration of his establishment by misrepresentation or suppression of any material fact, or registration of certain establishments, then, such misrepresentation or suppression of any material fact shall be deemed to be the contravention of the provisions of this Code for prosecution of the employer under section 94 without affecting the registration and running of the establishment
- (b) has obtained the registration of his establishment so fraudulently or otherwise that the registration has become useless or ineffective to run the establishment, the registering officer may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration by an order and such process for revocation shall be completed by the registering officer within sixty days from coming into his notice the facts specified in clause (b).

**(7) *Prohibition on Employment Without Registration:*** No employer shall employ workers if—

- (a) the establishment has not been registered under this section; or
- (b) the employer has not preferred appeal under section 4 against the cancellation of the registration certificate of the establishment under sub-section (5) or revocation of the registration of the establishment under sub-section (6) or the appeal so preferred has been dismissed.

**(8) *Deemed Registration of Existing Establishments:*** Notwithstanding anything contained in this Code, where any establishment, to which this Code applies, has already been registered under any—

- (a) Central Labour law; or
- (b) any other law which may be notified by the Central Government and which applies to the establishment which is in existence at the time of the commencement of this Code,

shall be deemed to have been registered under the provisions of this Code, subject to the condition that the registration holder provides the details of registration to the concerned registering officer within such time and in such form as may be prescribed.

## HEALTH, SAFETY AND WORKING CONDITIONS

### Responsibility of Employer for maintaining Health, Safety, and Working Conditions (Section 23)

Section 23 deals with the employer's responsibility for health, safety, and working conditions.

1. ***General Duty:*** Employers shall maintain health, safety, and working conditions in their establishments as prescribed by the Central Government.
2. ***Specific Matters Prescribed:*** The Central Government may prescribe standards relating to:

- (i) Cleanliness and hygiene.
- (ii) Ventilation, temperature, and humidity.
- (iii) Environment free from dust, noxious gases, fumes, and other impurities.
- (iv) Adequate humidification, ventilation, and cooling in workrooms.
- (v) Potable drinking water.
- (vi) Standards to prevent overcrowding and ensure sufficient space.
- (vii) Adequate lighting.
- (viii) Separate and hygienic latrine and urinal facilities for male, female, and transgender employees.

## WELFARE PROVISIONS

### Welfare Facilities in the Establishment (Section 24)

Section 24 is a comprehensive welfare provision that codifies the employer's responsibility to maintain health, safety, and decent working conditions.

1. **Welfare Facilities:** Employers shall provide and maintain welfare facilities as prescribed by the Central Government, including:
  - (i) Adequate and suitable washing facilities for male and female employees separately.
  - (ii) Bathing places and locker rooms for male, female, and transgender employees separately.
  - (iii) Places for keeping clothing not worn during working hours and drying wet clothing.
  - (iv) Sitting arrangements for employees obliged to work standing.
  - (v) Canteen facilities in establishments with 100 or more workers (including contract labour).
  - (vi) Medical examination of mine workers before employment and at prescribed intervals.
  - (vii) Adequate first-aid boxes or cupboards accessible during all working hours.
  - (viii) Any other welfare measures considered necessary by the Central Government for decent living standards.
2. **Additional Prescribed Matters:** Without prejudice to the generality of the powers referred to under sub-section (1), the Central Government may also prescribe:
  - (i) Ambulance rooms in establishments with **500 or more workers** (factories, mines, construction).
  - (ii) Medical facilities at the operating centres and halting stations, uniforms, raincoats, and other like amenities for protection from rain or cold for motor transport workers.
  - (iii) Adequate, suitable, and separate shelters/rest-rooms and lunch-rooms for male, female and transgender employees and lunch-room in every factory and mine wherein more than fifty workers are ordinarily employed and in motor transport undertaking wherein employee is required to halt at night;
  - (iv) Appointment of welfare officers in factories, mines, or plantations where **250 or more workers** are ordinarily employed, with prescribed qualifications and duties and the such welfare officer;
  - (v) Temporary living accommodation for building workers, free of charge, within the work site or as near

to it as may be possible, to all building workers employed by him and for causing removal or demolition of such temporary living accommodation and for returning by the employer the possession of any land obtained by him for such purpose from Municipal Board or any other local authority;

- (vi) Employer's responsibility to reimburse contractors for accommodation expenses in construction work, where the building or other construction work is done through the contractor;
- (vii) Any other matter as may be prescribed.

3. **Crèche Facilities:** The Central Government may make rules to provide for the facility of creche having suitable room or rooms for the use of children under the age of six years of the employees at suitable location and distance either separately or along with common facilities in establishments wherein more than fifty workers are ordinarily employed. It is provided that crèches may be common facilities provided by Government, municipality, NGOs, or pooled by multiple establishments.

## HOURS OF WORK AND ANNUAL LEAVE WITH WAGES

### Daily and Weekly Working Hours, Leave (Section 25)

Section 25 is a foundational provision on daily and weekly working hours, leave entitlements, and special categories of workers.

**General Working Hours:** No worker shall be required or allowed to work in any establishment or class of establishment for more than:

- i. 8 hours in a day; and
- ii. the daily period of work shall be fixed with intervals and spread overs as notified by the appropriate Government.

**Special Provisions for Mines:** It is provided that in case of mines

- a) Persons employed below ground shall not work for more than the hours in a day as notified by the Central Government.
- b) Work below ground shall be arranged in shifts, each not exceeding the daily maximum hours notified in
- c) No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work shown in respect of him in the register maintained under clause ( a ) of section 33.

**Special Provisions for Motor Transport Workers:** It is further provided that subject to clause ( a ) that the hours of work in case of motor transport worker shall include—

- (i) Time spent during the running time of the transport vehicle.
- (ii) Time spent in subsidiary work (accounts, ticket checking, garaging, upkeep, loading/unloading, etc.).
- (iii) Period of mere attendance at terminals of less than 15 minutes.

**Working hours for Working Journalist:** Notwithstanding anything contained in sub-section (1), the hours of work for working journalist shall, subject to a maximum of one hundred and forty-four hours of work during any period of four consecutive weeks and a period of not less than twenty-four consecutive hours of rest during any period of seven consecutive days, be such as may be prescribed by the Central Government.

### ***Sales Promotion Employees & Working Journalists – Leave Entitlements:***

A sales promotion employee or the working journalist,

- (i) in addition to such holidays, casual leave or other kinds of leave as may be prescribed by the Central Government, shall be granted, if requested for—
  - (a) Earned leave: At least 1/11th of duty period, on full wages.
  - (b) Medical leave: At least 1/18th of service period, on half wages.
- (ii) Earned leave may be accumulated up to prescribed limits.
- (iii) Earned leave may be encashed or availed, subject to prescribed limits.
- (iv) On voluntary retirement, or termination (for any reason whatsoever other than punishment), entitled to cash compensation subject to such conditions and restrictions as may be prescribed by the Central Government (including conditions by way of specifying the maximum period for which such cash compensation shall be payable), in respect of the earned leave earned by him and not availed of;
- (v) On death in service, his heirs shall be entitled to cash compensation for the earned leave earned by him and not availed of his heirs shall be paid the cash compensation in respect of any period of earned leave for which he or his heirs, is or are entitled to cash compensation under clause (iv) or clause (v), which shall be an amount equal to the wages due to him for such period.

***Adolescent Workers:*** Notwithstanding anything contained in this section, working hours of an adolescent worker shall be regulated by the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

### **Weekly and Compensatory Holidays (Section 26)**

Section 26 ensuring that workers receive weekly rest and, if deprived, compensatory holidays.

***Weekly Holiday Rule:*** No worker shall be required or allowed to work in an establishment for more than six days in any one week.

***Special Provision for Motor Transport Workers:*** It is provided that in any motor transport undertaking, an employer may, in order to prevent any dislocation of a motor transport service, require a worker to work on any day of weekly holiday which is not a holiday so arranged that the worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

***Government Exemptions:*** The appropriate Government may, by notification, exempt certain workers from the weekly holiday requirement, subject to prescribed conditions.

***Compensatory Holidays:*** If workers are deprived of weekly holidays due to exemptions or rules, they shall be granted compensatory holidays equal to the number of weekly holidays lost within the same month, or within the following two months.

### **Extra Wages for Overtime (Section 27)**

This provision ensures that overtime is both voluntary and fairly compensated

#### ***Overtime Pay:***

- Workers who work beyond prescribed daily or weekly hours shall be paid at twice the rate of wages.
- Overtime is calculated on a daily or weekly basis, whichever is more favourable to the worker.

***Consent Requirement:*** It is provided that a worker shall be required to work overtime by the employer subject to

the consent of such worker for such work.

**Government Regulation:** It is further provided that the appropriate Government may prescribe the maximum number of overtime hours permissible.

### **Night Shifts (Section 28)**

Where a worker in an establishment works on a shift which extends beyond midnight:

- (a) for the purposes of section 26, a weekly holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;
- (b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

### **Prohibition of Overlapping Shift (Section 29)**

The section provides for regulating arrangement of shifts in establishments to prevent overlapping relays of workers.

**General Rule:** Work in an establishment shall not be carried out by a system of shifts arranged in such a way that more than one relay of workers is engaged in the same kind of work at the same time.

**Exemptions:** For exemption from the prohibition in sub-section (1), the appropriate Government, or with its approval, the Chief Inspector-cum-Facilitator, may issue a written order exempting:

- Any establishment or class of establishments,
- Any department or section of an establishment, or
- Any category or description of workers.

Such exemptions shall specify reasons and may be subject to conditions deemed expedient.

**Special Provision for Mines:** It is provided that the exemption power under sub-section (2) does not apply to mines.

### **Restriction on Double Employment in Factory and Mine (Section 30)**

The section provides that no worker shall be required or allowed to work in a mine or factory if he has already been working in any other such similar establishment within the preceding twelve hours, save in such circumstances as may be prescribed by the appropriate Government.

### **Notice of Periods of Work (Section 31)**

The section provides for procedural compliance ensuring transparency in work schedules. It mandates employers to formally display and notify periods of work, with oversight by the Inspector-cum-Facilitator.

**Display of Notice:** Every establishment shall display and correctly maintain a notice showing, for each day, the periods during which workers may be required to work, in accordance with the Code.

**Form and Submission:** The form of the notice, its manner of display, and the procedure for sending it to the Inspector-cum-Facilitator shall be prescribed by the appropriate Government.

**Changes in Work System:** Any proposed change in the system of work that requires altering the notice shall be:

- Intimated to the Inspector-cum-Facilitator before implementation.
- Not made until one week has elapsed since the last change, unless sanctioned by the Inspector-cum-

Facilitator.

### **Annual Leave with Wages (Section 32)**

The section comprehensively provides for annual leave with wages, laying down eligibility, accrual, carry-forward, encashment, and special rules for mines.

Eligibility and Accrual: Every worker in an establishment shall be entitled to annual leave with wages if:

- (i) They have worked one hundred and eighty days or more in a calendar year.
- (ii) Leave accrual (in a calendar year):
  - One day leave for every twenty days of work.
  - Adolescent workers: One day for every fifteen days.
  - Mine workers (below ground): One day for every fifteen days.
- (iii) Periods of layoff, maternity leave, or annual leave count towards the one hundred- and eighty-days threshold but do not earn leave.
- (iv) Holidays in a calendar Year/prefixed/suffixed to leave are excluded from the leave period.
- (v) in case of such worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate specified in clause ( ii), if he has worked for one-fourth of the total number of days in the remainder of the calendar year;
- (vi) Leave on Separation: If a worker is discharged, dismissed, quits, retires, or dies, they (or their heirs/nominees) are entitled to wages in lieu of the quantum of leave to which such worker was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated as specified in preceding clauses, even if such worker has not worked for the required period under this sub-section making such worker eligible to avail such leave, and such payment shall be made—
  - (a) where such worker is discharged or dismissed or quits employment before the expiry of the second working day from the date of such discharge, dismissal or quitting; and
  - (b) where such worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death;
- (vii) Carry Forward of Leave: Unused leave may be carried forward, subject to:
  - (a) Maximum 30 days carry forward.
  - (b) If leave was applied for but refused, it may be carried forward without limit.
- (viii) Encashment of Leave: Without prejudice to clause (vi) such worker shall be entitled on his demand for encashment of leave at the end of calendar year.
- (ix) Such worker shall be entitled, where his total number of leave exceeds thirty days under sub-clause (a) of clause (vii), to encash such exceeded leave.

Extension to Other Establishments: The appropriate Government may, by notification, extend these provisions to other establishments (except railways).

Special Provisions for Mines

- Existing rights under other laws, awards, or contracts remain protected.

- If such arrangements provide longer leave, they shall prevail.
- The Central Government may exempt mines if their leave rules are not less favourable than those in sub section (1).

## **MAINTENANCE OF REGISTERS, RECORDS AND RETURNS**

### **Maintenance of Registers, Records, and Filing of Returns (Section 33)**

An employer of an establishment shall—

- (a) maintain register in prescribed form, electronically or otherwise, containing such particulars of workers as may be prescribed by the appropriate Government including, —
  - (i) work performed by them;
  - (ii) number of hours of work constituting normal working hours in a day;
  - (iii) day of rest allowed in every period of seven days;
  - (iv) wage paid and receipts given therefor;
  - (v) leave, leave wages, overtime work, attendance and dangerous occurrences; and
  - (vi) employment of adolescent;
- (b) display notices at the work place of the workers in such manner and form as may be prescribed by the appropriate Government;
- (c) issue wage slips to the workers, in electronic forms or otherwise; and
- (d) file such return electronically or otherwise to the Inspector-cum-Facilitator in such manner

## **INSPECTOR -CUM-FACILITATORS AND OTHER AUTHORITY**

### **Appointment of Inspector-cum-Facilitators (Section 34)**

The section provides the framework for appointing and regulating Inspector-cum-Facilitators under the Code. It defines their appointment, jurisdiction, inspection schemes, hierarchy, and safeguards against conflicts of interest as follows:

The appropriate Government may, by notification, appoint Inspector-cum- Facilitators for the purposes of this Code who shall exercise the powers conferred on them under this Code throughout their respective jurisdiction specified in the notification.

- (1) The Inspector-cum-Facilitators appointed under sub-section (1) shall, apart from other duties to be discharged by them under this Code, conduct such inspections as specified in sub-section (3).
- (2) The appropriate Government may—
  - (i) for the purposes of inspection referred to in sub-section (2), by notification, lay down an inspection scheme which may provide for the generation of web-based inspection and calling of information under this Code, electronically and such scheme shall, inter alia , have provisions to cater to special circumstances for assigning inspection and calling for information from establishment or any other person besides web-based inspections; and

- (ii) without prejudice to the provisions of sub-section (2), by notification, under the scheme, provide for the randomised selection of establishment and the Inspector-cum-Facilitator for inspection.
- (3) Without prejudice to the powers of the appropriate Government under this section, the inspection scheme referred to in sub-section (3) may be designed taking into account, inter alia, the following factors, namely:—
- (a) assignment of unique number, to each establishment (which will be same as the registration number allotted to the establishment registered under section 3), unique number to each Inspector- cum-Facilitator and to each inspection in such manner as may be notified by the appropriate Government;
  - (b) timely uploading of inspection reports in such manner and subject to such conditions as may be notified in the scheme;
  - (c) provisions for special inspections based on such parameters as may be notified by the appropriate Government; and
  - (d) the characteristics of employment, the nature of work, and characteristics of the workplaces based on such parameters as may be notified by the appropriate Government.
- (4) The appropriate Government may, by notification, appoint any person or persons possessing the prescribed qualifications and experience to be Chief Inspector-cum-Facilitator for the purposes of such establishments or class of establishments and for such local limits of jurisdiction as may be specified in the notification:

It is provided that a Chief Inspector-cum-Facilitator may be appointed for the purposes of *a State or more than one States or for the purposes of the whole of the Country*.

- (5) The appropriate Government may, by notification, appoint for the purposes of establishments as may be notified by that Government, as many Additional Chief Inspector-cum-Facilitators, Joint Chief Inspector-cum-Facilitators and Deputy Chief Inspector-cum-Facilitators or any other officer of any designation as it thinks appropriate, to exercise such powers of the Chief Inspector-cum-Facilitator within his jurisdiction, as may be specified in the notification.
- (6) Every Additional Chief Inspector-cum-Facilitator, Joint Chief Inspector-cum- Facilitator, Deputy Chief Inspector-cum-Facilitator and every other officer appointed under sub-section (6) shall, in addition to the powers of a Chief Inspector-cum-Facilitator specified in the notification by which the officer is appointed, exercise the powers of an Inspector-cum-Facilitator within such local limits as may be specified in the notification.

No person shall be appointed under this section or having been so appointed, shall continue to hold office, who is, or who becomes, directly or indirectly interested in a workplace or work activity or in any process or business carried on in any workplace or in any plant or machinery connected therewith.

- (7) The appropriate Government may also, by notification, appoint such public officers as it thinks fit to be Inspector-cum-Facilitators in addition to existing Inspector-cum-Facilitator for exercising the powers and discharging the duties of Inspector-cum-Facilitator for all or any of the purposes of this Code within such local limits as may be specified in such notification.
- (8) Without prejudice to the other functions of the Inspector-cum-Facilitator under this Code, an Inspector-cum-Facilitator may in respect of any establishment or class of establishments in local area or areas of his jurisdiction where the Chief Inspector-cum-Facilitator with the approval of the appropriate Government and subject to such restrictions or conditions as he may think fit to impose, by order in writing authorise

the Inspector-cum-Facilitator to exercise such of the powers of the Chief Inspector- cum-Facilitator as may be specified in such order:

*It is provided that the Chief Inspector-cum-Facilitator, with the approval of the appropriate Government, may by order in writing, prohibit the exercise, by any Inspector-cum- Facilitator or any class of Inspector- cum-Facilitators specified in such order, of any such power by such Inspector-cum-Facilitator or class of Inspector-cum-Facilitators.*

- (9) Every Chief Inspector-cum-Facilitator, Additional Chief Inspector-cum-Facilitator, Joint Chief Inspector-cum-Facilitator, Deputy Chief Inspector-cum-Facilitator, Inspector-cum-Facilitator and every other officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and shall be officially subordinate to such authority as the appropriate Government may specify in this behalf.

### **Powers of Inspector-cum-Facilitators (Section 35)**

Sections 35 and 36 together define the powers of Inspector-cum-Facilitators and extend those powers to the District Magistrate in respect of mines. These provisions are central to enforcement under the Code, blending investigative authority with compliance facilitation. The provisions of the section are as follows:

- (1) Subject to any rules made in this behalf, an Inspector-cum-Facilitator may—
- (i) enter, with such assistance of persons, being persons in the service of the Government, or any local or other public authority, or with an expert, as he thinks fit, any place which is used, or which he has reason to believe, is used as a work place;
  - (ii) inspect and examine the establishment, any premises, plant, machinery, article, or any other relevant material;
  - (iii) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or death or not and take on the spot or otherwise statement of any person which he may consider necessary for such inquiry;
  - (iv) subject to any rules made by the State Government in this behalf, within his jurisdiction, examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Code, and take on the spot or otherwise statement of any person which he may consider necessary for carrying out the purposes of this Code relating to plantation;
  - (v) supply information and sensitise the employers and workers regarding the provisions of this Code and compliance thereof;  
require the production of any register or any other document relating to the workplace or work activity;
  - (vi) search or seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Code, which he has reason to believe, has been committed;
  - (vii) direct the concerned occupier or employer that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any inspection or inquiry;
  - (viii) take measurements, photographs and videographs and make such recordings as he considers necessary for the purpose of any examination or inquiry;

- (ix) take samples of any articles or substances found in any establishment or premises into which he has power to enter and of the air of the atmosphere in or in the vicinity of any such establishment or premises in such manner as may be prescribed by the appropriate Government;
  - (x) in case of any article or substance found in any establishment or premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health and safety of the employees, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of any provision of this Code) and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;
  - (xi) issue show cause notice relating to safety, health and welfare provisions arising under this Code, rules, regulations and bye-laws made thereunder;
  - (xii) prosecute, conduct or defend before any court any complaint or other proceeding arising under this Code, the rules and regulations made thereunder; and
  - (xiv) exercise such other powers and perform such other duties as may be prescribed by the appropriate Government.
- (2) Any person required to produce any document or to give any information required by an Inspector- cum-Facilitator under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.
- (3) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

### **Third Party Audit and Certification (Section 37)**

Section 37 of the Code introduces the concept of third-party audit and certification that shifts part of the oversight responsibility from government inspectors to empanelled experts.

**Empanelment of Experts:** The appropriate Government may, by notification, formulate a scheme to empanel experts with prescribed qualifications and experience. Such experts may be designated for start-up establishments or specified classes of establishments, as may be notified.

**Duties of Empanelled Experts:** The experts empanelled under sub-section (1), shall, —

- (a) Assigned audits and certifications in a randomised manner through a web-based scheme.
- (b) Carry out audits and certifications in the manner and for the purpose specified in the scheme.

Perform duties as specified in the scheme and submit reports to both the employer and the Inspector- cum-Facilitator.

## **SPECIAL PROVISION RELATING TO EMPLOYMENT OF WOMEN**

### **Employment of Women (Section 43)**

The section is a progressive provision that affirms the right of women to be employed across all establishments and types of work, while balancing this entitlement with safeguards for safety and working conditions

Women shall be entitled to be employed in all establishments for all types of work under this Code and they may also be employed, with their consent before 6 a.m. and beyond 7 p.m. subject to such conditions relating to safety,

holidays and working hours or any other condition to be observed by the employer as may be prescribed by the appropriate Government.

### **Adequate Safety of Employment of Women in Dangerous Operations (Section 44)**

Section 44 complements Section 43 by focusing specifically on women's employment in hazardous or dangerous operations. It ensures that equality in employment is balanced with mandatory safeguards for health and safety.

If the appropriate Government considers that employment of women in an establishment, or a class of establishments, or any particular hazardous/dangerous process therein, is dangerous to their health and safety,

Then, the Government may, in the prescribed manner, require the employer to provide adequate safeguards before employing women in such operations.

## **SPECIAL PROVISIONS FOR CONTRACT LABOUR**

### **Applicability of Part(I) {Section 45}**

Section 45 of the Code is the gateway provision for the applicability of the Chapter XI (Part I) dealing with contract labour. It defines the threshold for coverage, exclusions, and clarifies what counts as "intermittent" or "casual" work.

**Coverage:** Part I applies to:

- (i) Every establishment where 50 or more contract labour are employed (or were employed on any day in the preceding 12 months).
- (ii) Every manpower supply contractor who has employed 50 or more contract labour on any day in the preceding 12 months.

**Exclusion:** This Part does not apply to establishments where work performed is only of an intermittent or casual nature.

**Authority to Decide:** If a dispute arises about whether work is intermittent or casual, the appropriate Government, after consulting the National Board or State Advisory Board, shall decide. Such decision shall be final.

It may be noted that work performed in an establishment shall not be deemed to be of an intermittent nature—

- (i) if it was performed for more than one hundred and twenty days in the preceding twelve months; or
- (ii) if it is of seasonal character and is performed for more than sixty days in a year.

### **Appointment of Designated Authority (Section 46)**

The appropriate Government may, by order:

- Appoint Gazetted officers of the Government as designated authorities under Section 119(1).
- Specify the limits of their jurisdiction.
- Vest them with powers and duties, including issuance of licences, revocation of licences and handling such functions electronically, as may be prescribed.

### **Licensing of Contractors (Section 47)**

The section is a core compliance provision that regulates the licensing of contractors engaging contract labour. It ensures that contractors cannot operate without formal authorisation, and it introduces both general licences and work-specific licences.

**General Rule:** Except under and in accordance with a licence issued by the designated authority under Section 119(1), no contractor covered by this Part shall:

- (a) Supply or engage contract labour in any establishment; or
- (b) Undertake or execute work through contract labour,

Licence shall be issued after verifying that the contractor meets qualifications/criteria prescribed by the Central Government. Such licence shall specify:

- Number of contract labour permitted.
- Amount of security to be deposited.

**Work-Specific Licence:** If contractor does not meet prescribed qualifications/criteria, the authority may issue a work-specific licence. Such licence:

- Is electronically renewable within prescribed period.
- Applies only to the concerned work order.
- Is subject to specified conditions.

**Conditions of Licence:** Subject to the provisions of this Part—

- (a) Licence may include conditions relating to hours of work.
  - Fixation of wages.
  - Essential amenities for contract labour.
- (b) Licence shall be obtained from:
  - Central Government authority (if establishment falls under Central jurisdiction).
  - State Government authority (if establishment falls under State jurisdiction).

It may be noted that contractors seeking licences for multiple States or whole of India must obtain licence from the referred to in sub-section (1) of section 119 designated by the Central Government for such purpose. It is further provided that before issuing such licence the authority so designated shall consult the concerned State or States authorities designated under sub-section (1) of section 119, electronically before issuing licence for the establishments for which the appropriate Government is the State Government.

### **Procedure for Issue or Renewal of Licence (Section 48)**

Section 48 laying down the procedure for issue and renewal of contractor licences. It formalises the process, introduces electronic applications, and defines validity, amendment, and contractor responsibilities.

#### **Electronic Application**

- a. Applications for licences under Section 119 (for purposes of Section 47(1) or 47(2)) shall be made electronically in form and manner as may be prescribed.
- b. Application shall include particulars such as:
  - i. Number of contract labour.
  - ii. Nature of work for which contract labour is to be employed.

- iii. Other prescribed particulars, including information on inter-State migrant workers.

*Prescribed Procedure:* The designated authority under Section 119(1) shall follow the procedure prescribed by the appropriate Government for processing applications.

**Validity and Amendment:** Licence issued under Section 47(1) shall be valid for five years in respect of the number of contract labour specified therein.

If contractor wishes to increase the number of contract labour, he shall apply for amendment in prescribed manner. The authority may amend licence after deposit of additional security deposit for the balance period.

**Contractor's Responsibilities:** The licence so issued shall contain responsibilities of the contractor as prescribed by the appropriate Government.

#### **No Fees or Commission or Any Cost to Workers (Section 49)**

A contractor shall not charge, either directly or indirectly, in whole or in part, any fee, or commission, or any other cost from the contract labour.

#### **Information Regarding Work Order to be given to the Appropriate Government (Section 50)**

The section is a compliance and accountability provision that ensures transparency between contractors and the Government regarding contract labour engagements.

**Mandatory Intimation:** When a contractor receives a work order from an establishment:

- To supply contract labour, or
- To execute work through contract labour,

The contractor shall intimate the designated authority (under Section 119) within the prescribed time and manner.

*Penalty for Non-Compliance:* If the contractor fails to give intimation, the designated authority may suspend or cancel the licence in such manner as may be prescribed by the appropriate Government. Any such action of revocation or suspension shall be taken after giving the contractor an opportunity to show cause.

#### **Revocation, Suspension and Amendment of Licence (Section 51)**

Sections 51 and 52 together establish the disciplinary framework for contractor licences under the Code. They cover revocation, suspension, amendment, and appeals, ensuring both accountability and procedural fairness.

**Grounds for Revocation or Suspension:** The designated authority under Section 119(1) may revoke or suspend a licence if:

- (a) The licence was obtained by misrepresentation or suppression of material facts.
- (b) The licence holder has failed to comply with licence conditions or contravened provisions of this Part or rules.

This revocation or suspension is without prejudice to any other penalty to which the contractor may be liable under this Code.

**Due Process:** Action shall be taken only after giving the contractor an opportunity to show cause. Procedure for revocation/suspension is prescribed by the Central Government.

**Amendment of Licence:** Subject to any rules that may be made in this behalf, the authority referred to in sub-section (1) of section 119 may amend a licence granted for the purposes of this Part.

## Appeals (Section 52)

Any person aggrieved by an order under Sections 47, 48, or 51 may appeal to the appellate authority prescribed by the appropriate Government under Section 119(6). Appeal shall be filed within 30 days of communication of the order. It is provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

## Disposal of Appeal:

On receipt of an appeal, the appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal within thirty days from the date on which the appeal is preferred.

## Liability of Principal Employer for Welfare Facilities (Section 53)

The principal employer of an establishment shall provide to contract labour employed therein the welfare facilities specified under Sections 23 and 24.

## Effect of Employing Contract Labour from a Non-Licensed Contractor (Section 54)

If a principal employer engages contract labour through a contractor who is required to obtain a licence under this Part but has not obtained such licence, then, such employment shall be deemed to be in contravention of the provisions of this Code.

## Responsibility for Payment of Wages (Section 55)

This section lays down the financial accountability framework for contractors and principal employers in relation to contract labour.

**Contractor's Responsibility:** A contractor shall be responsible for payment of wages to each contract labour employed by him and such wages shall be paid before the expiry of such period as may be prescribed by the appropriate Government.

**Mode of Payment:** Every contractor shall, make the disbursement of wages referred to in sub-section (1) through bank transfer or electronic mode and inform the principal employer electronically the amount so paid by such mode. It is provided that where it is not practicable to disburse payment in the mode specified in this section, then, the payment shall be made in such manner as may be prescribed by the appropriate Government.

**Principal Employer's Liability:** If the contractor fails to pay wages within the prescribed period or makes short payment, the principal employer shall be liable to pay wages in full or the unpaid balance to the contract labour. The principal employer may recover the amount from the contractor by deducting from any amount payable under any contract, or as a debt payable by the contractor.

If the contractor does not pay wages, the appropriate Government shall order payment from the security deposit deposited by the contractor under the licence. Payment shall be made in the manner prescribed by such Government.

## Experience Certificate (Section 56)

This section ensures that contract labourers receive formal recognition of their work experience.

Every concerned contractor shall, on demand, issue an experience certificate to the contract labour. The certificate shall be in the form prescribed by the appropriate Government and contains the details of the work performed by the contract labour.

## **Prohibition of Employment of Contract Labour (Section 57)**

The section establishes a general prohibition on employing contract labour in the core activities of an establishment, thereby protecting the integrity of essential operations and ensuring that permanent workers are not displaced. However, it also provides limited exceptions where contract labour may be engaged, and sets out a mechanism for determining whether an activity qualifies as “core.”

**General Prohibition:** Notwithstanding anything contained in Part I, employment of contract labour in core activities of any establishment is prohibited.

**Exceptions:** It is provided that the principal employer may engage contract labour through a contractor to any core activity, if—

- (a) the normal functioning of the establishment is such that the activity is ordinarily done through contractor; or
- (b) the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be;
- (c) any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.

### **Determination of Core Activity:**

- (a) The appropriate Government may appoint, by notification, a designated authority to advise on whether an activity is core or not.
- (b) if a question arises as to whether any activity of an establishment is a core activity or otherwise, the aggrieved party may make an application in such form and manner as may be prescribed, to the appropriate Government for decision;
- (c) the appropriate Government may refer any such question suo motu or refer the application to the designated authority, which on the basis of relevant material in its possession, or after making such an enquiry as it deems fit, shall report to the appropriate Government, within such period and thereafter the appropriate Government shall decide the question within such period as may be prescribed.

## **FACTORIES**

### **Approval and Licensing of Factories (Section 79)**

- (1) The Appropriate Government may make rules in respect of factory or class or description of factories for—
  - (a) the submission of plans including specifications, nature and certification thereof;
  - (b) the previous permission for the site on which the factory is to be situated and for the construction or extension thereof; and
  - (c) subject to the provision of sub-section 119, licensing and renewal thereof including fees to be payable for such, licensing and renewal, if required, as the case may be.
- (2) If on an application for permission referred to in clause (b) of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (a) of that sub-section, sent to the State Government or Chief Inspector-cum-Facilitator in the electronic mode, no order is communicated to the applicant within such period not exceeding thirty days, the permission applied for in the said application shall be deemed to have been granted.

**Appeal to the Central Government:** Where a State Government or a Chief Inspector-cum-Facilitator refuses to grant permission to the site, construction or extension of a factory and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to the State Government in any other case.

**When shall factory not be deemed to be extended:** Explanation of the section provides that a factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery or within such limits as may be prescribed, of the addition of any plant or machinery if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health.

### **Liability of Owner of Premises in Certain Circumstances (Section 80)**

Where any premises or separate buildings are leased to different occupiers for use as separate factories, the owner of the premises and occupiers of the factories utilising such common facilities which include safety and fire prevention and protection, access, hygiene, occupational health, ventilation, temperature, emergency preparedness and response, canteens, shelter, rest rooms and crèches shall jointly and severally be responsible for provision and maintenance of such common facilities and services as may be prescribed by the appropriate Government.

### **Power to apply Code to Certain Premises (Section 81)**

The appropriate Government may, by notification, declare that all or any of the provisions of this Part shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is ordinarily carried on irrespective of the number of workers working in the factory.

After a place is so declared, it shall be deemed to be a factory for the purposes of this Code, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

Explanation. —For the purposes of this section, “owner” shall include a lessee or mortgagee with possession of the premises.

### **Dangerous Operations. (Section 82)**

The appropriate Government may by rules make the provisions relating to any factory or class or description of factories in which manufacturing process or operation is carried on which exposes any of the persons employed in it to a serious risk of bodily injury, poisoning or disease, for—

- (a) specifying the manufacturing process or operation and declaring it to be dangerous;
- (b) prohibiting or restricting the employment of pregnant women in the manufacturing process or operation;
- (c) the periodical medical examination before, or at any time during the employment to ascertain the fitness of a worker or employee for such employment on the cost of the occupier; and
- (d) welfare amenities, sanitary facilities, protective equipment and clothing, and
- (e) any other requirement necessary for dangerous operations.

### **Constitution of Site Appraisal Committee (Section 83)**

The appropriate Government may, constitute one or more site appraisal committees consisting of a chairman and other members, for such purpose as may be prescribed including to consider and to give recommendations on an application for grant of permission for the initial location of a factory involving a hazardous process or for the

expansion of such factory.

The site appraisal committee shall make its recommendation within a period of thirty days of the receipt of the application for any of the purpose referred to in the said sub-section in such form, as may be prescribed.

### **Compulsory Disclosure of Information by Occupier (Section 84)**

**Information to be disclosed:** The occupier of every factory involving a hazardous process shall disclose in the manner prescribed by the State Government all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes.

**To whom disclosure shall be made:**

- the workers employed in the factory,
- the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator,
- the local authority within whose jurisdiction the factory is situate and
- the general public in the vicinity.

**Detailed policy to be laid down by the Occupier:** The occupier shall, at the time of registering the factory involving a hazardous process,

- lay down a detailed policy with respect to the health and safety of the workers employed therein and
- intimate such policy to the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator and the local authority and,

*thereafter, at such intervals as may be prescribed by the State Government, inform the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator and the local authority of any change made in the said policy.*

**Accurate information to be furnished:** The information furnished shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.

**Onsite emergency plan:** Every occupier shall,

- with the approval of the Chief Inspector-cum-Facilitator, draw up an on-site emergency plan and detailed disaster control measures for his factory and
- make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.

**Duty to disclose nature of hazardous process:** Every occupier of a factory shall, if such factory proposes to engage in a hazardous process at any time after the commencement of this Code, inform the Chief Inspector-cum-Facilitator about the nature and details of the process in such form and in such manner as may be prescribed by the State Government. Such disclosure shall be made within a period of thirty days before the commencement of such process.

**Penalty for contravention:** Where any occupier of a factory contravenes the provisions of section 84(5) and the licence issued under section 79 to such factory shall, notwithstanding any penalty to which the occupier of factory shall be subjected to under the provisions of this Code, be liable for cancellation.

**Measures for handling hazardous substances:** The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector-cum-Facilitator, lay down measures for the

- handling, usage, transportation and storage of hazardous substances inside the factory premises and
- the disposal of such substances outside the factory premises and
- publicise them in the manner prescribed by the State Government among the workers and the general public living in the vicinity.

### **Specific Responsibility of The Occupier in Relation to Hazardous Processes (Section 85)**

Every occupier of a factory involving any hazardous process shall—

- (a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed by the State Government;
- (b) appoint persons who possess prescribed qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed by the State Government:

It is provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector-cum-Facilitator shall be final;

- (c) provide for medical examination of every worker—
  - (i) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance; and
  - (ii) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in such manner as may be prescribed by the State Government.

### **National Board to Inquire into Certain Situations (Section 86)**

In the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, the Central Government may direct the National Board to inquire into the standards of health and safety observed in the factory with a view to finding out

- the causes of any failure or neglect in the adoption of any measures or standards prescribed by the State Government for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected due to such failure or neglect and
- for the prevention of recurrence of such extraordinary situations in future in such factory or elsewhere.

The recommendations of the National Board shall be advisory in the nature.

### **Emergency Standards (Section 87)**

The Central Government may direct the Directorate General Occupational Safety and Health formerly known as the Directorate General of Factory Advice Service and Labour Institutes or any Institution authorised in matters relating to standards of safety in hazardous processes,

- to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes

*Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate.*

**Enforceability of the emergency standards:** The emergency standards laid down under sub-section (1) shall, until they are incorporated in the rules made under this Code, be enforceable and have the same effect as if they had been incorporated in the rules made under this Code.

### **Permissible Limits of Exposure of Chemicals and Toxic Substances (Section 88)**

The maximum permissible limits of exposure of chemical and toxic substances in manufacturing process in any factory shall be of the value as may be prescribed by the State Government.

### **Right of Workers to Warn About Imminent Danger (Section 89)**

**Apprehension by the Workers:** Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may, bring the same to the notice of

- the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee and
- simultaneously bring the same to the notice of the Inspector-cum-Facilitator.

**Duty of the Person Receiving Notice of Imminent Danger:** It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to

- take immediate remedial action if he is satisfied about the existence of such imminent danger and
- send a report forthwith of the action taken to the Inspector-cum-Facilitator.

**Reference of the matter in case imminent danger is not observed:** If the occupier, agent, manager or the person in-charge is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the Inspector-cum-Facilitator whose decision on the question of the existence of such imminent danger shall be final.

### **Composition of Certain Offences (Section 114)**

Any penalty under section 12(3) or section 94 or section 96 or section 97(1) or section 99 or section 106 or sub-section (3) or any offence under sub-section (2) of section 97 or sub-section (1) of section 100 or section 101 or clause (b) of sub-section (1) of section 103 or section 105 or sub-section (2) of section 113 may either before or after the holding the enquiry or, as the case may be, of institution of prosecution may be compounded by such officer of the appropriate Government as may be notified by that Government in the manner as may be prescribed by it—

- (a) in a case of penalty for a sum of fifty per cent. of the maximum penalty provided for such penalty; and
- (b) in a case of offence for a sum of seventy-five per cent. of the maximum fine provided for such offence.

Where a penalty or an offence has been compounded under sub-section (1), the person liable for penalty or the offender, as the case may be, shall be discharged of the penalty or offence and there shall be no further proceedings against him in respect of such penalty or offence.

Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be liable to pay a penalty equivalent to twenty per cent. of the maximum penalty or fine provided for the penalty or the offence, as the case may be, in addition to the penalty or fine.

The amount of composition received under sub-section (1) shall be credited to the fund established under sub-section (1) of section 115 for the unorganised workers.

Nothing contained in sub-section (1) shall apply to a penalty or an offence committed by a person for a second or

subsequent time within a period of three years from the date of penalty or offence, as the case may be, —

- (a) which was earlier compounded; or
- (b) for which such person was earlier convicted.

## **SOCIAL SECURITY FUND**

### **Social security fund (Section 115)**

There shall be established by the appropriate Government a social security fund for the welfare of the unorganised workers to which there shall be credited the amount received from

- composition of the offence as specified in sub-section (4) of section 114 and
- the amount of the penalty as specified in sub-section (6) of section 111.
- The fund may also be funded by such other sources as may be prescribed by the appropriate Government.

**Administration and Expenditure of the fund:** The fund shall be administered and expended for welfare of the unorganised workers in such manner as may be prescribed by the appropriate Government including the transfer of the amount in the fund to any fund established under any other law for the time being in force for the welfare of the unorganised workers.

### **Repeal and Savings (Section 143)**

- (1) The following enactments shall stand repealed on and from the dates the notification referred to in sub-section (2) of section 1 is issued, namely: —
  - (a) The Factories Act, 1948;
  - (b) The Plantations Labour Act, 1951;
  - (c) The Mines Act, 1952;
  - (d) The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;
  - (e) The Working Journalists (Fixation of Rates of Wages) Act, 1958;
  - (f) The Motor Transport Workers Act, 1961;
  - (g) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
  - (h) The Contract Labour (Regulation and Abolition) Act, 1970;
  - (i) The Sales Promotion Employees (Conditions of Service) Act, 1976;
  - (j) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
  - (k) The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981;
  - (l) The Dock Workers (Safety, Health and Welfare) Act, 1986;
  - (m) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
- (2) Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed for the purposes under any of the provisions of the enactments repealed by

this Code, shall be deemed to have been appointed under this Code for such purposes under this Code.

- (3) Notwithstanding repeal under sub-section (1), anything done or any action taken under the enactments so repealed (including any rule, regulation, bye-laws, notification, nomination, appointment, order or direction made thereunder) shall be deemed to have been done or taken under the corresponding provisions of this Code and shall remain in force to the extent they are not contrary to the provisions of this Code till they are repealed by the Central Government.
  - (a) Without prejudice to the provisions of sub-section (2), provisions of section 6 of the General Clauses Act, 1897 shall apply to the repeal of such enactments.

## Lesson 17- The Industrial Relations Code, 2020

### INTRODUCTION

The Industrial Relations Code, 2020 is a landmark consolidation of India's labour laws, merging three major statutes—the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947—into a single, streamlined framework. Historically, these laws were enacted in different eras and addressed specific industrial concerns, resulting over time in fragmentation, inconsistent procedures, and delays in dispute resolution. To modernise and rationalise this framework, the Industrial Relations Code Bill, 2019 was introduced in the Lok Sabha and subsequently referred to the Parliamentary Standing Committee on Labour, which submitted a detailed report recommending clearer definitions, stronger worker safeguards, and simplified compliance requirements. Incorporating several of these recommendations, the revised Code was passed by Parliament in September 2020. Although the Code received Presidential assent on 28 September 2020. The Central Government has since notified the Code for enforcement with effect from 21st November 2025, bringing its provisions formally into operation across the country.

The Code reflects long-standing recommendations of the Second National Commission on Labour (2002) to consolidate labour laws into broad, comprehensive codes aimed at promoting industrial harmony. Designed with the objectives of simplifying procedures, strengthening collective bargaining, enhancing ease of doing business, enabling faster dispute resolution, and balancing flexibility with worker protection, the Code represents a forward-looking and technology-enabled framework for India's evolving industrial relations landscape.

Towards end to disputes by amalgamating 3 Labour Laws into the Industrial Relations Code the Central Government has taken steps for safeguarding the interests of Trade Unions as well as the workers. In this Code, all possible steps have been taken for industrial units and workers so that disputes do not arise in future.

The Industrial Relations Code, 2020 is structurally organised into 14 Chapters, comprising a total of 104 Sections and 3 Schedules. The Code begins with *Chapter I*, which contains preliminary provisions including the short title, extent, commencement, and key definitions. *Chapter II* introduces bipartite forums such as Works Committees and Grievance Redressal Committees. *Chapter III* deals with the registration, recognition, and functioning of Trade Unions, while *Chapter IV* lays down provisions relating to Standing Orders, including certification and modification. *Chapter V* addresses the law relating to industrial disputes, covering conciliation, arbitration, tribunals, and settlement mechanisms. *Chapter VI* contains restrictions and procedures regarding strikes and lockouts. *Chapter VII* governs lay-off, retrenchment, and closure, including compensation norms and procedural requirements. *Chapter VIII* introduces the framework for recognising a Negotiating Union or Negotiating Council. *Chapter IX* establishes the Re-skilling Fund for retrenched workers. *Chapter X* prescribes offences, penalties, and compounding provisions, while *Chapter XI* outlines the powers and duties of Inspectors-cum-Facilitators. The remaining chapters—*Chapters XII to XIV*—cover procedural matters, rule-making powers, exemptions, protection of actions, and repeal and savings clauses. The Three Schedules appended to the Code deal respectively with: matters to be included in Standing Orders, list of unfair labour practices, and transitional provisions related to prior enactments. Together, the structural arrangement ensures clarity, consolidation, and ease of compliance across India's industrial relations framework.

### Salient Features of the Code

**Fixed Term Employment (FTE):** Allows direct, time-bound contracts with full parity in wages and benefits; gratuity eligibility after one year. The provision reduces excessive contractualization and offers cost efficiency to employers.

**Re-skilling Fund:** To train retrenched employees, this fund has been set up from the contribution to be made by an industrial establishment for an amount equal to 15 days' wages for every worker retrenched. This is in addition to

retrenchment compensation. The amount will be credited to the workers account within 45 days of retrenchment.

**Trade Union Recognition:** Unions with 51% membership get recognition as the Negotiating Union; otherwise, a Negotiating Council is formed from unions, not less than 20% membership of trade union. Such an arrangement strengthens collective bargaining.

**Expanded Worker Definition:** Covers sales promotion staff, journalists, and supervisory employees earning up to Rs.18,000/month.

**Broader Definition of Industry:** Includes all systematic employer-employee activities, regardless of profit or capital, widening access to labour protections.

**Higher Threshold for Lay-off/Retrenchment/Closure:** Approval limit raised from 100 to 300 workers; States may enhance the limit further. The provision will simplify compliance and contribute to formalization.

**Women's Representation:** Ensures proportional representation of women in grievance committees for gender-sensitive redressal.

**Standing Orders Threshold:** Raised from 100 to 300 employees, easing compliance and enabling flexible workforce management.

**Work-from-Home Provision:** Permitted in service sectors by mutual consent, improving flexibility.

**Industrial Tribunals:** Two-member tribunals consisting of judicial and administrative member for quicker dispute resolution.

**Direct Tribunal Access:** Parties may approach tribunals directly after failed conciliation within 90 days.

**Notice for Strikes/Lockouts:** Mandatory 14-day notice for all establishments to promote dialogue and minimize disruptions.

**Expanded Definition of Strike:** Includes "mass casual leave also within its ambit" to prevent flash strikes and ensure lawful action.

**Decriminalization & Compounding:** Minor offences made compoundable with monetary penalties, promoting compliance over prosecution.

**Digital Processes:** Enables electronic record-keeping, registration, and communication for transparency and efficiency.

## PRELIMINARY

Section 1 of the Code sets out the applicability of the Industrial Relations Code, 2020. It provides the name of the legislation, its territorial scope, and the manner of its commencement. The Code shall extend to the whole of India.

### Enforcement of the Code:

- It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint; and
- different dates may be appointed for different provisions of this Code and
- any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

In exercise of the powers conferred by sub-section (3) of section 1 of the Industrial Relations Code, 2020 (35 of

2020), the Central Government hereby appoints the 21<sup>st</sup> day of November, 2025 as the date on which the provisions of the said Code, shall come into force.

## Definitions

In this Code, unless the context otherwise requires, —

**“Appellate Authority”** means an authority appointed by the appropriate Government to exercise such functions in such area as may be specified by that Government by notification in the Official Gazette. {Section 2(a)}

Section 2(b) of the Code defines **“Appropriate Government”** as, —

- (i) the Central Government.
  - in relation to any industrial establishment or undertaking carried on by or under the authority of the Central Government or concerning any such controlled industry as may be specified in this behalf by the Central Government or
  - the establishment of railways including metro railways, mines, oil fields, major ports, air transport service, telecommunication, banking and insurance company or
  - a corporation or other authority established by a Central Act or a central public sector undertaking,
  - subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government including establishments of the contractors for the purposes of such establishment,
  - corporation, other authority, public sector undertakings or any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, as the case may be, the Central Government.

Explanation: For the purposes of this clause, the Central Government shall continue to be the appropriate Government for Central Public Sector Undertakings even if the holding of the Central Government reduces to less than fifty per cent. equity in that public sector undertaking after the commencement of this Code;

- (ii) the State Government in relation to any other industrial establishment, including
  - State public sector undertakings,
  - subsidiary companies set up by the principal undertaking and
  - autonomous bodies owned or controlled by the State Government,

**“Arbitrator”** includes an umpire; {Section 2(c)}

**“Average Pay”** means the average of the wages payable to a worker, —

- (i) in the case of monthly paid worker, in three complete calendar months;
- (ii) in the case of weekly paid worker, in four complete weeks;
- (iii) in the case of daily paid worker, in twelve full working days,

preceding the date on which the average pay becomes payable.

If the worker had worked for three complete calendar months or four complete weeks or twelve full working

days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a worker during the period he actually worked; {Section 2(d)}

**“Award”** means an interim or a final determination of any industrial dispute or of any question relating thereto by any Industrial Tribunal referred to in section 44 or National Industrial Tribunal referred to in section 46 and includes an arbitration award made under section 42; {Section 2(e)}

**“Banking Company”** means a banking company as defined in section 5 of the Banking Regulation Act, 1949 and includes

- the Export-Import Bank of India,
- the Industrial Reconstruction Bank of India,
- the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989,
- the Reserve Bank of India,
- the State Bank of India,
- a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970,
- a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. {Section 2(f)}

**“Certifying Officer”** means any officer appointed by the appropriate Government, by notification, to perform the functions of a certifying officer under the provisions of Chapter IV. {Section 2(g)}

**“Closure”** means the permanent closing down of a place of employment or part thereof. {Section 2(h)}

**“Conciliation Officer”** means a conciliation officer appointed under section 43. {Section 2(i)}

**“Conciliation Proceeding”** means any proceeding held by a conciliation officer under this Code. {Section 2(j)}

**“Controlled Industry”** means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest. {Section 2(k)}

**“Employee”** means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union. {Section 2(l)}

**“Employer”** means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employee or worker in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified by the head of the department in this behalf or where no authority is so specified, the head of the department, and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

- (i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;
- (ii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director,

such manager or managing director;

- (iii) contractor; and
- (iv) legal representative of a deceased employer. {Section 2(m)}

**“Executive”**, in relation to a Trade Union, means the body by whatever name called, to which the management of the affairs of a Trade Union is entrusted. {Section 2(n)}

**“Fixed Term Employment”** means the engagement of a worker on the basis of a written contract of employment for a fixed period:

Provided that—

- (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature;
- (b) he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute; and
- (c) he shall be eligible for gratuity if he renders service under the contract for a period of one year. {Section 2(o)}

**“Industry”** means any systematic activity carried on by cooperation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

- (i) any capital has been invested for the purpose of carrying on such activity; or
- (ii) such activity is carried on with a motive to make any gain or profit,

but does not include—

- (i) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
- (ii) any activity of the appropriate Government relating to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
- (iii) any domestic service; or
- (iv) any other activity as may be notified by the Central Government. {Section 2(p)}

**“Industrial Dispute”** means any dispute or difference between employers and employees or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person and includes any dispute or difference between an individual worker and an employer connected with, or arising out of discharge, dismissal, retrenchment or termination of such worker. {Section 2(q)}

**“Industrial Establishment or Undertaking”** means an establishment or undertaking in which any industry is carried on:

*Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then, —*

- (i) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from

the other unit or units of such establishment or undertaking which is not carrying on or aiding the carrying on of any such activity, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (ii) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking. {Section 2(r)}

**“Insurance Company”** means a company as defined in section 2 of the Insurance Act, 1938. {Section 2(s)}

**“Lay-Off”** (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason, to give employment to a worker whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

*Explanation.* —Every worker whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

*Provided that if the worker, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day:*

*Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.* {Section 2(t)}

**“Lock-Out”** means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. {Section 2(u)}

**“Major Port”** means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908. {Section 2(v)}

**“Metro Railway”** means the metro railway as defined in sub-clause (i) of clause (1) of section 2 of the Metro Railways (Operation and Maintenance) Act, 2002. {Section 2(w)}

**“Mine”** means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952. {Section 2(x)}

**“National Industrial Tribunal”** means a National Industrial Tribunal constituted under section 46. {Section 2(y)}

**“Negotiating Union or Negotiating Council”** means the negotiating union or negotiating council referred to in section 14. {Section 2(z)}

**“Notification”** means a notification published in the Official Gazette of India or the Official Gazette of a State, as the case may be, and the expression “notify” with its grammatical variation and cognate expressions shall be construed accordingly. {Section 2(za)}

**“Office-Bearer”**, in relation to a Trade Union, includes any member of the executive thereof, but does not include an auditor. {Section 2(zb)}

**“Prescribed”** means prescribed by rules made under this Code. {Section 2(zc)}

**“Railway”** means the railway as defined in clause (31) of section 2 of the Railways Act, 1989. {Section 2(zd)}

**“Registered Office”** means that office of a Trade Union which is registered under this Code as the head office thereof. {Section 2(ze)}

**“Registered Trade Union”** means a Trade Union registered under this Code. {Section 2(zf)}

**“Registrar”** means a Registrar of Trade Unions appointed by the State Government under section 5. {Section 2(zg)}

**“Retrenchment”** means the termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (i) voluntary retirement of the worker; or
- (ii) retirement of the worker on reaching the age of superannuation; or
- (iii) termination of the service of the worker as a result of the non-renewal of the contract of employment between the employer and the worker concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (iv) termination of service of the worker as a result of completion of tenure of fixed term employment; or
- (v) termination of the service of a worker on the ground of continued ill-health. {Section 2(zh)}

**“Settlement”** means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and worker arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and to the conciliation officer. {Section 2(zi)}

**“Standing Orders”** means orders relating to matters set-out in the First Schedule. {Section 2(zj)}

**“Strike”** means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment and includes the concerted casual leave on a given day by fifty per cent. or more workers employed in an industry. {Section 2(zk)}

**“Trade Union”** means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions: *Provided that the provisions of Chapter III of this Code shall not affect—*

- (i) any agreement between partners as to their own business; or
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft. {Section 2(zl)}

**“Trade Union Dispute”** means any dispute relating to Trade Union arising between two or more Trade Unions or between the members of a Trade Union inter se. {Section 2(zm)}

**“Tribunal”** means an Industrial Tribunal constituted under section 44. {Section 2(zn)}

**“Unfair Labour Practice”** means any of the practices specified in the Second Schedule. {Section 2(zo)}

**“Unorganised Sector”** shall have the same meaning as assigned to it in clause (l) of section 2 of the Unorganised Workers’ Social Security Act, 2008. {Section 2(zp)}

**“Wages”** means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be

payable to a person employed in respect of his employment or of work done in such employment, and includes,—

- (i) basic pay;
- (ii) dearness allowance;
- (iii) retaining allowance, if any,

but does not include—

- (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
- (b) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) house rent allowance;
- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance;
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment; or
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment:

Provided that, for calculating the wage under this clause, if any payments made by the employer to the employee under sub clauses (a) to (i) exceeds one half, or such other per cent. as may be notified by the Central Government, of all remuneration calculated under this clause, the amount which exceeds such one half, or the per cent. so notified, shall be deemed to be remuneration and shall be accordingly added in wages under this clause:

Provided further that, for the purpose of equal wages to all genders and for the purpose of payment of wages the emoluments specified in sub clauses (d), (f), (g) and (h) shall be taken for computation of wage.

Explanation: Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee. {Section 2(zq)}

**“Worker”** means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and for the

purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who is employed in a supervisory capacity drawing wages exceeding eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time:

*Provided that for the purposes of Chapter III, "worker"—*

- (a) means all persons employed in trade or industry; and
- (b) includes the worker as defined in clause (m) of section 2 of the Unorganised Workers' Social Security Act, 2008. {Section 2(zr)}

## **BI-PARTITE FORUMS**

### **Works Committee (Section 3)**

In the case of any industrial establishment in which one hundred or more workers are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute a Works Committee, in such manner as may be prescribed, consisting of representatives of employer and workers engaged in the establishment. It is provided that the number of representatives of workers in such Committee shall not be less than the number of representatives of the employer.

The representatives of the workers shall be chosen, in such manner as may be prescribed, from among the workers engaged in the establishment and in consultation with their Trade Union, if any, registered in accordance with the provisions of section 9.

*Duties of Works Committee:* It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workers and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

### **Constitution of Grievance Redressal Committee (Section 4)**

Every industrial establishment employing twenty or more workers shall have one or more Grievance Redressal Committees for resolution of disputes arising out of individual grievances.

The Grievance Redressal Committee shall consist of equal number of members representing the employer and the workers to be chosen in such manner as may be prescribed.

The chairperson of the Grievance Redressal Committee shall be selected from among persons representing the employer and the workers alternatively on rotational basis every year.

The total number of members of the Grievance Redressal Committee shall not exceed ten.

Provided that there shall be adequate representation of women workers in the Grievance Redressal Committee and such representation shall not be less than the proportion of women workers to the total workers employed in the

industrial establishment.

An application in respect of any dispute referred to in sub-section (1) may be filed before the Grievance Redressal Committee by any aggrieved worker in such manner as may be prescribed within one year from the date on which the cause of action of such dispute arises.

The Grievance Redressal Committee may complete its proceedings within thirty days of receipt of the application under sub-section (5).

The decision of the Grievance Redressal Committee on any application filed under sub-section (5) shall be made on the basis of majority view of the Committee, provided more than half of the members representing the workers have agreed to such decision; otherwise, it shall be deemed that no decision could be arrived at by the Committee.

The worker who is aggrieved by the decision of the Grievance Redressal Committee or whose grievance is not resolved in the said Committee within the period specified in sub-section (6), may, within a period of sixty days from the date of the decision of the Grievance Redressal Committee or from the date on which the period specified in sub-section (6) expires, as the case may be, file an application for the conciliation of such grievance to the conciliation officer through the Trade Union, of which he is a member, in such manner as may be prescribed.

Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual worker, any dispute or difference between that worker and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other worker nor any Trade Union is a party to the dispute.

Notwithstanding anything contained in this section or section 53, any worker as is specified in sub-section (5) may make an application directly to the Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the conciliation officer of the appropriate Government for conciliation of the dispute, and on receipt of such application the Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as the Tribunal has in respect of the application filed under sub-section (6) of section 53.

The application referred to in sub-section (10) shall be made to the Tribunal before the expiry of two years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (9).

## **TRADE UNIONS**

### **Registrar of Trade Unions (Section 5)**

This section establishes the administrative framework for registration and regulation of Trade Unions. It empowers the State Government to appoint Registrars and supporting officers, and clarifies their jurisdiction and authority in relation to Trade Unions.

**Appointment of Registrar and Other Officers:** The State Government may, by notification, appoint

- a person to be the Registrar of Trade Unions, and
- other persons as Additional Registrar of Trade Unions, Joint Registrar of Trade Unions and Deputy Registrar of Trade Unions,

who shall exercise such powers and perform such duties of the Registrar as the State Government may, by notification, specify from time to time.

**Jurisdiction and Authority:** Subject to the provisions of any order made by the State Government

- Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Deputy Registrar of Trade Unions, as the case may be, shall be deemed to be the Registrar in relation to that Trade Union for the purposes of this Code where either of them exercises the powers and performs the duties of the Registrar in an area within which the registered office of a Trade Union is situated.

### Criteria for Registration (Section 6)

- *Minimum number of members to apply for registration:* Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Code with respect to registration, apply for registration of the Trade Union under this Code.
- *Membership threshold for registration:* No Trade Union of workers shall be registered *unless at least ten per cent. of the workers or one hundred workers, whichever is less*, engaged or employed in the industrial establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.
- *Validity of Application in case of withdrawal of applicants:* Where an application has been made under subsection (1) for registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application.
- *Condition for continuing registration:* A registered Trade Union shall at all times maintain:
  - a) At least 10% of the workers or 100 workers, whichever is less, as members.

Subject to a minimum of **seven members** engaged in the establishment/industry with which it is connected.

### Provisions to be Contained in Constitution or Rules of Trade Union (Section 7)

A Trade Union shall not be entitled to registration under this Code, unless the executive thereof is constituted in accordance with the provisions of this Code, and the rules of the Trade Union provide for the following matters, namely: —

- (a) the name of the Trade Union;
- (b) the whole of the objects for which the Trade Union has been established;
- (c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Code;
- (d) the maintenance of a list of members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union;
- (e) the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the industrial establishment, undertaking or industry, or units, branches or offices of an industrial establishment, as the case may be, with which the Trade Union is connected, and also the admission of such number of honorary or temporary members, who are not such workers, as are not permitted under section 21 to be office-bearers to form the executive of the Trade Union;
- (f) the payment of a subscription by members of the Trade Union from such members and others, as may be prescribed;

- (g) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on any member;
- (h) the annual general body meeting of the members of the Trade Union, the business to be transacted at such meeting, including the election of office-bearers of the Trade Union;
- (i) the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected once in a period of every three years and removed, and filling of casual vacancies;
- (j) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union;
- (k) the manner in which the rules shall be amended, varied or rescinded; and
- (l) the manner in which the Trade Union may be dissolved.

### **Application for Registration, Alteration of Name and Procedure thereof (Section 8)**

*Application for Registration of Trade Unions:* Every application for registration of a Trade Union shall be made to the Registrar electronically or otherwise and be accompanied by—

- (a) a declaration to be made by an affidavit in such form and manner as may be prescribed;
- (b) copy of the rules of the Trade Union together with a copy of the resolution by the members of the Trade Union adopting such rules;
- (c) a copy of the resolution adopted by the members of the Trade Union authorising the applicants to make an application for registration; and
- (d) in the case of a Trade Union, being a federation or a central organisation of Trade Unions, a copy of the resolution adopted by the members of each of the member Trade Unions, meeting separately, agreeing to constitute a federation or a central organisation of Trade Unions.

*Explanation.* — For the purposes of this clause, resolution adopted by the members of the Trade Union means, in the case of a Trade Union, being a federation or a central organisation of Trade Unions, the resolution adopted by the members of each of the member Trade Unions, meeting separately.

*Additional documents by existing Trade Union before registration:* Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars, as may be prescribed.

*Power of Registrar to call for further information:* The Registrar may call for further information for the purpose of satisfying himself that

- the application complies with the provisions of this Code and
- the Trade Union is entitled for registration under this Code, and

Registrar is vested with discretionary power to refuse to register the Trade Union until such information is furnished.

*Resemblance of name of applicant Trade Union:* The Registrar shall require the persons applying for altering the name of the Trade Union if the name under which the Trade Union is proposed to be registered is

- identical with that of an existing registered Trade Union or
- in the opinion of the Registrar so nearly resembles the name of an existing Trade Union that such name is likely to deceive the public or the members of either Trade Union.

The Registrar shall refuse to register the Trade Union until such alteration has been made.

### **Registration of Trade Union and Cancellation thereof (Section 9)**

This section lays down the process for registration of Trade Unions, issuance of certificates, recognition of existing unions, and grounds for cancellation or withdrawal of registration. It ensures that registration is conclusive, continuity is maintained for unions already registered under earlier law, and cancellation is subject to due process and recorded reasons.

*Registration by Registrar:* The Registrar shall, on being satisfied that the Trade Union has complied with all the requirements of the provisions of this Chapter in regard to registration, register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

*Certificate of Registration:* Where the Registrar makes an order for registration of a Trade Union, he shall issue a certificate of registration to the applicant Trade Union, in such form as may be prescribed. The sub section states the certificate of registration so issued, shall be the conclusive evidence that the Trade Union has been registered under this Code.

*Entry in Register:* If the Registrar has issued a certificate of registration to a Trade Union, he shall enter the name and other particulars of the Trade Union in a register maintained in this behalf in such form as may be prescribed.

*Recognition of Existing Unions:* Every Trade Union registered under the Trade Unions Act, 1926 having valid registration immediately before the commencement of this Code shall be deemed to have been registered under this Code.

It is provided that such Trade Union shall file with the Registrar a statement that the constitution of the executive of the Trade Union is in accordance with this Code along with the rules of the Trade Union updated in accordance with section 7, and the Registrar shall amend his records accordingly.

*Withdrawal or Cancellation of Registration:* The certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar—

- (i) on the application of the Trade Union verified in such manner as may be prescribed; or
- (ii) on the information received by him regarding the contravention by the Trade Union of the provisions of this Code or the rules made thereunder or its constitution or rules; or
- (iii) if he is satisfied that the members in a Trade Union falls below ten per cent. of total workers or one hundred workers, whichever is less:

It is provided that-

*Registrar shall give at least sixty days previous notice in writing specifying the grounds on which it is proposed to cancel the certificate of registration of a Trade Union before the certificate of registration is cancelled otherwise than on the application of the Trade Union.*

*Cancellation of registration by Registrar:* A certificate of registration of a Trade Union shall be cancelled by the Registrar where a Tribunal has made an order for cancellation of registration of such Trade Union.

*Reasoned order of cancellation:* While cancelling the certificate of registration of a Trade Union, the Registrar shall record the reasons for doing so and communicate the same in writing to the Trade Union concerned.

### **Appeal against Non-Registration or Cancellation of Registration (Section 10)**

*This section vests right to appeal in cases where the Registrar either refuses registration or cancels a certificate of registration, with provisions for condonation of delay and fair hearing.*

*Right to Appeal:* Any person may within such period as may be prescribed, prefer an appeal to the Tribunal, if aggrieved by

- the refusal of the Registrar to grant registration to a Trade Union under section 9 or
- the cancellation of a certificate of registration under sub-section (5) of the said section.

It is provided that the Tribunal may entertain the appeal after the limitation prescribed for preferring the appeal under this sub-section, if the appellant satisfies the Tribunal that such delay has been caused due to sufficient reason or unavoidable circumstances.

*Powers of the Tribunal:* The Tribunal may, after giving the parties concerned an opportunity of being heard,

- dismiss the appeal or
- pass an order directing the Registrar to register the Trade Union and to issue a certificate of registration or
- set aside the order of cancellation of certificate of registration, as the case may be, and

*Copy of such order shall be forwarded to the Registrar.*

### **Communication to Trade Union and Change in Its Registration Particulars (Section 11)**

This section outlines the ongoing compliance responsibilities of registered Trade Unions by ensuring proper communication channels, continuous monitoring of membership thresholds, and timely reporting of changes in particulars or rules to the Registrar.

*Communication and Notices:* All communications and notices to a registered Trade Union shall be sent, in such manner as may be prescribed, to the address of the head office of the Trade Union as entered in the register maintained by the Registrar.

*Membership Threshold Notification:* The Trade Union shall inform the Registrar if the members of such Trade Union fall below ten per cent. of total workers or one hundred workers, whichever is less.

*Notice of change to the Registrar:* The Trade Union shall inform the Registrar of any change in the particulars given by it in its application for registration and in its constitution or rules, in such manner as may be prescribed.

### **Incorporation of Registered Trade Union (Section 12)**

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

### **Certain Acts not to apply to registered Trade Unions (Section 13)**

The provisions of the following Acts, namely: —

- (a) the Societies Registration Act, 1860;

- (b) the Co-operative Societies Act, 1912;
- (c) the Multi-State Co-operative Societies Act, 2002;
- (d) the Companies Act, 2013; and
- (e) any other corresponding law relating to co-operative societies for the time being in force in any State,

*shall not apply to any registered Trade Union and the registration of any such Trade Union under any of the aforementioned Acts shall be void.*

### **Recognition of Negotiating Union or Negotiating Council (Section 14)**

This section provides for the framework for collective bargaining in industrial establishments. It has also laid down rules for recognition of a negotiating union or constitution of a negotiating council, depending on the number and strength of registered Trade Unions in the establishment. It ensures structured representation of workers and sets validity periods and facilities for effective negotiation

*Negotiating union or council mandatory:* There shall be a negotiating union or a negotiating council, as the case may be, in an industrial establishment having registered Trade Union for negotiating with the employer of the industrial establishment, on such matters as may be prescribed.

*Recognition of Sole negotiating union of the workers in case of solo Trade union:* Where only one Trade Union of workers registered under the provisions of this Chapter is functioning in an industrial establishment, then, the employer of such industrial establishment shall, subject to such criteria as may be prescribed, recognise such Trade Union as sole negotiating union of the workers.

*Recognition of Sole negotiating union of the workers in case of multiple Trade union:* If more than one Trade Union of workers registered under this Code are functioning in an industrial establishment, then,

- If there is Trade Union having fifty-one per cent. or more workers on the muster roll of that industrial establishment, verified in such manner as may be prescribed, supporting that Trade Union shall be recognised by the employer of the industrial establishment, as the sole negotiating union of the workers.
- But if no such Trade Union has fifty-one per cent. or more of workers on the muster roll of that industrial establishment, verified in such manner as may be prescribed, supporting that Trade Union, then, there shall be constituted by the employer of the industrial establishment, a negotiating council for negotiation on the matters referred to in sub-section (1),
  - (i) consisting of the representatives of such registered Trade Unions which have the support of not less than twenty per cent. of the total workers on the muster roll of that industrial establishment so verified and
  - (ii) such representation shall be of one representative for each twenty per cent. and for the remainder after calculating the membership on each twenty per cent.

*Decision-Making in Negotiating Council:* Where any negotiation on the matters referred to in sub-section (1) is held between an employer and a negotiating council constituted under sub-section (4), consequent upon such negotiation, any agreement is said to be reached, if it is agreed by the majority of the representatives of the Trade Unions in such negotiating council.

*Validity of Recognition:* Any recognition made under sub-section (2) or sub-section (3) or the negotiating council constituted under sub-section (4) shall be valid for three years from the date of recognition or constitution. Such recognition can be further extended by such further period not exceeding five years, in total, as may be mutually

decided by the employer and the Trade Union, as the case may be.

*Facilities to Negotiating Body:* The facilities to be provided by industrial establishment to a negotiating union or negotiating council shall be such as may be prescribed.

### **Objects of General Fund, Composition of Separate Fund and Membership Fee of Trade Union (Section 15)**

*Spending of general funds:* The general funds of a registered Trade Union shall not be spent on any objects other than such objects as may be prescribed.

*Separate funds for furthering civic and political interests of members:* A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of such objects as may be prescribed.

*Contribution to separate fund not mandatory:*

- No member shall be compelled to contribute to the fund constituted under sub-section (2) and
- Contribution to the said fund shall not be made a condition for admission to the Trade Union. A member who does not contribute to the said fund shall not be
  - (i) excluded from any benefits of the Trade Union, or
  - (ii) placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund)

*by reason of his not contributing to the said fund; and.*

*Quantum of subscriptions:* The subscriptions payable by the members of the Trade Union shall be such as may be prescribed.

### **Immunity from Civil Suit in Certain Cases (Section 16)**

This section provides legal immunities to registered Trade Unions and their members in respect of acts done during industrial disputes w.r.t. civil suits.

*Immunity from Civil Suits:* No suit or legal proceeding shall be maintainable in a civil court against:

- Any registered Trade Union, or
- Any office-bearer or member thereof,

For acts done in contemplation or furtherance of an industrial dispute to which a member of the Trade Union, merely because:

- It induces another person to break a contract of employment, or
- It interferes with trade, business, or employment of another person, or

It interferes with another person's right to dispose of capital or labour as he wills.

*Limited Liability for Tortious Acts:* A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortious act done in contemplation or furtherance of an industrial dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express

instructions given by, the executive of the Trade Union.

A registered Trade Union shall not be liable in civil court for tortious acts committed in contemplation or furtherance of an industrial dispute by its agent, if it is proved that:

- The act was done **without the knowledge** of the union's executive, or
- The act was done **contrary to express instructions** of the union's executive.

### **Criminal Conspiracy in furtherance of Objects of Trade Union (Section 17)**

Protection from Punishment

- No office-bearer or member of a registered Trade Union shall be liable to punishment under Section 120B (2) of the Indian Penal Code (criminal conspiracy) for any agreement made between members to further objects of the Trade Union specified in Section 15.
- Exception: This protection does not apply if the agreement is to commit an offence.

### **Enforceability of agreements (Section 18)**

*This section clarifies the legal status of agreements made between members of a registered Trade Union. It protects such agreements from being declared void merely because they involve restraint of trade, while also limiting their enforceability in civil courts.*

*Validity of Agreements:* Notwithstanding anything contained in any other law for the time being in force, agreements between members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade:

*Limitation on Enforcement:* It is provided that nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.

### **Right to Inspect Books of Trade Union (Section 19)**

For an office-bearer or member of the Trade Union, following shall be open for inspection at such times as may be provided for in the rules of the Trade Union:

- The books of account of a registered Trade Union and
- the list of members thereof.

### **Rights of Minor to Membership of Trade Union (Section 20)**

Any person who has attained the age of fourteen years and is employed in a non-hazardous Industry

- may be a member of a registered Trade Union subject to any rules of the Trade Union, and
- may, subject to as aforesaid enjoy all the rights of a member and execute all instruments and given all acquaintances necessary to be executed or given under the rules.

## **Disqualification of Office Bearers of Trade Unions (Section 21)**

*Grounds of disqualification:* A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a registered Trade Union, if—

- (i) he has not attained the age of eighteen years;
- (ii) he has been convicted by a court in India for any offence involving moral turpitude and sentenced to imprisonment unless a period of five years has elapsed since his release;
- (iii) the Tribunal has directed that he shall be disqualified for being chosen or for being office-bearer of a Trade Union for a period specified therein.

*Conflict of Interest Restriction:* No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected) in the Union or a State shall be a member of the executive or other office-bearer of a Trade Union.

## **Adjudication of Disputes of Trade Unions (Section 22)**

*Application to the Tribunal:* An application may be made in such manner as may be prescribed to the Tribunal having jurisdiction over the area where the registered office of the Trade Union or Trade Unions is located for adjudication of the disputes, where a dispute arises between—

- (a) one Trade Union and another; or
- (b) one or more workers who are members of the Trade Union and the Trade Union regarding registration, administration or management or election of office bearers of the Trade Union; or
- (c) one or more workers who are refused admission as members and the Trade Union; or
- (d) where a dispute is in respect of a Trade Union which is a federation of Trade Unions and office-bearer authorised in this behalf by the Trade Union.

*Only Tribunal has power to entertain such civil suit:* No civil court other than the Tribunal shall have power to entertain any suit or other proceedings in relation to any dispute referred to in sub-section (1).

## **Proportion of Office-Bearers to be Connected with Industry (Section 23)**

This section ensures that the leadership of registered Trade Unions remains closely connected to the industry or establishment they represent, thereby preventing domination by outsiders and maintaining genuine worker representation.

*Minimum number of office bearers to be actually employed:* Not less than one-half of the total number of the office-bearers of every registered Trade Union in an unorganised sector shall be persons actually engaged or employed in an establishment or industry with which the Trade Union is connected.

It is provided that the Appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

Explanation: For the purposes of this sub-section, “unorganised sector” means any sector which the appropriate Government may, by notification, specify.

*Save as otherwise above:*

- All office-bearers of a registered Trade Union shall be persons actually engaged or employed in the connected establishment or industry.

- Exception: Not more than one-third of office-bearers or five (whichever is less) may be outsiders.

*Explanation:* Retired or retrenched employees are not considered outsiders for the purpose of holding office in a Trade Union.

## **Change of Name, Amalgamation, Notice of Change and Its Effect (Section 24)**

This section governs the process of changing the name of a registered Trade Union or amalgamating two or more registered Trade Unions. It ensures that such changes are democratic, legally valid, and do not prejudice existing rights or obligations.

*Change of Name:* Any registered Trade Union may, with the consent of not less than two-third of the total number of its members and subject to the provisions of sub-section (3), change its name. {Sub-section (1)}

*Amalgamation of registered Trade Union:* Any two or more registered Trade Unions may be amalgamated in such manner as may be prescribed. {Sub-section (2)}

*Notice to Registrar:* Notice in writing of every change of name and of every amalgamation signed—

- (a) in the case of a change of name, by the secretary and by seven members of the Trade Union changing its name; and
- (b) in the case of an amalgamation, by the secretary and by seven members of each and every Trade Union which is a party thereto,

shall be sent to the Registrar and, where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State in such manner as may be prescribed. {Sub-section (3)}

*Registrar's Power to Refuse:* If the proposed name is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name. {Sub-section (4)}

*Effect of Registration of Change of Name:* Save as provided in sub-section (4), the Registrar shall, if he is satisfied that the provisions of this Code in respect of change of name have been complied with, register the change of name in the register referred to in sub-section (3) of section 9, and the change of name shall have effect from the date of such registration. {Sub-section (5)}

*Effect of Registration of Amalgamation:* The Registrar of the State in which the head office of the amalgamated Trade Union is situated shall, if he is satisfied that the provisions of this Code in respect of amalgamation have been complied with and that the Trade Union formed thereby is entitled to registration under section 9, register the Trade Union and the amalgamation shall have effect from the date of such registration. {Sub-section (6)}

*Continuity of Rights and Proceedings:* The change in the name of a registered Trade Union shall not affect any rights or obligations of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name. {Sub-section (7)}

*Protection of Rights in Amalgamation:* An amalgamation of two or more registered Trade Unions shall not prejudice any right of any such Trade Unions or any right of a creditor of any of them. {Sub-section (8)}

## **Dissolution (Section 25)**

This section governs the procedure and consequences of dissolving a registered Trade Union. It ensures that dissolution is carried out in accordance with union rules, properly notified to the Registrar, and that funds are fairly distributed if rules are silent on the matter.

*Notice of Dissolution:* When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the secretary of the Trade Union shall,

- within fourteen days of the dissolution, be sent to the Registrar, and
- shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and

*the dissolution shall have effect from the date of such registration.*

*Distribution of Funds:* Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

## **Annual Returns (Section 26)**

This section lays down the reporting and transparency obligations of registered Trade Unions. It ensures that unions maintain proper financial accountability, keep their rules updated with the Registrar, and remain subject to inspection for compliance.

Every registered Trade Union shall forward to the Registrar—

- forward annually to the Registrar, on or before such date, in such form, audited in such manner and by such person, as may be prescribed,
  - (i) a general statement containing particulars of all receipts and expenditure of such registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December;  
{Sub-section (1) (a)}
  - (ii) along with the general statement referred to in clause (a), forward to the Registrar a statement showing changes of office-bearers made by the Trade Union during the year to which such general statement refers, together also with a copy of the rules of the Trade Union corrected up to the date of dispatch thereof to the Registrar. {Sub-section (1)(b)}
- A copy of every alteration made in the rules of a registered Trade Union *within fifteen days of the making of the alteration.* {Sub-section (2)}

*Registrar's Power of Inspection:* For the purpose of examining the documents referred to in clauses (a) and (b) of sub-section (1), and sub-section (2), the Registrar or any officer authorised by him, by general or special order, may at all reasonable times

- inspect the certificate of registration, account books, registers and other documents, relating to a Trade Union, at its registered office or
- may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than fifteen kilometres from the registered office of such Trade Union. {Sub-section (3)}

## **Recognition of Trade Unions at Central and State level (Section 27)**

This section provides the framework for official recognition of Trade Unions or federations of Trade Unions at both the Central and State levels.

*Recognition at Central Level:* Where the Central Government is of the opinion that it is necessary or expedient that a Trade Union or federation of Trade Unions is to be recognised as Central Trade Union at the Central level, it may

recognise such Trade Union or federation of Trade Unions as Central Trade Union in such manner and for such purpose, as may be prescribed. If any dispute arises in relation to such recognition, it shall be decided by such authority in such manner as may be prescribed by the Central Government. {Sub-section (1)}

*Recognition at State Level:* Where the State Government is of the opinion that it is necessary or expedient that a Trade Union or federation of Trade Unions is to be recognised as State Trade Union at the State level, it may recognise such Trade Union or federation of Trade Unions as State Trade Union in such manner and for such purpose, as may be prescribed. If any dispute arises in relation to such recognition, it shall be decided by such authority in such manner as may be prescribed by the State Government. {Sub-section (2)}

## STANDING ORDERS

### Application of Chapter IV (Standing Order) (Section 28)

This section defines the scope of applicability of the Chapter IV (Standing Order), clarifying which industrial establishments are covered and which are excluded due to the application of specific service rules or regulations.

*General Applicability:* The provisions of this Chapter shall apply to every industrial establishment wherein three hundred or more than three hundred workers are employed, or were employed on any day of the preceding twelve months. {Sub-section (1)}

*Establishment excluded from applicability of the Chapter:* Notwithstanding anything contained in sub-section (1), the provisions of this Chapter shall not apply to an industrial establishment in so far as the workers employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government, apply. {Sub-section (2)}

### Making of model standing orders by Central Government and temporary application (Section 29)

This section lays the **framework for model standing orders** prepared by the Central Government which shall serve as a default set of service conditions for industrial establishments until their own certified standing orders come into effect

*Model Standing Order by the Central Government:* The Central Government shall make model standing orders relating to conditions of service and other matters incidental thereto or connected therewith.

*Temporary Adoption of Model Standing Orders:* Notwithstanding anything contained in sections 30 to 36, for the period commencing on the date on which this section becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Code come into operation under section 33 in that establishment, the model standing order referred to in sub-section (1) shall be deemed to be adopted in that establishment and the provisions of sub-section (2) of section 33 and section 35 shall apply to such model standing orders as they apply to the standing orders so certified.

### Preparation of Draft Standing Orders by Employer and Procedure for Certification (Section 30)

This section lays down the **procedure for employers to prepare, consult, and certify standing orders** for their industrial establishments. It ensures that service conditions are codified, fair, and consistent with the Code, while involving trade unions and workers in the process.

### *Preparation of Draft Standing Orders:*

- The employer shall prepare draft standing orders based on the model standing orders referred to in section 29 in respect of the matters specified in the First Schedule and on any other matter considered necessary by him for incorporation of necessary provisions in such standing orders for his industrial establishment or undertaking, considering the nature of activity in his industrial establishment or undertaking. It is provided that such provision shall not be inconsistent with any of the provisions of this Code and covers every matter set out in the First Schedule.
- The draft standing order shall be prepared within a period of six months from the date of commencement of the Code. {Sub-section (1)}

### **Matters to be Provided in Standing Orders Under IR Code**

1. Classification of workers, whether permanent, temporary, apprentices, probationers, badlis or fixed term employment.
2. Manner of intimating to workers periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workers arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workers.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workers against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be specified by the appropriate Government by notification.

### *Consultation with Unions:*

- The employer shall consult the Trade Unions or recognised negotiating union or members of the negotiating council relating to the industrial establishment or undertaking, as the case may be, in respect of the draft of the standing order and
- thereafter the draft of the standing order shall be forwarded electronically or otherwise to the certifying officer for certification. {Sub-section (2)}

### *Adoption of Model Standing Orders:*

- Where an employer adopts a model standing order of the Central Government referred to in section 29 with respect to matters relevant to his industrial establishment or undertaking, then, such model standing order shall be deemed to have been certified under the provisions of this section and
- the employer shall forward the information in this regard to the concerned certifying officer in such manner as may be prescribed:

It is provided that if the certifying officer has any observation, he may direct such employer to amend the standing

order so adopted within such period as may be prescribed. {Sub-section (3)}

*Draft Modifications:*

- The employer shall prepare the draft of the modifications required in the standing order, if any, in accordance with the provisions of this Code
- The employer shall forward such draft electronically or otherwise to the certifying officer for certification of those modifications.
- The draft shall be forwarded only within a period of six months from the date the provisions of this Chapter become applicable to his industrial establishment. {Sub-section (4)}

*Certification Procedure:*

On receipt of the drafts referred to in sub-section (1) and sub-section (4), the certifying officer shall issue notice to—

- (i) the Trade Union or negotiating union of the industrial establishment or undertaking, or members of the negotiating council; or
- (ii) where there is no Trade Union operating, to such representatives of the workers of the industrial establishment or undertaking chosen in such manner as may be prescribed.

The notice is issued for seeking their comments in the matter and after receipt of their comments give an opportunity of being heard to the negotiating union or negotiating council, or as the case may be, to the Trade Unions or the representatives of the workers, The certifying officer shall then decide as to whether or not any modification or addition to such draft standing order is necessary to render the draft standing order certifiable, and shall make an order in writing in this regard:

It is provided that the certifying officer shall complete such procedure for certification referred to in sub-sections (4) and (5) in respect of—

- (a) the draft standing order so received within a period of sixty days from the date of the receipt of it; and
- (b) the draft modifications in the standing order so received within a period of sixty days from the date of the receipt of such modifications,

failing which such draft standing orders or, as the case may be, the modifications in the standing order shall be deemed to have been certified on the expiry of the said period. {Sub-section (5)}

*Conditions for certification of standing orders:*

The standing orders shall be certifiable under this Code, if—

- (a) provision is made therein for every matter set out in the First Schedule which is applicable to the industrial establishment; and
- (b) such orders are otherwise in conformity with the provisions of this Code. {Sub-section (6)}

*Adjudication upon Fairness and Reasonableness:*

It shall be the function of the certifying officer or the appellate authority referred to in section 32 to adjudicate upon the fairness or reasonableness of the provisions of any standing orders keeping in view the provisions of the model standing orders referred to in section 29. {Sub-section (7)}

*Certification and communication:*

The certifying officer shall certify the draft standing orders or the modifications in the standing orders referred to in sub-section (5), and shall within seven days thereafter send copies of the certified standing orders or the

modifications in the standing orders, authenticated in such manner as may be prescribed, to the employer and to the negotiating union or negotiating council or the Trade Union or other representatives of the workers referred to in clause (ii) of sub-section (5). {Sub-section (8)}

*Accompanying Statement with prescribed particulars:* The draft standing orders under sub-section (1) or draft of the modifications proposed in the standing orders under sub-section (5) shall be accompanied by a statement giving such particulars, as may be prescribed, of the workers employed in the industrial establishment, the Trade Union to which they belong, and the negotiating union or negotiating council, if any. {Sub-section (9)}

*Joint Drafts by employers in similar establishment:* Subject to such conditions as may be prescribed, a group of employers in similar establishments may submit a joint draft of standing orders under this section and

*For the purposes of proceedings specified in sub-sections (1), (5), (6), (8) and (9), the expressions "employer", "Trade Union" and "negotiating union or negotiating council" shall respectively include all the employers, Trade Unions and negotiating unions or negotiating council of such similar establishments, as the case may be.* {Sub-section (10)}

*Continuity of Existing Standing Orders and deemed certification:* Without prejudice to the foregoing provisions of this section, the standing orders relating to an industrial establishment or undertaking existing on the date of commencement of the relevant provisions of this Code shall, in so far as is not inconsistent with the provisions of this Code or rules made thereunder, continue and be deemed to be the standing orders certified under sub-section (8) and accordingly the provisions of this Chapter shall apply thereon. {Sub-section (11)}

### **Certifying Officer and Appellate Authority to Have Powers of Civil Court (Section 31)**

The section provides for powers of certifying officer and appellate authority.

*Civil powers of certifying officer and the appellate authority:* Every certifying officer and the appellate authority referred to in section 32 shall have all the powers of a civil court for the purposes of receiving evidence, administering oath, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973.

*Rectification of clerical or arithmetical mistakes:* Clerical or arithmetical mistakes in any order passed by a certifying officer, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that officer or successor in office of such officer.

### **Appeals (Section 32)**

*Right to Appeal:* If following are not satisfied with the order of the certifying officer given under sub-section (5) of section 30, they may file appeal:

- An employer or
- Trade Union or
- the negotiating union or negotiating council, or
- where there is no negotiating union or negotiating council in an industrial establishment or undertaking, any union or such representative body of the workers of the industrial establishment or undertaking

*Time of filing appeal:* Such appeal shall be filed within sixty days of receipt of the order of the certifying officer to the appellate authority appointed by the appropriate Government, by notification, and such authority shall dispose of the appeal in such manner as may be prescribed.

### **Date of Operation of Standing Orders and Its Availability (Section 33)**

This section specifies **when certified standing orders come into effect** and the employer's duty to maintain them for workers' information.

*Commencement of Standing Orders:*

- (i) *Where no appeal is preferred under section 32*, the standing orders or modified standing orders, as the case may be, shall come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (8) of section 30, or
- (ii) *Where an appeal as aforesaid is preferred*, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent in such manner as may be prescribed.

*Maintenance of Certified Standing Orders:* The text of a standing order as finally certified under this Code shall be maintained by the employer in such language and in such manner for the information of the concerned workers as may be prescribed.

### **Register of Standing Orders (Section 34)**

The certifying officer shall

- file copy of all standing orders as finally certified under this Code in a register maintained for the purpose or uploaded in electronic form or such other form as may be prescribed, and
- furnish a copy thereof to any person applying therefor on payment of such fee as may be prescribed.

### **Duration and Modification of Standing Orders (Section 35)**

This section lays down the **procedure and limitations for modifying certified standing orders**. And ensures stability in service conditions while allowing changes through agreement or prescribed procedure.

*Minimum Time Before Modification:* Certified standing orders (under Section 30(8)) shall not be to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

*Exception:* They may be modified earlier if there is an **agreement between the employer and workers**, or with a negotiating union/Trade Union/representative body of workers. {Sub-section (1)}

*Application for Modification:*

- An employer or worker or a Trade Union or other representative body of the workers may apply to the certifying officer to have the standing orders modified in such application as may be prescribed *subject* to the provisions of sub-section (1),
- Such an application shall be accompanied by such copies of the modifications proposed to be made, and where the modifications are proposed to be made by agreement between the employer and the workers or a Trade Union or other representative body of the workers, a certified copy of that agreement shall be filed along with the application. {Sub-section (2)}

*Procedure for Certification:* The foregoing provisions of this Code shall apply in respect of an application under sub-section (2) as they apply to the certification of the first-time standing orders. {Sub-section (3)}

### **Oral Evidence in Contradiction of Standing Orders not Admissible (Section 36)**

No oral evidence having the effect of adding to or otherwise varying or contradicting standing order as finally certified under this Chapter shall be admitted in any Court.

### **Interpretation of Standing Orders (Section 37)**

This section provides a **mechanism for resolving disputes about the application or interpretation of certified standing orders.**

*Subject matter of Disputes:* If any question arises as to the application, or interpretation, of the standing orders certified under sub-section (8) of section 30 or the modification made therein by an agreement entered into under sub-section (5) of that section, then application to Tribunal can be made.

*Who may make such application?*

- the employer or
- any worker or workers concerned or the Trade Union in relation to the workers employed in the industrial establishment or undertaking, wherein the question has arisen,

*may apply to the Tribunal, within the local limits of whose territorial jurisdiction such establishment or the office, section or branch of the undertaking is situated, to decide the question.*

Such Tribunal shall, after giving all the parties concerned a reasonable opportunity of being heard, decide the question and its decision shall be final and binding on the concerned employer and the workers.

### **Time-limit for Completing Disciplinary Proceedings and Liability to Pay Subsistence Allowance. (Section 38)**

This section ensures that disciplinary proceedings against suspended workers are completed within a reasonable time and that workers are financially supported during suspension through subsistence allowance.

*Time-limit for Proceedings:* Where any worker is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, such investigation or inquiry, or where there is an investigation followed by an inquiry, both the investigation and inquiry shall be completed ordinarily within a period of ninety days from the date of suspension. {Sub-section (1)}

*Provision in Standing Orders:*

The standing orders certified under section 30(8) or modified under section 35 shall provide that where a worker is suspended as referred to in sub-section (1), the employer in relation to an industrial establishment or undertaking shall pay to such worker employed in such industrial establishment or undertaking subsistence allowance at the rates specified in sub-section (3) for the period during which such worker is placed under suspension pending investigation or inquiry into complaints or charges of misconduct against such worker.

{Sub-section (2)}

*Rates of Subsistence Allowance:* The amount of subsistence allowance payable under sub-section (2) shall be—

(a) at the rate of fifty per cent. of the wages which the worker was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy-five per cent. of such wages for the remaining period of suspension, if the delay in the completion of disciplinary proceedings against such worker is not directly attributable to the conduct of such worker. {Sub-section (3)}

## Power to Exempt (Section 39)

The appropriate Government may, by notification, exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Chapter.

## NOTICE OF CHANGE

### Notice of Change (Section 40)

This section mandates employers to give prior notice of change of service conditions to the workers and protects them from sudden or unilateral changes, except in specific circumstances.

*General Rule:* No employer, who proposes to effect any change in the conditions of service applicable to any worker in respect of any matter specified in the Third Schedule, shall effect such change, —

- (i) without giving to the workers likely to be affected by such change a notice in such manner as may be prescribed of the nature of the change proposed to be effected; or
- (ii) within twenty-one days of giving such notice:

*Exception:* It is provided that no notice shall be required for effecting any such change—

- (a) where the change is effected in pursuance of any settlement or award;
- (b) where the workers likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply;
- (c) in case of emergent situation which requires change of shift or shift working, otherwise than in accordance with standing orders, in consultation with the Grievance Redressal Committee;
- (d) if such change is effected in accordance with the orders of the appropriate Government or in pursuance of any settlement or award.

### Conditions of Service for Change of Which Notice is to be Given:

1. Wages, including the period and mode of payment.
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workers under any law for the time being in force.
3. Compensatory and other allowances.
4. Hours of work and rest intervals.
5. Leave with wages and holidays.
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders.
7. Classification by grades.
8. Withdrawal of any customary concession or privilege or change in usage.
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in

standing orders.

10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workers.
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.

### **Power of Appropriate Government to Exempt (Section 41)**

Where the appropriate Government is of the opinion that the application of the provisions of section 40 to any class of industrial establishments or to any class of worker employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workers employed in any industrial establishment.

### **VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION**

#### **Voluntary Reference of Disputes to Arbitration. (Section 42)**

This section provides a special arbitration mechanism for resolving industrial disputes under the Code.

*Reference to Arbitration:* Where any industrial dispute exists or is apprehended and the employer and the workers agree to refer the dispute to arbitration, they may, by a written agreement, refer the dispute to arbitration, and the reference shall be to such person or persons as an arbitrator or arbitrators as may be specified in the arbitration agreement.

*Appointment of umpire in case of even number of arbitrators:* Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire. Such umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Code.

*Form and Signature:* An arbitration agreement shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

*Forwarding Agreement:* A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer.

*Notification by Government:* Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workers who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators:

*It is provided that—*

- (i) where such industrial dispute is the industrial dispute other than the termination of individual worker by way of discharge, dismissal, retrenchment or otherwise, the workers shall be represented before the arbitrator, —

- (a) where there is negotiating union or negotiating council, by the negotiating union or negotiating council, as the case may be; or
  - (b) where there is no negotiating union or negotiating council, by the Trade Union; or
  - (c) where there is no Trade Union, by such representatives of the workers chosen in such manner as may be prescribed;
- (ii) where such industrial dispute relates to termination of individual worker by way of discharge, dismissal, retrenchment or otherwise, the concerned workers shall be represented in person or through a representative authorised by him.

*Arbitration award submission:* The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

*Prohibition of strike or lockout:* The appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference, where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (5).

**{Sub-section (7)}**

*Non applicability of the Arbitration and Conciliation Act, 1996:* Nothing in the Arbitration and Conciliation Act, 1996, shall apply to arbitrations under this section. **{Sub-section (8)}**

## **MECHANISM FOR RESOLUTION OF INDUSTRIAL DISPUTES**

### **Conciliation Officer (Section 43)**

This section lays down the framework for appointing conciliation officers, who play a crucial role in mediating and promoting the settlement of industrial disputes.

*Appointment of conciliation officers:* The Appropriate Government may, by notification, appoint such number of persons, as it thinks fit to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

*Area and tenure of appointment:*

- A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and
- He may be appointed either permanently or for a limited period.

### **Industrial Tribunal (Section 44)**

This section provides for constitution of the Industrial Tribunals as adjudicatory bodies for industrial disputes.

*Constitution of Tribunals:*

The appropriate Government may, by notification, constitute one or more Industrial Tribunals for

- (i) the adjudication of industrial disputes and
- (ii) for performing such other functions as may be assigned to them under this Code and

*the Tribunal so constituted by the Central Government shall also exercise the jurisdiction, powers and authority conferred on the Tribunal, as defined in clause (m) of section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 by or under that Act.*

*Composition of the Tribunal:* Every Industrial Tribunal shall consist of two members to be appointed by the appropriate Government out of whom

- one shall be a Judicial Member and
- the other, an Administrative Member.

*Benches:* A bench of the Tribunal shall consist of

- a Judicial Member and an Administrative Member or
- single Judicial Member or
- single Administrative Member.

*Qualifications & Service Conditions of Central Government Tribunal members:* The qualifications for appointment, method of recruitment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Judicial Member and the Administrative Member of the Tribunal constituted by the Central Government shall be in accordance with the rules made under section 184 of the Finance Act, 2017.

*Ineligibility for appointment as an administrative member of the Tribunal:* It is provided that a person who has held a post below the rank of Joint Secretary to the Government of India or an equivalent rank in the Central Government or a State Government, shall not be eligible to be appointed as an Administrative Member of the Tribunal.

*Service Conditions of State Government Tribunal members:* The term of office of the Judicial Member and the Administrative Member of a Tribunal constituted by the State Government, their salaries and allowances, resignation, removal and other terms and conditions of service shall be such as may be prescribed by the State Government.

*Protection of Service Conditions:* The salary and allowances and the terms and conditions of service of the Judicial Member or Administrative Member referred to in sub-section (2) and appointed by a State Government shall not be varied to his disadvantage after his appointment.

*Composition of benches for deciding various cases:* The procedure of the Tribunal (including distribution of cases in the benches of the Tribunal) shall be such as may be prescribed.

It is provided that a bench consisting of a Judicial Member and an Administrative Member shall entertain and decide the cases only relating to—

- (a) the application and interpretation of standing order;
- (b) discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen dismissed;
- (c) illegality or otherwise of a strike or lockout;
- (d) retrenchment of workmen and closure of establishment; and
- (e) Trade Union disputes,

The remaining cases shall be entertained and decided by the bench of the Tribunal consisting either a Judicial Member or an Administrative Member of the Tribunal.

*Who shall preside the Tribunal:* The Judicial Member shall preside over the Tribunal where the bench of the Tribunal consists of one Judicial Member and one Administrative Member.

*Filling of vacancy:* If, for any reason, a vacancy (other than a temporary absence) occurs in a National Industrial Tribunal or a Tribunal, then, such vacancy shall be filled up in such manner as may be prescribed, without prejudice to the provisions of sub-section (4) or sub-section (5), as the case may be, and the proceeding shall be continued

before such National Industrial Tribunal or Tribunal, as the case may be, from the stage at which the vacancy is filled.

*Appointment of other officers and staff:* The appropriate Government may provide such number of officers and other staff as it thinks fit in consultation with the Judicial Member of the Tribunal which may be required for the due discharge of the functioning of the Tribunal.

#### **Finality of constitution of Tribunal (Section 45)**

The section provides that only on the ground mainly of the existence of any vacancy in, or defect in the constitution of such Tribunal:

- No notification of the appropriate Government appointing any person as a Judicial Member or an Administrative Member of a Tribunal shall be called in question in any manner; and
- no act or proceeding before the Tribunal shall be called in question in any manner

#### **National Industrial Tribunal (Section 46)**

The section provides for constitution of the National Industrial Tribunals (NITs), which are special adjudicatory bodies constituted by the Central Government to deal with industrial disputes of national importance or those affecting industrial establishments across multiple States

*Constitution of the National Industrial Tribunals:* The Central Government may, by notification, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government,

- involve questions of national importance or
- are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

*Composition of a National Industrial Tribunal:* A National Industrial Tribunal shall consist of two members to be appointed by the Central Government out of whom

- one shall be a Judicial Member and
- the other, an Administrative Member.

*Qualification for Judicial member:* A person shall not be qualified for appointment as the Judicial Member of a National Industrial Tribunal unless he is, or has been, a Judge of a High Court.

*Qualification for Administrative member:* A person shall not be qualified for appointment as Administrative Member of a National Industrial Tribunal unless, he is or has been

- Secretary to the Government of India or
- holding an equivalent rank in the Central Government or State Government, having adequate experience of handling the labour related matters.

*President of the Tribunal:* The Judicial Member shall preside over a National Industrial Tribunal.

*Service Conditions:* The procedure of selection of Judicial Member and Administrative Member of the National Industrial Tribunal, their salaries, allowances and other terms and conditions of service shall be such as may be prescribed.

*Appointment of supporting officers and staff:* The Central Government may provide such number of officers and other staff as it thinks fit in consultation with the Judicial Member of the National Industrial Tribunal which may be required for the due discharge of the functioning of the National Industrial Tribunal.

### **Decision of Tribunal or National Industrial Tribunal (Section 47)**

This section lays down the **procedure for decision-making** in Industrial Tribunals and National Industrial Tribunals.

*Consensus Rule:* The decision of a Tribunal or a National Industrial Tribunal, as the case may be, shall be by consensus of the members.

*Difference of Opinion:* If the members of a Tribunal or a National Industrial Tribunal differ in opinion on any point, they shall

- state the point or points on which they differ, and
- make a reference to the appropriate Government.

*Resolution of Differences:*

- On receiving the reference, the appropriate Government shall appoint a Judicial Member from another Tribunal or National Industrial Tribunal.
- That Judicial Member shall hear the disputed point(s) himself
- The point(s) shall then be decided according to the majority opinion of:
  - a) The original members who first heard the case, and
  - b) The Judicial Member appointed to resolve the difference.

### **Procedure and Powers of Arbitrator, Conciliation Officer, Tribunal and National Industrial Tribunal (Section 49)**

This section outlines the procedural flexibility, investigative powers, and legal status of arbitrators, conciliation officers, Tribunals, and National Industrial Tribunals.

*Procedural Flexibility:* Subject to the provisions of this Code and the rules that may be made in this behalf, an arbitrator, conciliation officer, Tribunal or National Industrial Tribunal shall follow such procedure as the arbitrator, conciliation officer, Tribunal or National Industrial Tribunal may deem fit. {

*Right of Entry:* A conciliation officer or an officer authorised in this behalf by the Tribunal or National Industrial Tribunal may, for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

*Powers of Civil Court:* The conciliation officer, Tribunal and National Industrial Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects
- (c) issuing commissions for the examination of witnesses;
- (d) in respect of such other matters as may be prescribed, and every inquiry or investigation by Tribunal or National Industrial Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193

and 228 of the Indian Penal Code.

*Additional Powers of Conciliation Officer:* A conciliation officer may

- enforce the attendance of any person for the purpose of examination of such person or
- call for and inspect any document which he has ground for considering
  - (i) to be relevant to the industrial dispute or
  - (ii) to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Code, and

for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him or of compelling the production of documents.

*Appointment of assessors or experts:* The appropriate Government may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessors or experts to advise a Tribunal or National Industrial Tribunal, as the case may be, in respect of any proceeding before either of the said Tribunals.

*Deemed public servants:* All conciliation officers and the members of a Tribunal or National Industrial Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

*Costs of Proceedings:* Subject to any rules made under this Code, the costs of, and incidental to, any proceeding before a Tribunal or National Industrial Tribunal shall be in the discretion of such Tribunal or National Industrial Tribunal.

That Tribunal or National Industrial Tribunal, as the case may be, shall have full powers to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid. Such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.

*Deemed Civil Court:* Every Tribunal or National Industrial Tribunal shall be deemed to be civil court for the purposes of sections 345, 346, and 348 of the Code of Criminal Procedure, 1973.

*Execution of award, order or settlement:* Every award made, order issued or settlement arrived at by or before a Tribunal or a National Industrial Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a civil court under Order XXI of the Code of Civil Procedure, 1908 and for that purpose such Tribunal or National Industrial Tribunal shall be deemed to be a civil court.

### **Conciliation and Adjudication of Dispute (Section 53)**

This section lays down the procedure, time limits, and outcomes of conciliation proceedings conducted by conciliation officers. It ensures disputes are investigated promptly, settlements are documented, and unresolved matters can move to adjudication before a Tribunal.

*Initiation of Conciliation:* Where any industrial dispute exists or is apprehended or a notice under section 62 has been given, the conciliation officer shall hold conciliation proceedings in such manner as may be prescribed.

*It is provided that* the conciliation officer shall not hold any such proceedings relating to the industrial dispute after two years from the date on which such industrial dispute arose.

*Role of Conciliation Officer:* The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement

of the dispute.

*Conciliation report and Memorandum of settlement:* If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send

- a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government.
- Such report shall be accompanied with a memorandum of the settlement signed by the parties to the dispute.

*Report:* If no such settlement is arrived at, the conciliation officer shall, as soon as practicable, after the close of the investigation, send to

- the concerned parties and
- the appropriate Government

*a full report, in the electronic or other form as may be prescribed, setting forth the steps taken by him for*

- (i) ascertaining the facts and circumstances relating to the dispute and
- (ii) bringing about a settlement thereof.

The report shall be sent together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

*Time Limits for Reports:* The conciliation officer shall send the report to the concerned parties and the appropriate Government within forty-five days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

It is provided that where a conciliation officer receives notice under section 62, he shall send the report to the concerned parties and to the appropriate Government within fourteen days of the commencement of the conciliation proceedings.

It is provided further that subject to the approval of the conciliation officer; the time may be extended by such period as may be agreed upon in writing by the concerned parties to the dispute.

*Application to Tribunal:* Any concerned party may make application in the prescribed form to the Tribunal

- in the matters not settled by the conciliation officer under this section
- within ninety days from the date on which the report is received to the concerned party and the Tribunal shall decide such application in the prescribed manner.

## **STRIKES AND LOCK-OUTS**

### **Prohibition of Strikes and Lock-Outs (Section 62)**

This section lays strict conditions and prohibitions on strikes by workers and lock-outs by employers in industrial establishments and ensures industrial peace.

***No person employed in an industrial establishment shall go on strike, in breach of contract—***

- (a) without giving to the employer notice of strike, as hereinafter provided, within sixty days before striking;  
or

- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or
- (e) during the pendency of proceedings before a Tribunal or a National Industrial Tribunal and sixty days, after the conclusion of such proceedings; or
- (f) during the pendency of arbitration proceedings before an arbitrator and sixty days after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 42; or
- (g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

No employer of an industrial establishment shall lock-out any of his workers—

- (a) without giving them notice of lock-out as hereinafter provided, within sixty days before locking-out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or
- (e) during the pendency of proceedings before a Tribunal or a National Industrial Tribunal and sixty days, after the conclusion of such proceedings; or
- (f) during the pendency of arbitration proceedings before an arbitrator and sixty days after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 42; or
- (g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

*Notice or intimation of strike or lockout:* The employer shall send to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of services—

- The notice of strike or lock-out under this section
- intimation of such lock-out or strike where there is already in existence a strike or, as the case may be, lock-out,

Such notice or intimation shall be sent on the day on which it is declared.

*Delivery of notice of strike:* The notice of strike shall be given by such number of persons to such person or persons and in prescribed manner.

*Delivery of notice of lock out:* The notice of lock-out shall be given in such manner as may be prescribed.

*Time period of reporting:* If on any day an employer

- receives from any person employed by him any such notices or
- gives to any person employed by him any such notices,

he shall within five days thereof report to the appropriate Government or to such authority as that Government may

prescribe and to the conciliation officer, the number of such notices received or given on that day.

### **Illegal Strikes and Lock-Outs (Section 63)**

This section defines when strikes and lock-outs are considered illegal under the Code along with exceptions

- (i) *Illegal Strikes/Lock-outs*: A strike or lock-out shall be illegal, if it is commenced or declared in contravention of section 62; or
- (ii) continued in contravention of an order made under section 42(7).

*Continuance of Existing Strikes/Lock-outs:*

- If a strike or lock-out was not at its commencement in contravention of the provisions of the Code or the continuance thereof was not prohibited under section 42(7) and
- Such a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the filing of the application relating to such industrial dispute in the Tribunal or of the reference of such industrial dispute to an arbitrator or a National Industrial Tribunal,

*The continuance of such strike or lock-out shall not be deemed to be illegal.*

*Consequential Strikes/Lock-outs*: A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

### **Prohibition of Financial Aid to Illegal Strikes or Lock-Outs (Section 64)**

No person shall knowingly spend or apply any money in direct furtherance or support of any illegal strike or lock-out.

## **LAY-OFF, RETRENCHMENT AND CLOSURE**

### **Application of Sections 67 to 69 (Section 65)**

This section defines the **scope and exclusions** for the application of provisions relating to lay-off, retrenchment, and closure (Sections 67–69).

*Exemptions from Sections 67–69*: Sections 67 to 69 (both inclusive) shall not apply to industrial establishments

- to which Chapter X applies ( in which not less than three hundred workers, or such higher number of workers as may be notified by the appropriate Government, were employed on an average per working day in the preceding twelve months.; or
- in which less than fifty workers on an average per working day have been employed in the preceding calendar month; or
- which are of a seasonal character or in which work is performed intermittently.

*Government's Final Authority*: If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

*Explanation*: In this section and in sections 67, 68 and 69, industrial establishment shall mean a—

- (i) factory as defined in clause (m) of section 2 of the Factories Act, 1948; or
- (ii) mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952; or

- (iii) plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951.

### **Definition of Continuous Service (Section 66)**

This section defines continuous service for workers, clarifying what counts as uninterrupted service and when workers are deemed to be in continuous service even if they fall short of the full period.

Continuous Service in relation to a worker, means the uninterrupted service of such worker, including his service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the worker.

*Deemed Continuous Service:* Where a worker is not in continuous service for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the worker during a period of twelve months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than—
  - (i) one hundred and ninety days in the case of a worker employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the worker during a period of six months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than—
  - (i) ninety-five days in the case of worker employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

*Counting Actual Work Days:* The number of days on which a worker has actually worked under an employer shall include the days on which—

- (i) he has been laid-off under an agreement or as permitted by or under this Code or any other law applicable to the industrial establishment for the time being in force; or
- (ii) he has been on leave on full wages earned in the previous years; or
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; or
- (iv) in the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed the period as specified in the Maternity Benefit Act, 1961.

### **Rights of Workers Laid Off for Compensation (Section 67)**

This section provides the rights of workers to compensation during lay-off and the conditions under which employers may limit or offset such payments.

*Eligibility for Compensation:* A worker (other than a badli worker or a casual worker) shall be paid by the employer for all days during which he is so laid-off if-

- his name is borne on the muster rolls of an industrial establishment and
- who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently,

he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him, had he not been so laid-off.

It is provided that if during any period of twelve months, a worker is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the worker and the employer.

It is provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the worker in accordance with the provisions contained in section 70 at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the worker for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

It may be noted that "*badli worker*" means a worker who is employed in an industrial establishment in the place of another worker whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such, if he has completed one year of continuous service in the establishment.

### **Duty of an Employer to Maintain Muster Rolls of Workers (Section 68)**

The section provides that notwithstanding that worker in any industrial establishment have been laid-off, it shall be the duty of every employer

- to maintain a muster roll, and
- to provide for the making of entries therein by workers who may present themselves for work at the establishment at the appointed time during normal working hours.

### **Workers not Entitled for Compensation in Certain Cases (Section 69)**

This section specifies the **exceptions to compensation during lay-off**, ensuring that workers are not entitled to payment if they fail to cooperate with reasonable alternatives or if the lay-off arises from collective worker action in another part of the establishment

*No Compensation Payable:* Compensation shall not be paid to a worker who has been laid-off—

- (i) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of eight kilometres from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the worker, provided that the wages which would normally have been paid to the worker are offered for the alternative employment also
- (ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;
- (iii) if such laying-off is due to a strike or slowing-down of production on the part of workers in another part of the establishment.

### **Conditions Precedent to Retrenchment of Workers (Section 70)**

Worker shall not employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the worker has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice;
- (b) the worker has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen

days' average pay, or average pay of such days as may be notified by the appropriate Government, for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in such manner as may be prescribed is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification.

### **Procedure for Retrenchment (Section 71)**

The section provides that where any worker in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workers in that establishment, then, in the absence of any agreement between the employer and the worker in this behalf, the employer shall ordinarily retrench the worker who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other worker.

### **Reemployment of Retrenched Worker (Section 72)**

The section states that where any worker is retrenched and the employer proposes to take into his employment any person within one year of such retrenchment, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workers who are citizens of India to offer themselves for re-employment and such retrenched workers who offer themselves for re-employment shall have preference over other persons.

### **Compensation to Workers in Case of Transfer of Establishment (Section 73)**

The section makes provisions for compensation to workers in case of transfer of establishment.

Where the ownership or management of an establishment is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment to a new employer, every worker who has been in continuous service for not less than one year in that establishment immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 70 as if the worker had been retrenched:

It may be noted that this section shall not apply to a worker in any case where there has been a change of employers by reason of the transfer, if—

- (a) the service of the worker has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the worker after such transfer are not in any way less favourable to the worker than those applicable to them immediately before the transfer; and
- (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the worker, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

### **Sixty Days' Notice to Be Given of Intention to Close Down Any Undertaking (Section 74)**

*Mandatory Notice Requirement:* An employer who intends to close down an undertaking shall serve a notice, in such manner as may be prescribed, on the appropriate Government. The notice shall be served at least sixty days before the date on which the intended closure is to become effective. The notice shall state clearly the reasons for the intended closure of the undertaking.

It may be noted that this section shall not apply to—

- i. an industrial establishment in which less than fifty workers are employed or were employed on any day in the preceding twelve months;

- ii. an industrial establishment set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

*Exceptions:* The appropriate Government may, if it is satisfied that owing to such exceptional circumstances as

- accident in the undertaking or
- death of the employer or
- an extraordinary situation such as natural calamities or the like,

it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period, as may be specified in the order.

### **Compensation to Workers in Case of Closing Down of Undertakings (Section 75)**

This section governs the rights of workers to compensation when an undertaking is closed down. *General Rule of Compensation:* Where an establishment is closed down for any reason whatsoever, every worker who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 70, as if the worker had been retrenched.

It is provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the worker under clause (b) of section 70, shall not exceed his average pay for three months.

*Explanation:* An industrial establishment which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of un-disposed stocks; or
- (iii) the expiry of the period of the lease or license granted to it; or
- (iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

*Special Rule for Mining Closures:* Where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no worker referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 70, if—

- a) the employer provides the worker, at the place located within a radius of twenty kilometres from such undertaking engaged in mining operation is closed down, with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;
- b) the service of the worker has not been interrupted by such alternative employment; and
- c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the worker, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

*Special Rule for Construction Undertakings:*

- No worker employed therein shall be entitled to any compensation under clause (b) of section 70, where any undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up
- If the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

## SPECIAL PROVISIONS RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS

### Application (Section 77)

This section defines the scope of applicability of Section 77 to 88 to lay-off, retrenchment, and closure in larger establishments.

*Applicability Threshold:* The provisions of Section 77 to 88 shall apply to an industrial establishment in **which not less than three hundred workers were employed on an average per working day in the preceding twelve months.** The appropriate Government may notify higher number of workers for this purpose.

However, this applicability threshold is not applicable to an industrial establishment of a seasonal character or in which work is performed only intermittently.

*Government's Final Authority:* If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

*Definition of Industrial Establishment:*

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948;
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952; or
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951.

### Prohibition of Lay-Off (Section 78)

This section governs the procedure and conditions for lay-off in industrial establishments with more than 300 workers.

*Prior Permission Requirement:* No worker (*other than a badli worker or a casual worker*) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except with the prior permission of the appropriate Government, obtained on an application made in this behalf except when such lay-off is due to

- shortage of power,
- natural calamity, and
- the case of a mine, such lay-off is due to fire, flood, excess of inflammable gas or explosion. {Sub- section (1)}

*Application for Permission:* An application for permission under sub-section (1) shall be made by the employer electronically or otherwise in the prescribed manner. The application shall state clearly the reasons for the intended lay-off. A copy of such application shall also be served simultaneously on the workers concerned in such manner as

may be prescribed. {Sub-section (2)}

*Special Rule for Mines:* Where the workers (other than badli workers or casual workers) of industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, apply, in such manner as may be prescribed, to the appropriate Government for permission to continue the lay-off. The application shall be made within a period of thirty days from the date of commencement of such lay-off. {Sub-section (3)}

*Government's Decision:* Where an application for permission under sub-section (1) or sub-section (3) has been made, the Appropriate Government shall

- make such enquiry as it thinks fit and
- give a reasonable opportunity of being heard to the employer, the workers concerned and the persons interested in such lay-off.

Thereafter, the Appropriate Government may, by order and for reasons to be recorded in writing, grant or refuse to grant such permission. The appropriate Government shall, while making such order, have regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workers and all other relevant factors. A copy of such order shall be communicated to the employer and the workers. {Sub-section (4)}

*Deemed Permission:*

Where an application for permission under sub-section (1) or sub-section (3) has been made and the Appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made,

- the permission applied for shall be deemed to have been granted as applied for on the expiration of the said period of sixty days and
- the application shall be deemed to have been disposed of accordingly by the appropriate Government. {Sub-section (5)}

*Order of the appropriate Government to be final and binding:* An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (7),

- be final and binding on all the parties concerned and
- remain in force for one year from the date of such order. {Sub-section (6)}

*Review of order or reference to Tribunal:* The appropriate Government may

- review its order granting or refusing to grant permission under sub-section (4) within the prescribed time from the date on which such order is made or
- refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication.

The appropriate Government may do so either on its own motion or on the application made by the employer or any worker. It is provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. {Sub-section (7)}

*Illegal Lay-off:* Lay-off shall be deemed to be illegal from the date on which the workers had been laid-off-

- Where no application for permission under sub-section (1) is made, or
- where no application for permission under sub-section (3) is made within the period specified therein, or
- where the permission for any lay-off has been refused.

The workers shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off. {Sub-section (8)}

*Exemption in exceptional circumstances:* Notwithstanding anything contained in the foregoing provisions of this section, if the appropriate Government is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, it may, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order. {Sub-section (9)}

*Application of Section 67:* The provisions of section 67 (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section. {Sub-section (10)}

*Explanation (Alternative Employment):* For the purposes of this section, a worker shall not be deemed to be laid-off by an employer if such employer offers any alternative employment

- in the same establishment from which he has been laid-off or
- in any other establishment belonging to the same employer,
  - situated in the same town or village, or
  - situated within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the worker having regard to the facts and circumstances of his case.

Conditions for alternative employment to fall in exception:

- The alternative employment, in the opinion of the employer does not call for any special skill or previous experience and can be done by the worker.
- The wages which would normally have been paid to the worker are offered for the alternative appointment also. {Sub-section (11)}

### **Conditions Precedent to Retrenchment of Workers (Section 79)**

This section governs retrenchment in establishments with  $\geq 300$  workers.

*Conditions Precedent to Retrenchment:* These provisions of retrenchment are applicable to workers employed in any industrial establishment with  $\geq 300$  workers and who has been in continuous service for not less than one year under an employer. Such worker shall not be retrenched by that employer until—

- (a) the worker has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government has been obtained on an application made in this behalf. {Sub-section (1)}

*Application for permission of retrenchment:* An application for permission under sub-section (1) shall be made by the employer electronically or otherwise in the prescribed manner stating clearly the reasons for the intended retrenchment. A copy of such application shall also be served simultaneously on the workers concerned in such manner as may be prescribed. {Sub-section (2)}

*Reasoned order by the Appropriate Government:* Where an application for permission under sub-section (1) has been made, the Appropriate Government may, by order and for reasons to be recorded in writing, grant or refuse to grant such permission. Such an order shall be made by the appropriate Government only after making such

enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workers concerned and the persons interested in such retrenchment. The Government shall have regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workers and all other relevant factors. A copy of such order shall be communicated to the employer and the workers. {Sub-section (3)}

*Deemed permission:* Where an application for permission has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days and the application shall be deemed to have been disposed of accordingly by the appropriate Government. {Sub-section (4)}

*Enforcement and duration of the order of Appropriate Government:* An order of the Appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. {Sub-section (5)}

*Review or reference of order:* The Appropriate Government may, either on its own motion or on the application made by the employer or any worker,

- review its order granting or refusing to grant permission under sub-section (3) within the prescribed time from the date on which such order is made or
- refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication.

It is provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. {Sub-section (6)}

*Illegal Retrenchment:* The retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the worker-

- where no application for permission under sub-section (1) is made, or
- where the permission for any retrenchment has been refused

The worker shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. {Sub-section (7)}

*Exemption to establishment:* Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order. {Sub-section (8)}

*Rights of worker retrenched:* Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every worker who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive compensation at the time of retrenchment.

*Quantum of retrenchment compensation:* Such retrenchment compensation shall be equivalent to fifteen days average pay, or average pay of such days as may be notified by the appropriate Government, for every completed year of continuous service or any part thereof, in excess of six months. {Sub-section (9)}

## **Procedure for Closing Down an Industrial Establishment (Section 80)**

This section regulates closure of undertakings in industrial establishments with  $\geq 300$  workers.

*Prior Permission Requirement:* An employer who intends to close down an undertaking of an industrial

establishment to which this Chapter applies shall, electronically or otherwise, apply in such manner as may be prescribed, for prior permission. Such an application shall be made at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government. The application shall clearly state the reasons for the intended closure of the undertaking. A copy of such application shall also be served simultaneously on the representatives of the workers in such manner as may be prescribed.

*Exception:* It is provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work. {Sub-section (1)}

*Reasoned order by the appropriate Government:* Where an application for permission has been made under sub-section (1), the Appropriate Government may, by order and for reasons to be recorded in writing, grant or refuse to grant such permission.

The Appropriate Government shall make such order only

- after making such enquiry as it thinks fit and
- after giving a reasonable opportunity of being heard to the employer, the workers and the persons interested in such closure
- after having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors.

A copy of such order shall be communicated to the employer and the workers. {Sub-section (2)}

*Deemed Permission:* Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted. It is deemed to be granted as on the expiration of the said period of sixty days. The application shall be deemed to have been disposed of accordingly by the appropriate Government. {Sub-section (3)}

*Duration and finality of the order of the appropriate Government:* An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties. Such an order shall remain in force for one year from the date of such order. {Sub-section (4)}

*Review or reference of the order to Tribunal:* The Appropriate Government may-

- review its order granting or refusing to grant permission under sub-section (2) within the prescribed time from the date on which such order is made or
- refer the matter to a Tribunal for adjudication.

Such a move may be made by the appropriate Government either on its own motion or on the application made by the employer or any worker.

It is provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. {Sub-section (5)}

*Illegal closure:* The closure of the undertaking shall be deemed to be illegal from the date of closure

- where no application for permission under sub-section (1) is made within the period specified therein, or
- where the permission for closure has been refused.

The workers shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. {Sub-section (6)}

*Exemption to establishment owing to exceptional circumstances:* Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order. {Sub-section (7)}

*Right of compensation:* Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every worker who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation. Such compensation shall be equivalent to fifteen days average pay, or average pay of such days as may be notified by the appropriate Government, for every completed year of continuous service or any part thereof in excess of six months. {Sub-section (8)}

### **Duty of an Employer to Maintain Muster Rolls of Workers (Section 81)**

It shall be the duty of every employer to maintain a muster roll, and to provide for the making of entries therein by workers who may present themselves for work at the establishment at the appointed time during normal working hours.

### **Certain provisions of Chapter IX to apply to industrial establishment to which this Chapter applies. (Section 82)**

The provisions of sections 66, 71, 72, 73 and section 76 also applicable to an industrial establishment with  $\geq 300$  workers.

## **WORKER RE-SKILLING FUND**

### **Worker Reskilling Fund (Section 83)**

This section introduces the Worker Reskilling Fund, a statutory mechanism to support workers who are retrenched.

*Establishment of Fund:* The appropriate Government shall, by notification, set up a fund to be called the worker re-skilling fund.

*Sources of the Fund:* The fund shall consist of—

- (a) the contribution of the employer of an industrial establishment an amount equal to fifteen days wages last drawn by the worker immediately before the retrenchment, or such other number of days as may be notified by the Central Government, for every retrenched worker in case of retrenchment only;
- (b) the contribution from such other sources as may be prescribed by the appropriate Government.

*Utilisation of the Fund:* The fund shall be utilised by crediting fifteen days wages last drawn by the worker to his account who is retrenched, within forty-five days of such retrenchment, in such manner as may be prescribed.

## **UNFAIR LABOUR PRACTICES**

### **Prohibition of Unfair Labour Practice (Section 84)**

No employer or worker or a Trade Union shall commit any unfair labour practice specified in the Second Schedule. This prohibition is applicable irrespective of the fact whether they are registered under Industrial Relation Code, or not,

## Unfair Labour Practices

### *I. On the Part of Employers and Trade Unions of Employers*

- (1) To interfere with, restrain from, or coerce, workers in the exercise of their right to organise, form, join or assist a Trade Union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say,—
  - (a) threatening workers with discharge or dismissal, if they join a Trade Union;
  - (b) threatening a lock-out or closure, if a Trade Union is organised;
  - (c) granting wage increase to workers at crucial periods of Trade Union organisation, with a view to undermining the efforts of the Trade Union organisation.
- (2) To dominate, interfere with or contribute support, financial or otherwise, to any Trade Union, that is to say,—
  - (a) an employer taking an active interest in organising a Trade Union of his workers; and
  - (b) an employer showing partiality or granting favour to one of several Trade Unions attempting to organise his workers or to its members, where such a Trade Union is not a recognised Trade Union.
- (3) To establish employer sponsored Trade Unions of workers.
- (4) To encourage or discourage membership in any Trade Union by discriminating against any worker, that is to say,—
  - (a) discharging or punishing a worker, because he urged other workers to join or organise a Trade Union;
  - (b) discharging or dismissing a worker for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Code);
  - (c) changing seniority rating of workers because of Trade Union activities;
  - (d) refusing to promote workers to higher posts on account of their Trade Union activities;
  - (e) giving unmerited promotions to certain workers with a view to creating discord amongst other workers, or to undermine the strength of their Trade Union;
  - (f) discharging office-bearers or active members of the Trade Union on account of their Trade Union activities.
- (5) To discharge or dismiss workers, —
  - (a) by way of victimisation;
  - (b) not in good faith, but in the colourable exercise of the employer's rights;
  - (c) by falsely implicating a worker in a criminal case on false evidence or on concocted evidence;
  - (d) for patently false reasons;
  - (e) on untrue or trumped-up allegations of absence without leave;
  - (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

- (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the worker, thereby leading to a disproportionate punishment.
- (6) To abolish the work of a regular nature being done by workers, and to give such work to contractors as a measure of breaking a strike.
- (7) To transfer a worker mala fide from one place to another, under the guise of following management policy.
- (8) To insist upon individual workers, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.
- (9) To show favouritism or partiality to one set of workers regardless of merit.
- (10) To employ workers as badli workers, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workers.
- (11) To discharge or discriminate against any worker for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
- (12) To recruit worker during a strike which is not an illegal strike.
- (13) Failure to implement award, settlement or agreement.
- (14) To indulge in acts of force or violence.
- (15) To refuse to bargain collectively, in good faith with the recognised Trade Unions.
- (16) Proposing or continuing a lock-out deemed to be illegal under this Code.

## ***II. On the Part of Workers and Trade Unions of Workers***

- (1) To advise or actively support or instigate any strike deemed to be illegal under this Code.
- (2) To coerce workers in the exercise of their right to self-organisation or to join a Trade Union or refrain from, joining any Trade Union, that is to say—
  - (a) for a Trade Union or its members to picketing in such a manner that non-striking workers are physically debarred from entering the work places;
  - (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workers or against managerial staff.
- (3) For a recognised union to refuse to bargain collectively in good faith with the employer.
- (4) To indulge in coercive activities against certification of a bargaining representative.
- (5) To stage, encourage or instigate such forms of coercive actions as wilful, “go-slow”, squatting on the work premises after working hours or “gherao” of any of the members of the managerial or other staff.

Explanation 1.—For the removal of doubts, it is clarified that “go-slow” shall mean an occasion when more than one worker in an establishment conjointly work more slowly and with less effort than usual to try to persuade the employer of the establishment to agree to higher pay or better service condition or such other demand.

Explanation 2.—For the purposes of Explanation 1, the expression “usual” shall mean,—

- (i) where the standard has been specified for a worker for his work either daily, weekly or monthly

basis, such work; and

- (ii) where no such standard has been specified such rate of work which is the average of work in the previous three months calculated on daily or weekly or monthly basis, as the case may be.
- (6) To stage demonstrations at the residence of the employers or the managerial staff members.
- (7) To incite or indulge in wilful damage to employer's property connected with the industry.
- (8) To indulge in acts of force or violence or to hold out threats of intimidation against any worker with a view to prevent him from attending work.

### **Offences by Companies (Section 88)**

This section provides for the liability framework for offences committed by companies under the Code.

*General Liability:* If the person committing an offence under the Code is a company-

- every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the
- company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Defence:* It is provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that

- the offence was committed without his knowledge and
- he exercised all due diligence to prevent the commission of such offence.

*Specific Liability for Consent, Connivance, or Neglect:* Notwithstanding anything contained in sub-section (1), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section, —

- (a) “company” means any body corporate and includes-
  - (i) a firm; or
  - (ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; or
  - (iii) other association of individuals; and
- (b) “director” in relation to a firm means a partner in the firm.

### **Composition of Offences (Section 89)**

This section provides a mechanism for compounding offences under the Code, allowing certain offences to be settled by payment of a prescribed sum instead of undergoing full prosecution.

*Compounding of Offences:*

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under the Code,

not being an offence punishable with imprisonment only, or with imprisonment and also with fine may be compounded. For compounding, an application has to be made by the accused person, either before or after the institution of any prosecution. The Appropriate Government may, by notification, specify any Gazetted Officer as a compounding authority. Such an offence may be compounded, in the manner as may be prescribed, for a sum of

- fifty per cent. of the maximum fine provided for such offence punishable with fine only and
- seventy-five per cent. provided for such offence punishable with imprisonment for a term which is not more than one year or with fine,

It may be noted that such amount of composition shall be credited to the Social Security Fund established under section 141 of the Social Security Code, 2020.

*Compounding not permissible:* An offence committed by a person for the second time or thereafter within a period of three years from the date—

- (a) of commission of a similar offence which was earlier compounded;
- (b) of commission of similar offence for which such person was earlier convicted.

*Supervisory control of the Appropriate Government:* It is stated that such compounding Officer shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Appropriate Government.

*Manner of application:* Every application for the compounding of an offence shall be made in such prescribed manner.

*Compounding before institution of prosecution:* Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

*Compounding after institution of prosecution:* Where the composition of any offence is made after the institution of any prosecution-

- such composition shall be brought by the compounding officer in writing, to the notice of the adjudicating officer appointed under section 85(1) before whom the prosecution is pending and
- on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.

*Consequences of failure to comply with compounding order:* Any person who fails to comply with an order made by the compounding officer shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

*Restrictive provision:* Offence punishable under the provisions of the Code shall be compounded in accordance with the provisions of this section.

## Lesson 18- Code on Wages, 2019

### INTRODUCTION

The Code on Wages, 2019 seeks to simplify, consolidate, and rationalize the provisions of four existing laws- The Payment of Wages Act, 1936; The Minimum Wages Act, 1948; The Payment of Bonus Act, 1965; and The Equal Remuneration Act, 1976. It aims to strengthen workers' rights while promoting simplicity and uniformity in wage-related compliance for employers.

### Salient Features of the Code on Wages

**Universal Minimum Wages:** The Code establishes a statutory right to minimum wages for all employees across both organized and unorganized sectors. Earlier, the Minimum Wages Act applied only to scheduled employments covering ~30% of workers.

**Introduction of Floor Wage:** A statutory floor wage shall be set by the Government based on minimum living standards, with scope for regional variation. No state can fix minimum wages below this level, ensuring uniformity and adequacy nationwide.

**Criteria for Wage Fixation:** Appropriate Governments will determine minimum wages considering workers' skill levels (unskilled, skilled, semi-skilled and highly skilled), geographic areas, and job conditions such as temperature, humidity, or hazardous environments.

**Gender Equality in Employment:** Employers shall not discriminate on the basis of gender, including transgender identity, in recruitment, wages, and employment conditions for similar work.

**Universal Coverage for Wage Payment:** Provisions ensuring timely payment and preventing un-authorized deductions will apply to all employees, irrespective of wage limits (currently applicable only to employees earning up to `24,000/month).

**Overtime Compensation:** Employers must pay all employees overtime wages at least twice the normal rate for any work done beyond the regular working hours.

**Responsibility for Wage Payment:** Employers, including companies, firms, or associations, shall pay wages to employees employed by them. Failure to do so makes the proprietor/ entity liable for unpaid wages.

**Inspector-cum-Facilitator:** The traditional role of "Inspector" is replaced with "Inspector-cum-Facilitator," emphasizing guidance, awareness, and advisory roles alongside enforcement to improve compliance.

**Compounding of Offences:** First-time, non-imprisonable offences can be compounded by paying a penalty. Repeat offences within five years, however, cannot be compounded.

**Decriminalization of Offences:** The Code replaces imprisonment for certain first-time offences with monetary fines (up to 50% of the maximum fine), making the framework less punitive and more compliance-oriented.

### CHAPTER I – PRELIMINARY

Section 1 of the Code provides for title and applicability of the Code as follows:

**This Act may be called the Code on Wages, 2019.**

**The Code extends to the whole of India.**

The Code has vested power in the **Central Government** for notification with respect to commencement of the Code, and different dates may be appointed for different provisions as may be considered appropriate. In exercise of these powers, the Central Government may, by notification in the Official Gazette, appoint the date(s) on which

the provisions of the Code shall come into force.

In exercise of the powers conferred by sub-section (3) of section 1 of the Code on Wages, 2019, the Central Government appointed 21st day of November, 2025 as the date on which the following provisions of the said Code, to come into force, namely: -

|  |
|--|
| Sections 1 to 41   |
| Sub-sections (4) to (9) of section 42  |
| Sections 43 to 66  |
| Sub-Section (1) And Clauses (A) to (R) and (U) TO (ZC) of sub-section (2) and Sub-Sections (3) to (5) of section 67        |
| Section 68   |
| Section 69, except the provisions of the code mentioned at serial number 3 of S.O. 4604 (E), dated the 18TH December, 2020 |

## Definitions

Section 2 of the Code provides for definitions with the opening words *“unless the context otherwise requires”* as follows:

**“Accounting Year”** means the year commencing on the 1st day of April. **{Section 2(a)}**

**“Advisory Board”** means the Central Advisory Board or, as the case may be, the State Advisory Board, constituted under section 42. **{Section 2(b)}**

**“Agricultural income tax law”** means any law for the time being in force relating to the levy of tax on agricultural income. **{Section 2(c)}**

**“Appropriate Government”** means—

| Establishment Type  | Appropriate Government |
|---|------------------------|
| Establishment carried on by or under the authority of the <b>Central Government</b>   | Central Government     |
| Establishment of <b>railways, mines, oil fields, major ports, air transport service, telecommunication, banking, insurance companies</b>      | Central Government     |
| <b>Corporation or authority established by a Central Act</b>  | Central Government     |
| <b>Central public sector undertakings (PSUs), their subsidiary companies, or autonomous bodies owned/controlled by the Central Government</b> | Central Government     |
| <b>Contractors</b> engaged for the purposes of such establishments, corporations, PSUs, subsidiaries, or autonomous bodies                    | Central Government     |
| <b>Any other establishment</b>  | State Government       |

**{Section 2(d)}**

**“Company”** means a company as defined in clause (20) of section 2 of the Companies Act, 2013. **{Section 2(e)}**

**“Contractor”**, in relation to an establishment, means a person, who—

**(i)** undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or

**(ii)** supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor;

*Therefore, contractor does not include mere supplier of goods or articles of manufacture through contract labour. The definition focus on those persons who are actually undertaking to give results for an establishment through contract labour or source workforce for any work of establishment. {Section 2(f)}*

**“Contract Labour”** means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer, and includes inter-State migrant worker. But this definition specifically excluded a worker (other than part-time employee) who—

- (i) is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis); and
- (ii) gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment. **{Section 2(g)}**

*The Code provides a detailed definition of “contract labour” to distinguish between workers engaged through contractors for specific work and those who are permanently employed by contractors under regulated employment conditions.*

**“Co-Operative Society”** means a society registered or deemed to be registered under the *Co-operative Societies Act, 1912* or any other law for the time being in force relating to co-operative societies in any State. **{Section 2(h)}**

**“Corporation”** means any body corporate established by or under any Central Act, or State Act, but does not include a company or a co-operative society. **{Section 2(i)}**

**“Direct Tax”** means—

- (i) any tax chargeable under the—
  - (A) Income-tax Act, 1961;
  - (B) *Companies (Profits) Surtax Act, 1964;*
  - (C) *Agricultural income tax law;*
- (ii) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification, to be a direct tax for the purposes of this Code. **{Section 2(j)}**

**“Employee”** means any person employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

The definition includes a person declared to be an employee by the appropriate Government. The

definition of employee specifically exclude-

- an apprentice engaged under the Apprentices Act, 1961.
- any member of the Armed Forces of the Union. **{Section 2(k)}**

**“Employer”** means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by-

- Central/State Government departments: authority specified by the head of the department, or if none specified, the head of the department.
- Local authority establishments: the chief executive of that authority.

**Specific inclusions:**

- (i) Factory: the *occupier* as defined in section 2(n) of the Factories Act, 1948, or, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;
- (ii) Other establishments: the person/authority with *ultimate control* over affairs, or the *manager/managing director* if entrusted.
- (iii) Contractor.
- (iv) Legal representative of a deceased employer. **{Section 2(l)}**

**“Establishment”** means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment. **{Section 2(m)}**

**“Factory”** means a factory as defined in clause (m) of section 2 of the Factories Act, 1948. **{Section 2(n)}**

**“Government Establishment”** means any office or department of the Government or a local authority. **{Section 2(o)}**

**“Income-tax Act”** means the Income-tax Act, 1961. **{Section 2(p)}** **“Industrial**

**dispute”** means—

- (i) any dispute or difference between employers and employers, or between employers and workers, or between workers and workers, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; and
- (ii) any dispute or difference between an individual worker and an employer connected with, or arising out of, discharge, dismissal, retrenchment or termination of such worker;

**{Section 2(q)}**

**“Inspector-cum-Facilitator”** means a person appointed by the appropriate Government under sub-section (1) of section 51. **{Section 2(r)}**

**“Minimum Wage”** means the wage fixed under section 6. **{Section 2(s)}**

**“Notification”** means a notification published in the Gazette of India or in the Official Gazette of a State, as the case may be, and the expression “notify” with its grammatical variations and cognate expressions shall be construed accordingly. **{Section 2(t)}**

**“Prescribed”** means prescribed by rules made by the appropriate Government. **{Section 2(u)}**

**“Same work or work of a similar nature”** means work in respect of which the skill, effort, experience and

responsibility required are the same, when performed under similar working conditions by employees, If there is any difference between the skill, effort, experience and responsibility required for employees of any gender, the difference is practically of no importance in relation to the terms and conditions of employment. **{Section 2(v)}**

**“State”** includes a Union territory. **{Section 2(w)}**

**“Tribunal”** shall have the same meaning as assigned to it in clause (r) of section 2 of the Industrial Disputes Act, 1947. **{Section 2(x)}**

**“Wages”**- The term *“wages”* under the Code is defined broadly to encompass all monetary remuneration payable to an employee in respect of employment or work done, whether under express or implied terms of employment. This ensures that the statutory scope of wages is not confined merely to salary but extends to allowances and other forms of compensation expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

The definition explicitly includes—

- (i) basic pay;
- (ii) dearness allowance; and
- (iii) retaining allowance, if any,

Followings are explicitly excluded from the definition —

|  |
|--|
| a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;  |
| b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government; |
| c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;  |
| d) any conveyance allowance or the value of any travelling concession;   |
| e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;   |
| f) house rent allowance;   |
| g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;   |
| h) any overtime allowance;   |
| i) any commission payable to the employee;   |
| j) any gratuity payable on the termination of employment;  |

k) any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment.

#### Special Provisions:

- **Ceiling on Exclusions:** If payments under clauses (a) to (i) exceed **50% (or such percentage notified by the Central Government)** of total remuneration calculated under this clause, the excess shall be deemed as remuneration and accordingly added in wages under this clause. This prevents employers from artificially structuring pay to minimize statutory wage obligations.
- **Gender Equality Clause:** For the purpose of equal wages and payment of wages, certain excluded emoluments specified in clauses (d), (f), (g) and (h) (conveyance allowance, HRA, remuneration under awards/settlements, overtime allowance) shall be taken for computation of wage. This ensures parity across genders and prevents discriminatory wage practices.
- **Remuneration in Kind:** Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee.

#### {Section 2(y)}

**“Worker”:** The definition of the worker under the Code is both inclusive and exclusive. It means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied. An apprentice as defined under clause (aa) of section 2 of the *Apprentices Act, 1961* is specifically excluded from purview of worker under the Code.

Following are specifically included in the definition of worker—

- working journalists as defined in clause (f) of section 2 of the *Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955*; and
- sales promotion employees as defined in clause (d) of section 2 of the *Sales Promotion Employees (Conditions of Service) Act, 1976*; and
- for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute,

The following persons are specifically excluded from the definition of worker-

- who is subject to the *Air Force Act, 1950*, or the *Army Act, 1950* or the *Navy Act, 1957*; or
- who is employed in the police service or as an officer or other employee of a prison; or
- who is employed mainly in a managerial or administrative capacity; or
- who is employed in a supervisory capacity drawing wages exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time. **{Section 2(z)}**

## Prohibition of Discrimination on Ground of Gender

Section 3 of the Code provides for **Prohibition of Discrimination on Ground of Gender** as follows:

- *Equal Wages for Equal Work*: There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.
- *Safeguards Against Wage Reduction and Recruitment Bias*-No employer shall—

|   |   |
|---|---|
| (i) for the purposes of complying with the provisions of sub-section (1), reduce the rate of wages of any employee; and | (ii) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment. However, such a discrimination is allowed under Code where the employment of women in such work is prohibited or restricted by or under any law for the time being in force. |
|---|---|

## Decision as to disputes with regard to same or similar nature of work

Section 4 of the Code provides for **decision as to Disputes with Regard to Same or Similar Nature of Work** as follows:

Where any dispute arises as to whether a work is of the same or similar nature for the purposes of Section 3, such dispute shall be decided by the authority as may be notified by the appropriate Government.

## CHAPTER II – MINIMUM WAGES

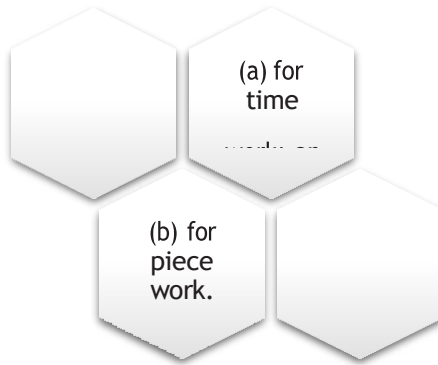
### Payment of minimum rate of wages

Section 5 of the Code makes it mandatory for every employer to pay to any employee wages at least equal to the minimum rate of wages notified by the appropriate Government.

#### Fixation of minimum wages

*Section 6 of the Code provides for Fixation of Minimum Rate of Wages as follows:*

- *Fixation of minimum rate of wages by the appropriate Government*: The appropriate Government shall fix the minimum rate of wages payable to employees in accordance with the provisions of this section. But this power is subject to the provisions of section 9. {Sub-section (1)}
- *Types of minimum wages*: For the purposes of sub-section (1), the appropriate Government shall fix a minimum rate of wages—



- *Minimum rate of wages for piece work based employee:* Where employees are employed on piece work, for the purpose of sub-section (1), the appropriate Government shall fix a minimum rate of wages for securing such employees a minimum rate of wages on a time work basis.
- *Basis of fixation of time work basis employees:* The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:—
  - (i) by the hour; or
  - (ii) by the day; or
  - (iii) by the month.
- *Manner of calculating wages:* Where the rates of wages are fixed by the hour or by the day or by the month, the manner of calculating the wages shall be such, as may be prescribed.
- *Criteria for Fixation of Minimum Wages:* For the purpose of fixation of minimum rate of wages under this section, the appropriate Government—
  - (a) shall primarily take into account **the skill of workers** required for working under the categories of unskilled, skilled, semi-skilled and highly-skilled or geographical area or both; and
  - (b) may, in addition to such minimum rate of wages for certain category of workers, take into account their **arduousness of work** like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work as may be prescribed by that Government; and
  - (c) the norms of such fixation of minimum rate of wages shall be such as may be prescribed.
- *Minimization of Wage Categories:* The appropriate Government shall keep the number of minimum rates of wages to be fixed under this section, as far as possible, at minimum.

### Components of minimum wages

The section 7 of the Code provides for the components of minimum wages as follows-

1. Any minimum rate of wages fixed or revised by the appropriate Government under section 8 may consist of—
  - (a) *Basic rate plus Cost of Living Allowance:* a basic rate of wages and an allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as “cost of living allowance”); or

- (b) *Basic rate plus cash value of concessions*: a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or
  - (c) *All-inclusive rate*: an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.
2. *Computation of cost of living allowance and cash value of concessions*: The cost-of-living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by such authority, as the appropriate Government may by notification appoint, at such intervals and in accordance with such directions as may be specified or given by the appropriate Government from time to time.

The section lays the **structure of minimum wages** that may be fixed or revised by the appropriate Government under Section 8. The provision ensures that minimum wages are not a flat figure but a **composite package**, reflecting both basic remuneration and adjustments for cost of living.

### Procedure for fixing and revising minimum wage

Section 8 lays down the procedural framework for fixing minimum wages for the first time or revising them thereafter.

- *Modes of Action by the Appropriate Government*: In fixing minimum rates of wages for the first time or in revising minimum rates of wages under this Code, the appropriate Government shall either—
  - (a) *Committee Method*: appoint as many committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be; or
  - (b) *Notification Method*: by notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals shall be taken into consideration. {Sub-section(1)}
- *Tripartite Constitution of the Committee*: Every committee appointed by the appropriate Government under clause (a) of sub-section (1) shall consist of persons—
  - (a) representing employers;
  - (b) representing employees, equal in number to the members specified in clause (a); and
  - (c) independent persons, not exceeding one-third of the total members of the committee.
- *Notification of minimum rates of wages*:
  - After considering the recommendation of the committee appointed under clause (a) of sub-section (1) or, as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall notify its decision.
  - The appropriate Government shall, by notification, fix, or as the case may be, revise the minimum rates of wages.
  - The notification shall come into force on the expiry of three months from the date of its issue unless such notification otherwise provides,;
  - *It is also made mandatory for the appropriate Government of consult the concerned Advisory Board constituted under section 42 where the appropriate Government proposes to revise the minimum rates of wages in the manner specified in clause (b) of sub-section (1).*

- *Periodic review or revision:* The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years.

### Power of Central Government to fix floor wage

Section 9 empowers the **Central Government** to fix a *floor wage*, which serves as the **baseline wage standard** across the country. It provides the same as follows: -

- *Fixation of floor wage:* The Central Government shall fix floor wage taking into account minimum living standards of a worker in such manner as may be prescribed:  
*The Central Government is also vested with discretionary power to fix different floor wage for different geographical areas.*
- *Floor wage to meet threshold of minimum wage:* The minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the floor wage. Simultaneously vice versa is safeguarded by providing that if the minimum rates of wages fixed by the appropriate Government earlier is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.
- *Advisory and Consultation procedure:* Before fixing the floor wage under the section, the Central Government is given discretionary power to
  - obtain the advice of the Central Advisory Board constituted under sub-section (1) of section 42 and
  - consult State Governments in such manner as may be prescribed.

### Wages of employee who works for less than normal working day

Section 10 safeguards employees as it provides that if a worker is employed for less than the requisite hours of a normal working day, they are still entitled to receive **full day's wages**, thereby protecting them from loss of income due to factors beyond their control.

- *Minimum Wages for employment less than normal working hours:* If an employee whose minimum rate of wages has been fixed under this Code by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day:
- *Exception: It has been provided that he shall not be entitled to receive wages for a full normal working day—*

in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and

in such other cases and circumstances, as may be prescribed.

### Wages for two or more classes of work

Section 11 addresses situations where an employee performs multiple classes of work within the same employment period, each attracting a different minimum wage rate. According to the section-

- *Minimum wage rate threshold to be met for each class of work:* Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such

employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

*So, the provisions ensures payment of minimum wage rate proportionate to the time devoted for each class of work.*

### Minimum time rate wages for piece work

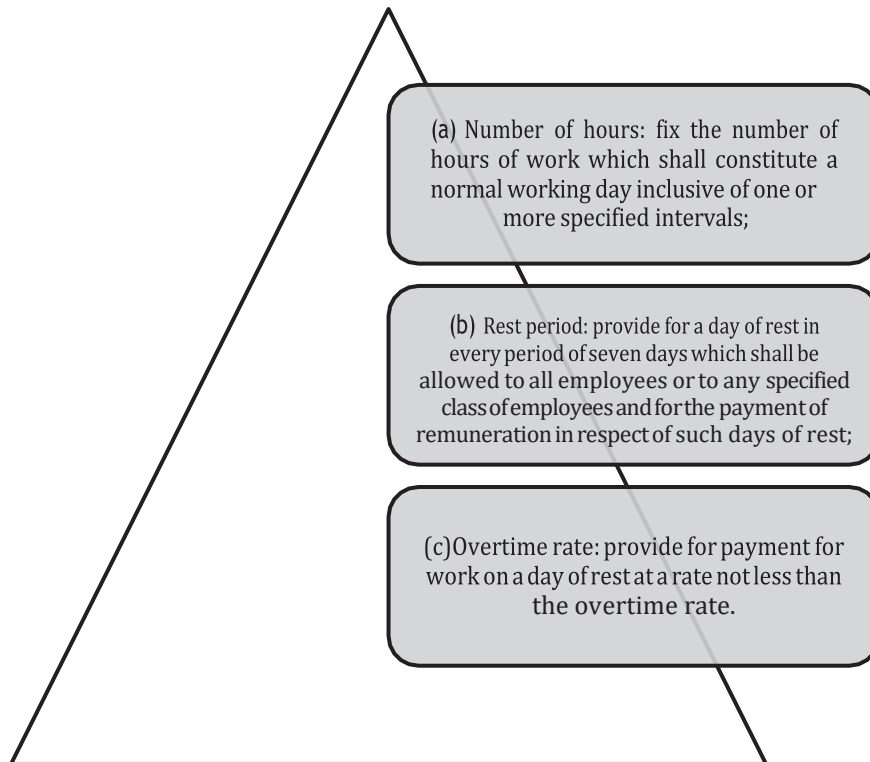
Section 12 ensures minimum time rate wages where minimum piece rate is also fixed by providing-

- Where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the minimum time rate.

### Fixing hours of work for normal working day

Section 13 empowers the appropriate Government to regulate the **hours of work** constituting a normal working day.

- *Power of the appropriate Government to fix working hours:* Where the minimum rates of wages have been fixed under this Code, the appropriate Government may—



- *Modification and extent of application of above provisions in specific class of work:* The above provisions of subsection (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed, namely:—

(a) employees engaged in any emergency which could not have been foreseen or prevented;

(b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(c) employees whose employment is essentially intermittent;

(d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and

(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

- *What is intermittent employment:* For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent -
  - *Declaration by the appropriate Government:* when it is declared to be so by the appropriate Government that the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.
  - Such a declaration can be made by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee,

### **Wages for overtime work**

Section 14 ensures that any work performed beyond the prescribed hours of a normal working day attracts enhanced remuneration.

*Applicability of the provisions:* Applicable to an employee whose minimum rate of wages has been fixed under this Code by the hour, by the day or by such a longer wage-period as may be prescribed.

*Wages for overtime work:* When such an employee works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

## **CHAPTER III – PAYMENT OF WAGES**

### **Mode of payment of wages**

Section 15 prescribes the acceptable modes of wage payment, ensuring transparency, accountability, and ease of access for employees.

|   |   |
|---|---|
| <b>Permissible mode of payments</b>     | All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode  |
| <b>Online mode of payment mandatory</b> | It is provided that the appropriate Government may, by notification, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account. |

### **Fixation of wage period**

**Section 16 requires every employer to fix a wage period for employees.**

*Fixation of wage period:* The employer shall fix the wage period for employees either as daily or weekly or

fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month.

*It is provided that different wage periods may be fixed for different establishments.*

### **Time limit for payment of wages**

Section 17 ensures that employees receive their wages **promptly and within defined timelines**, thereby safeguarding their right to timely remuneration and preventing undue hardship caused by delayed payments.

- *Timeframes for Payment:* The employer shall pay or cause to be paid wages to the employees, engaged on-

(i) daily basis, at the end of the shift;

(ii) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;

(iii) fortnightly basis, before the end of the second day after the end of the fortnight;

(iv) monthly basis, before the expiry of the seventh day of the succeeding month.

- *Payment of wages on removal/termination:* Where an employee has been—
  - (i) removed or dismissed from service; or
  - (ii) retrenched or has resigned from service, or became unemployed due to closure of the establishment,
    - the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.
- *Power vested in the appropriate Government:* Notwithstanding anything contained in this section above, the appropriate Government may provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.
- *Provisions of other laws for time limit to be not affected:* Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

### **Deductions which may be made from wages**

Section 18 establishes a **closed list of permissible deductions** from wages, prohibiting employers from making arbitrary or unauthorized deductions.

- *Only authorized deductions from wages:* Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorized under this Code.

*What is deemed to be deduction and what does not:* It is explained that for the purposes of this sub-section:-

- (a) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;
- (b) Following shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf-

*any loss of wages to an employee, for a good and sufficient cause, resulting from—*

- (i) the withholding of increment or promotion, including the stoppage of an increment; or
  - (ii) the reduction to a lower post or time-scale; or
  - (iii) the suspension,
- *Permissible Deductions:* Deductions from the wages of an employee shall be made in accordance with the provisions of this Code, and may be made only for the following purposes, namely:—
    - (a) fines imposed on him;
    - (b) deductions for his absence from duty;
    - (c) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
    - (d) deductions for house-accommodation supplied by the employer or by appropriate Government or any housing board set up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;
    - (e) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise, and such deduction shall not exceed an amount equivalent to the value of such amenities and services. It is provided via explanation that for the purposes of this clause, the expression “services” does not include the supply of tools and raw materials required for the purposes of employment;
    - (f) deductions for recovery of—
      - (i) advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages;
      - (ii) loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;
    - (g) deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;
    - (h) deductions of income-tax or any other statutory levy levied by the Central Government or State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;
    - (i) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
    - (j) deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;
    - (k) deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926 (16 of 1926);
    - (l) deductions for recovery of losses sustained by the railway administration on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;

- (m) deductions for recovery of losses sustained by the railway administration on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the railway administration whether in respect of fares, freight, demurrage, wharfage and cramage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
  - (n) deductions for recovery of losses sustained by the railway administration on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;
  - (o) deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify.
- *Maximum ceiling on quantum of deduction:* Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made as stated above in any wage period from the wages of an employee shall not exceed fifty per cent of such wages.
  - *Recovery of excess deduction:* Where the total deductions authorised under above provisions exceed fifty per cent of the wages, the excess may be recovered in such manner, as may be prescribed.
  - *Consequences of failure to deposit deductions:* Where any deduction is made by the employer from the wages of an employee under this section but not deposited in the account of the trust or Government fund or any other account, as required under the provisions of the law for the time being in force, such employee shall not be held responsible for such default of the employer.

## Fines

Section 19 regulates the **imposition of fines on employees**, ensuring that fines are not arbitrary but subject to **government approval, procedural safeguards, and strict limits**. The provisions are as follows:-

- *Mandatory approval before imposing fine:* No fine shall be imposed on any employee save in respect of those acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice under sub-section (2).
- *Display of notice:* A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.
- *Reasonable opportunity of being heard:* No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- *Maximum ceiling on fine:* The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.
- *Age ceiling on fine:* No fine shall be imposed on any employee who is under the age of fifteen years.
- *Time period and one time recovery of fine:* No fine imposed on any employee shall be recovered from him by installments or after the expiry of ninety days from the day on which it was imposed.
- *Enforcement of fine:* Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- *Register of fines and utilization of realisations:*

- All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and
- all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

### **Deductions for absence from duty**

Section 20 provides for the circumstances under which deductions from wages may be made for absence from duty. It ensures that deductions are proportionate, lawful, and not misused by employers, while also addressing collective absenteeism and strike-related conduct. The provisions of the section are as follows:-

- *Conditions for Deductions:* Deductions may be made under clause (b) of sub-section (2) of section 18 only on account of the absence of an employee from the place or places where by the terms of his employment, he is required to work. Such absence may be for the whole or any part of the period during which he is so required to work.
- *Proportionate time deduction:* The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage-period during which by the terms of his employment he was required to work.

*Deductions in case of collective absenteeism:* It is provided that, subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

It is further explained that for the purposes of this section, an employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

### **Deductions for damage or loss**

Section 21 regulates deductions from wages where an employee has caused damage or loss to the employer. It ensures that such deductions are fair and procedurally safeguarded as follows-

*Limitations on Deductions:* A deduction under clause (c) or clause (n) of sub-section (2) of section 18 for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee.

*Procedure to be followed before deduction:* A deduction shall not be made under sub-section (1) until the employee has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

*Recording of deductions and realisations thereof:* All such deductions and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed.

### **Deductions for services rendered**

Section 22 regulates deductions from wages in respect of house accommodation, amenities, or services provided by the employer. The provisions of the section are as follows-

*Mandatory acceptance of amenities by employee before deduction:*

- A deduction under clause (d) or clause (e) of sub-section (2) of section 18 shall not be made from the wages of an employee, unless the house-accommodation amenity or service has been accepted by him as a term

of employment or otherwise, and

- such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and shall be subject to such conditions as the appropriate Government may impose.

### **Deductions for recovery of advances**

Section 23 provides for deductions from wages for the recovery of advances made to employees as follows:-

*Pre conditions of deductions:* Deductions under clause (f) of sub-section (2) of section 18 for recovery of advances given to an employee shall be subject to the following conditions, namely:-

(a) recovery of advance of money given to an employee before the employment began shall be made from the first payment of wages to him in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling expenses;

(b) recovery of advance of money given to an employee after the employment began shall be subject to such conditions as may be prescribed;

(c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as may be prescribed.

### **Deductions for recovery of loans**

Section 24 of the Code provides for deductions from wages for recovery of loans as follows:-

*Scope of Application:*

- The section applies to deductions under **Section 18(2)(g)**, which permits recovery of loans granted for house-building or other approved purposes.
- The provision covers both:
  - The **extent to which loans may be granted**.
  - The **rate of interest payable** on such loans.

### **Chapter not to apply to Government establishments**

Section 25 provides that the provisions of this Chapter shall not automatically apply to Government establishments. It states that-

**General law is that the Government establishments are excluded from the scope of this Chapter.**

**The appropriate Government may, however, extend the provisions to specified Government establishments through a notification.**

## **CHAPTER IV – PAYMENT OF BONUS**

### **Eligibility for bonus, etc.**

Section 26 provides for the framework for **bonus entitlement** of employees, linking it to wages, allocable surplus, and the profitability of establishments. It ensures that employees receive a **minimum statutory bonus** regardless of the employer's financial performance, while also providing for higher bonuses when surplus profits exist.

*Eligibility of employee to receive bonus:*

- Every employee fulfilling following twin condition shall be paid bonus by the employer:-
  - who is drawing wages not exceeding such amount per mensem, as determined by notification by the appropriate Government **and**
  - who has put in at least thirty days' work in an accounting year.
- Minimum Bonus Payable: An annual minimum bonus calculated at the rate of eight and one-third per cent of the wages earned by the employee or one hundred rupees, whichever is higher, shall be payable whether or not the employer has any allocable surplus during the previous accounting year.  
{Sub-section(1)}

*Bonus for Higher Wage Employees:* For the purpose of calculation of the bonus where the wages of the employee exceed such amount per mensem, as determined by notification by the appropriate Government, the bonus payable to such employee under sub-sections (1) and (3) shall be calculated as if his wage were such amount which is higher of the following:

- so determined by the appropriate Government or
- the minimum wage fixed by the appropriate Government.

*Bonus Linked to Allocable Surplus:*

- Where in respect of any accounting year referred to in sub-section (1), the allocable surplus exceeds the amount of minimum bonus payable to the employees under that sub-section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus.
- Such bonus shall be an amount in proportion to the wages earned by the employee during the accounting year, subject to a maximum of twenty per cent of such wages.

*Amount to be set off in computing allocable surplus:* It is provided that in computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section.

*Productivity-Linked Bonus:* Any demand for bonus beyond the statutory minimum determined under sub-section (1), either based on production or productivity in an accounting year, shall be determined by an agreement or settlement between the employer and the employees. However, the total bonus, including minimum bonus, shall not exceed twenty per cent of the wages earned by the employee in the accounting year.

*Special Provisions for New Establishments:* The bonus is computed as follows in newly set up establishment following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment:

- In the first five accounting years-
  - bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment.
  - such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36.
- For the sixth and seventh accounting years, the provisions of section 36 shall apply subject to the following modifications, namely:—

- *for the sixth accounting year*, set on or set off, as the case may be, shall be made in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;
- *for the seventh accounting year*, set on or set off, as the case may be, shall be made in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.
- From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

*When are profits deemed to be derived:* Explanation 1 provides that for the purpose of this section, an employer shall not be deemed to have derived profit in any accounting year, unless—

- (a) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax law; and
- (b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Sale of trial production not to be considered:

- Explanation 2 provides that for the purposes of sub-sections (6), (7) and (8), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration.
- Where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

*Applicability of provisions of newly set up establishment:* The provisions of sub-sections (6), (7) and (8) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments.

### **Proportionate reduction in bonus in certain cases**

Section 27 provides for the proportionate reduction of the minimum bonus in cases where an employee has not worked for all the working days in an accounting year as follows-

*Proportionate Reduction:* Where an employee has not worked for all the working days in an accounting year-

- the minimum bonus, under sub-section (1) of section 26, shall be proportionately reduced.
- This provision of proportionate reduction is applicable only if such bonus is higher than eight and one-third per cent of the salary or wage of the days such employee has worked in that accounting year,

### **Computation of number of working days**

Section 28 clarifies how the number of working days is computed for the purposes of Section 27 (proportionate reduction in bonus) as follows-

*Deemed Working Days:* An employee shall be deemed to have worked in an establishment in any accounting year also on the days on which—

He has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

He has been on leave with salary or wages;

He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

The employee has been on maternity leave with salary or wages, during the accounting year.

### Disqualification for bonus

Section 29 sets out the circumstances under which an employee is disqualified from receiving bonus under the Code as follows-

*Grounds of disqualification:* Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for—

|               |   |  |                                       |
|---------------|---|--|---------------------------------------|
| (a) fraud; or | (b) riotous or violent behaviour while on the premises of the establishment; or | (c) theft, misappropriation or sabotage of any property of the establishment; or | (d) conviction for sexual harassment. |
|---------------|---|--|---------------------------------------|

### Establishments include departments, undertakings and branches

Section 30 provides for how bonus is to be computed when an establishment consists of multiple departments, undertakings, or branches, whether located in the same place or spread across different places as follows:-

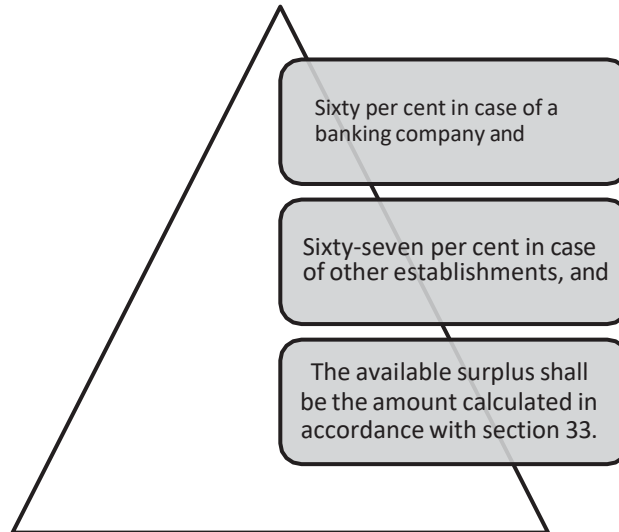
*Treatment of multiple branches of establishment for bonus:* Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Code.

*Exception:* It is provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Code for that year. This separate treatment shall be applicable only if such department or undertaking or branch was, immediately before the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.

### Payment of bonus out of allocable surplus

Section 31 provides for bonus to be payable out of the **allocable surplus** as follows:-

*What is allocable surplus:* The bonus shall be paid out of the allocable surplus which shall be an amount equal to following per cent of the available surplus:-



*Reliability of audited accounts:* Audited accounts of companies shall not normally be questioned.

*Resolution of dispute:* -Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

### Computation of gross profits

Section 32 of the Code provides for computation of gross profits as follows-

The gross profits derived by an employer from an establishment in respect of the accounting year shall—

In the case of a banking company, be calculated in the manner as may be prescribed by the Central Government;

In any other case, be calculated in the manner as may be prescribed by the Central Government.

### Computation of available surplus

Section 33 defines how the available surplus is computed for the purpose of bonus distribution as follows-

*Computation of available surplus:* The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34:

*Provided that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of this Code and in respect of every subsequent accounting year shall be the aggregate of—*

- (a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 34; and
- (b) an amount equal to the difference between—
  - (i) the direct tax, calculated in accordance with the provisions of section 35 in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
  - (ii) the direct tax, calculated in accordance with the provisions of section 35, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the

amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

### **Sums deductible from gross profits**

Section 34 of the Code provides for sums deductible from gross profits as prior charges as follows- The following sums shall be deducted from the gross profits as prior charges, namely:—

- (a) *Depreciation*: any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, for the time being in force, as the case may be;
- (b) *Direct Tax*: subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- (c) *Other prescribed sum*: such further sums in respect of the employer as may be prescribed by the Central Government.

### **Calculation of direct tax payable by employer**

Section 35 of the Code provides for calculation of direct tax payable by the employer as follows:-

For the purposes of this Code, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

- (a) *Exclusions*: in calculating such tax no account shall be taken of—
  - (i) *Carried forward loss*: any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
  - (ii) *Arrears of depreciation*: any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under sub-section (2) of section 32 of the Income-tax Act;
- (b) *Definition of a company in which public is substantially interested*: where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- (c) *Individuals and Hindu Undivided Families*: where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;
- (d) *Export profits rebate*: where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;
- (e) *Other rebates and deductions*: no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

## **Set on and set off of allocable surplus**

Section 36 introduces the mechanism of set on and set off in relation to allocable surplus for bonus computation so that bonus payments remain equitable and stable across accounting years, balancing fluctuations in profitability by carrying forward excesses or deficiencies as follows:-

- *Set On (Excess Surplus)* :
  - Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 26, then, the excess shall, be carried forward.
  - It can be set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in such manner as may be prescribed by the Central Government.
  - The carried forward is subject to a ceiling limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year,
- *Set Off (Deficiency in Surplus)*: Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 26, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in such manner as may be prescribed by the Central Government.

*Rules prescribed by the Central Government:* The principle of set on and set off as may be provided in rules by the Central Government under this Code shall apply to all other cases not covered in above provisions for the purpose of payment of bonus under this Code.

*Carried forward amount to be considered first:* Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

## **Adjustment of customary or interim bonus against bonus payable under this Code**

Section 37 of the Code provides for adjustment of customary or interim bonus against bonus payable under this Code as follows:-

The employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of any accounting year where he

- (a) has paid any *puja bonus* or other customary bonus to an employee; or
- (b) has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable,

*The employee shall be entitled to receive only the balance.*

## **Deduction of certain amounts from bonus payable**

Section 38 of the Code provides for deduction of certain amounts on account of misconduct of employee from bonus payable as follows:-

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the

employee under this Code in respect of that accounting year only, and the employee shall be entitled to receive the balance, if any.

### **Time limit for payment of bonus**

Section 39 of the Code provides for the time limit within which bonus shall be paid as follows:-

- Time limit and payment of bonus through banking channels:
  - The employer shall pay all amounts payable to an employee by way of bonus under this Code by crediting it in the bank account of the employee within a period of eight months from the close of the accounting year.
  - It is provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit. However, the total period so extended shall not in any case exceed two years.
- *Time limit for payment of disputed bonus:*
  - Notwithstanding anything contained above, where there is a dispute regarding payment of bonus pending before any authority, such bonus shall be paid within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
  - It is provided that if there is a dispute for payment at the higher rate, the employer shall pay eight and one-third per cent of the wages earned by the employee as per the provisions of this Code within a period of eight months from the close of the accounting year.

### **Application of this Chapter to establishments in public sector in certain cases**

- *Applicability of Chapter in competitive cases:* Section 40 of the Code provides that the provisions of this Chapter shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector where in any accounting year-
  - an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, **and**
  - the income from such sale or services or both is not less than twenty per cent of the gross income of the establishment in public sector for that year.
- *Non applicability of chapter in other PSUs:* Save as otherwise provided in sub-section (1), nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

Section 40 provides for the limited circumstances under which bonus provisions apply to public sector establishments. It distinguishes between public sector entities engaged in competitive commercial activity and those functioning primarily for public service, thereby balancing employee rights with the unique nature of public enterprises.

### **Non-applicability of this Chapter**

Section 41 of the Code provides for non-applicability of bonus provisions to certain categories of employees and establishments as follows:-

- *Where Chapter is not applicable:-* Nothing in this Chapter shall apply to—

- (a) employees employed by the Life Insurance Corporation of India;
- (b) seamen as defined in clause (42) of section 3 of the *Merchant Shipping Act, 1958*
- (c) employees registered or listed under any scheme made under the *Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948)*, and employed by registered or listed employers;
- (d) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;
- (e) employees employed by—
  - (i) the Indian Red Cross Society or any other institution of a like nature including its branches;
  - (ii) universities and other educational institutions;
  - (iii) institutions including hospitals, chambers of commerce and social welfare institutions established not for purposes of profit;
- (f) employees employed by the Reserve Bank of India;
- (g) employees employed by public sector financial institutions other than a banking company, which the Central Government may, by notification, specify, having regard to—
  - (i) its capital structure;
  - (ii) its objectives and the nature of its activities;
  - (iii) the nature and extent of financial assistance or any concession given to it by the Government; and
  - (iv) any other relevant factor;
- (h) employees employed by inland water transport establishments operating on routes passing through any other country; and
- (i) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

*Establishments where provisions of the Chapter are applicable:* Subject to the provisions of sub-section (1) and notwithstanding anything contained in any other provisions of this Chapter, the provisions of this Chapter shall apply to such establishment in which twenty or more persons are employed or were employed on any day during an accounting year.

## CHAPTER V – ADVISORY BOARD

### Central Advisory Board and State Advisory Boards

Section 42 of the Code provides for the constitution, composition, and functions of the Central Advisory Board and State Advisory Boards as follows:-

- *Central Advisory Board:*
  - *Appointing authority and constitution:* The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government—

Representing employers;

Representing employees, equal in number to the members specified in clause (a);

Independent persons, not exceeding one-third of the total members of the Board; and

Five representatives of such State Governments as may be nominated by the Central Government.

- *Women representative and Chairperson:* One-third of the members referred above shall be women, and a member specified in clause (c) above shall be appointed by the Central Government as the Chairperson of the Board.
- *Advisory role of the Central Advisory Board:* The Central Advisory Board so constituted shall, from time to time, advise the Central Government on reference of issues relating to—
  - (a) fixation or revision of minimum wages and other connected matters;
  - (b) providing increasing employment opportunities for women;
  - (c) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and
  - (d) any other matter relating to this Code.
- *Directions by the Central Government:* On such advice, the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.
- *Appointing authority and constitution of State Advisory Board:* Every State Government shall constitute a State Advisory Board for advising the State Government—
  - (a) in fixation or revision of minimum wages and other connected matters;
  - (b) for the purpose of providing increasing employment opportunities for women;
  - (c) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and
  - (d) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.

The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified above.

*Composition of State Advisory Board:* The State Advisory Board and each of the committees and sub-committees thereof shall consist of persons—

- (a) representing employers;
  - (b) representing employees, equal in number to the members specified in clause (a); and
  - (c) independent persons, not exceeding one-third of the total members of the Board or committee or sub-committee, as the case may be.
- *Women composition and Chairperson of State Advisory Board:* One-third of the members referred to in sub-section (6) shall be women, and one among the members specified in clause (c) of the said sub-section shall be—
    - (a) appointed by the State Government as the Chairperson of the Board;

- (b) appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be.
- *Factors to be considered in advisory role:* In tendering its advice in the matters specified in clause (b) or clause (c) above, the State Advisory Board shall have regard to
  - the number of women employed in the concerned establishment or employment,
  - the nature of work,
  - hours of work,
  - suitability of women for employment,
  - the need for providing increasing employment opportunities for women (including part-time employment), and s
  - Such other relevant factors as the Board may think fit.
- *Issue of Directions by the State Government:* The State Government may, after considering the advice tendered to it by the State Advisory Board and after inviting and considering the representations from establishments, employees, or any other person which that Government thinks fit, issue such directions as may be deemed necessary.
- *Regulation of Procedure:* The Central Advisory Board and the State Advisory Board shall respectively regulate their own procedure, including that of the committees and sub-committees constituted by the State Advisory Board, in such manner as may be prescribed.
- *Terms of the Advisory Board:* The terms of office of the Central Advisory Board and the State Advisory Board including that of the committees and sub-committees constituted by the State Advisory Board, shall be such as may be prescribed.

## CHAPTER VI – PAYMENT OF DUES, CLAIMS AND AUDIT

### Responsibility for payment of various dues

Section 43 of the Code provides for principal responsibility of employers in payment of dues as follows: -

*Obligation of employer:* Every employer shall pay all amounts required to be paid under this Code to every employee employed by him.

*Consequences of failure to pay:* It is provided that where such employer fails to make such payment in accordance with this Code, then, the company or firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

**Explanation—** For the purposes of this section the expression “firm” shall have the same meaning as assigned to it in the *Indian Partnership Act, 1932*.

### Payment of various undisbursed dues in case of death of employee

Section 44 provides for those undisbursed dues of an employee—such as wages, bonus, or other payments under the Code—to be properly settled in the event of the employee’s death or when the employee’s whereabouts are unknown. The provisions of the section are as follows: -

*To whom payment is to be made:* Subject to the other provisions of this Code, all amounts payable to an employee

under this Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known—

(a) be paid to the person nominated by him in this behalf in accordance with the rules made under this Code; or

(b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with such authority as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.

*Discharge of employer:* Where in accordance with above provisions of the section, all amounts payable to an employee under this Code—

(a) are paid by the employer to the person nominated by the employee; or

(b) are deposited by the employer with the authority referred to in clause (b) above

then, the employer shall be discharged of his liability to pay those amounts.

### **Claims under Code and procedure thereof**

Section 45 provides for the mechanism for adjudication of claims arising under the Code as follows:

- *Appointment of authorities:* The appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted Officer, to hear and determine the claims which arise under the provisions of this Code.
- Compensation and Timelines:
  - The authority so appointed, while deciding the claim, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined.
  - Such compensation may extend to ten times the claim determined,
  - The authority shall endeavour to decide the claim within a period of three months.
- *Recovery Mechanism:*
  - If an employer fails to pay the claim determined and compensation ordered to be paid under the section, the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located.
  - The Collector or District Magistrate, then, shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.
- *Who can file application for claim:* Any application before the authority for claim referred above may be filed by—
  - (a) the employee concerned; or
  - (b) any Trade Union registered under the *Trade Unions Act, 1926* of which the employee is a member; or
  - (c) the Inspector-cum-Facilitator.
- *Single application for collective claims:* Subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.
- *Limitation Period for filing application:* Such application may be filed within a period of three years from the date on which claims referred in the section arise. Discretionary power is also vested in the authority

entertain the application after three years on sufficient cause being shown by the applicant for such delay.

- *Powers of Civil Court:* The authority appointed the section for determining claim and compensation and the appellate authority appointed under sub-section (1) of section 49 shall have all the powers of a civil court under the *Code of Civil Procedure, 1908* for the purpose of
  - taking evidence and
  - of enforcing the attendance of witnesses and
  - compelling the production of documents.

Every such authority or appellate authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973*.

### Reference of disputes under this Code

Section 46 of the Code provides for reference of disputes under this Code as follows-

Notwithstanding anything contained in this Code, where any dispute arises between an employer and his employees with respect to—

- |   |
|---|
| (a) fixation of bonus or eligibility for payment of bonus under the provisions of this Code; or |
| (b) the application of this Code, in respect of bonus, to an establishment in public sector,    |

then, such dispute shall be deemed to be an industrial dispute within the meaning of the *Industrial Disputes Act, 1947*.

### Presumption about accuracy of balance sheet and profit and loss account of corporations and companies

Section 47 of the Code provides for presumption about accuracy of balance sheet and profit and loss account of corporations and companies as follows: --

- *Presumption of accuracy of financial statements:* Where, in respect of any dispute of the nature specified in sections 45 and 46 or in respect of an appeal under section 49, the balance sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), are produced during the course of proceedings before—
  - (a) the authority under section 45; or
  - (c) the appellate authority under section 49; or
  - (d) a Tribunal; or
  - (d) an arbitrator referred to in clause (aa) of section 2 of the *Industrial Disputes Act, 1947*,

then, the said authority, appellate authority, Tribunal or arbitrator, as the case may be, may presume the statements and particulars contained in such balance sheet and profit and loss account to be accurate if such financial statements are -

- duly audited by the Comptroller and Auditor-General of India or
- by auditors duly qualified to act as auditors of companies under section 141 of the *Companies Act, 2013*.

Then, it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode.

- *Measures in case of inaccuracy of financial statements:* It is provided that where the said authority, appellate authority, Tribunal or arbitrator, as the case may be, is satisfied that the statements and particulars contained in the balance sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.
- *Directions by the authority in case of clarification sought by Trade Union or employees to dispute:*
  - *Subject and parties to the application for clarification:* Following can make application requiring any clarification relating to any item in the balance sheet or the profit and loss account:-
    - (i) any Trade Union being a party to the dispute or an appeal, as the case may be and
    - (ii) where there is no Trade Union, by the employees being a party to the dispute or an appeal, as the case may be.
  - *To whom application is to be made:* An application in this respect shall be made to the authority, appellate authority, Tribunal or arbitrator, before whom the dispute or appeal is pending, as the case may be.
  - *Directions by the concerned authority:* Such authority, appellate authority, Tribunal or arbitrator may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the Trade Union or the employees such clarification within such time as may be specified in the direction. The corporation or, as the case may be, the company, shall comply with such direction.

### **Audit of account of employers not being corporations or companies**

Section 48 of the Code provides for audit of accounts of employers not being corporations or companies as follows:

*Application of section 47 for non-corporate employer:* If the accounts of a non-corporate employer are audited by an auditor qualified under Section 141 of the Companies Act, 2013, and produced before the authority, appellate authority, Tribunal, or arbitrator, as the case may be, dealing with any claim, dispute or appeal with respect to bonus payable under this Code between such a non- corporate employer, and his employees , then the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

*Direction to such employer to get accounts audited:* The authority, appellate authority, Tribunal or arbitrator may, by order, direct the employer to get his accounts audited when

- it finds that the accounts of such employer have not been audited by any such auditor **and**
- it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it,

Thereupon the employer shall get the accounts audited within such time as may be specified in the direction or within such further time as it may allow, by such auditor or auditors as it thinks fit and comply with such direction.

*Failure to get accounts audited:* Where such employer fails to get the accounts audited in pursuance of directions stated above, the authority, appellate authority, Tribunal or arbitrator referred above may, without prejudice to the provisions of section 54, get the accounts audited by such auditor or auditors as it thinks fit.

*Applicability of section 47:* When the accounts are audited under this section, the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

*Expenses of audit:* The expenses of, and incidental to, any audit under sub-section (3), including the remuneration of the auditor or auditors, shall be determined by the authority, appellate authority, Tribunal or arbitrator referred to in

sub-section (1), and paid by the employer; and in default of such payment, shall be recoverable by the authority referred to in sub-section (3) of section 45 from the employer in the manner provided in that sub-section.

## Appeal

Section 49 provides the framework for appeals against orders passed by the authority under Section 45 reinforcing principles of natural justice and procedural fairness as follows: -

- *Right to Appeal:*
  - Any person aggrieved by an order passed by the authority under sub-section (2) of section 45 may prefer an appeal to the appellate authority having jurisdiction, appointed by the appropriate Government by notification for such purpose.
  - Such an appeal shall be made within ninety days from the date of such order, in such form and manner as may be prescribed.
  - It is provided that the appellate authority may entertain the appeal after ninety days if it is satisfied that the delay in filing the appeal has occurred due to sufficient cause.
- *Appointment of appellate authority:* The appellate authority shall be appointed from the officers of the appropriate Government holding the post at least one rank higher than the authority referred under sub-section (1) of section 45.
- *Disposal of Appeals:* The outstanding dues under the orders of the appellate authority shall be recovered by the authority referred to in section 45, by issuing the certificate of recovery in the manner specified in sub-section (3) of that section.

## Records, returns and notices

Section 50 of the Code provides for maintenance of records, returns, and notices by employers as follows: -

- *Maintenance of Register by employer:* Every employer of an establishment to which this Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages, and such other details in such manner as may be prescribed.
- *Display of notice:* Every employer shall display a notice on the notice board at a prominent place of the establishment containing the abstract of this Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name and address of the Inspector-cum-Facilitator having jurisdiction.
- *Issue of wage slip:* Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.
- *Exemption for Small Employers:* The above provisions of sub-sections shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose.

It is provided that such employer, when demanded, shall produce before the Inspector-cum-Facilitator, the reasonable proof of the payment of wages to the persons so employed.

It is also explained that for the purposes of this sub-section, the expression “domestic purpose” means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation.

### Appointment of Inspector-cum-Facilitators and their powers

Section 51 of the Code provides for the appointment of Inspector-cum-Facilitators and the powers conferred upon them as follows: -

- *Appointment of Inspector-cum-Facilitators:*
  - The appropriate Government may, by notification, appoint Inspector-cum-Facilitators for the purposes of this Code.
  - He shall exercise the powers conferred on them under this section throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.
- *Inspection Scheme:* The appropriate Government may, by notification, lay down an inspection scheme which may also provide for
  - generation of a web-based inspection and
  - calling of information relating to the inspection under this Code electronically.
- *Randomised Selection:* Without prejudice to the above provisions, the appropriate Government may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of this Code to the Inspector-cum-Facilitator as may be specified in such notification.
- *Deemed public servant:* Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the *Indian Penal Code*.
- *Role of the Inspector-cum-Facilitator:* The Inspector-cum-Facilitator may—
  - (a) advise employers and workers relating to compliance with the provisions of this Code;
  - (b) inspect the establishments as assigned to him by the appropriate Government, subject to the instructions or guidelines issued by the appropriate Government from time to time.
- *Powers:* Subject to the above provisions, the Inspector-cum-Facilitator may—
  - (a) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe is a worker of the establishment;
  - (b) require any person to give any information, which is in his power to give, with respect to the names and addresses of the persons;
  - (c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;
  - (d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and
  - (e) exercise such other powers as may be prescribed.
- *Obligation to comply with orders of the Inspector-cum-Facilitator:* Any person required to produce any document or to give any information required by an Inspector-cum-Facilitator under sub-section (5) shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the *Indian Penal Code*.

- *Application of provisions of CrPC:* The provisions of the *Code of Criminal Procedure, 1973* shall, so far as may be, apply to the search or seizure under the section as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

## Offences by Companies

Section 55 lays the framework for corporate liability under the Code as follows:-

- Who is liable in case of offence committed by a company under the Code:
  - If the person committing an offence under this Code is a company, every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of business of the company, as well as the company itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
  - *Defence for officer in charge:* It is provided that the above provision shall not render any such person liable to any punishment if he proves that
    - the offence was committed without his knowledge or
    - he exercised all due diligence to prevent the commission of such offence.

*Liability for connivance, consent or negligence in committing an offence:* In addition to general liability of officer in charge, the director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly-

- where an offence under this Code has been committed by a company and
- it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, such director, manager, secretary or other officer of the company.

Explanation.— For the purposes of this section—

- (a) “company” means any body corporate and includes—
  - (i) a firm; or
  - (ii) a limited liability partnership registered under the *Limited Liability Partnership Act, 2008*; or
  - (iii) other association of individuals; and
- (b) “director” in relation to a firm means a partner in the firm.

## Composition of Offences

Section 56 of the Code provides for the composition of offences as follows:-

- *Requisites of compounding of offence under the Code:*
  - Notwithstanding anything contained in the *Code of Criminal Procedure, 1973*, an application may be made for compounding of any offence punishable under this Code, not being an offence punishable with
    - imprisonment only, or
    - with imprisonment and also with fine
  - For such compounding of offence, the accused person shall file an application either before or after the institution of any prosecution, to a Gazetted Officer, as the appropriate Government may, by

notification, specify.

- Such offences may be compounded by a Gazetted Officer for a sum of fifty per cent of the maximum fine provided for such offence, in the manner as may be prescribed.
- *Compounding not permissible:* Nothing contained above shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date—
  - (i) of commission of a similar offence which was earlier compounded;
  - (ii) of commission of similar offence for which such person was earlier convicted.
- *Exercise of compounding power:* Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.
- *Application for compounding:* Every application for the compounding of an offence shall be made in such manner as may be prescribed.
- *Consequences after compounding of offence:*
  - Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
  - Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred above in writing, to the notice of the court in which the prosecution is pending; and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.
- *Punishment for failure to comply with order of officer:* Any person who fails to comply with an order made by the officer under the section shall be punishable with a sum equivalent to twenty per cent of the maximum fine provided for the offence, in addition to such fine.
- *Offence under the code to be compounded only in accordance with above provisions:* No offence punishable under the provisions of this Code shall be compounded except under and in accordance with the provisions of this section.

## Lesson 19- Code on Social Security, 2020

### INTRODUCTION

The Code on Social Security incorporates existing nine Social Security Acts viz; *The Employee's Compensation Act, 1923*; *The Employees' State Insurance Act, 1948*; *The Employees' Provident Funds and Miscellaneous Provisions Act, 1952*; *The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959*; *The Maternity Benefit Act, 1961*; *The Payment of Gratuity Act, 1972*; *The Cine-Workers Welfare Fund Act, 1981*; *The Building and Other Construction Workers' Welfare Cess Act, 1996* and; *The Unorganised Workers' Social Security Act, 2008*. The Code extends social security to all workers- including unorganized, gig, and platform workers- covering life, health, maternity, and provident fund benefits, while introducing digital systems and facilitator- based compliance for greater efficiency. The Code on Social Security, 2020 represents a significant reform in India's labour welfare framework, aimed at ensuring comprehensive and inclusive social protection for all sections of the workforce.

### Salient Features of Social Security Code

**Expanded ESIC (Employees' State Insurance) Coverage:** ESIC now applies pan-India, eliminating the criteria of "notified areas." Establishments with fewer than 10 employees may voluntarily opt in with mutual consent of employers and employees. Coverage would be mandated for hazardous occupation and extended to plantation workers.

**Time-bound EPF (Employees' Provident Fund) Inquiries:** A five-year limit has been set for initiating EPF inquiries and recovery proceedings, to be completed within two years (extendable by one). Suo-moto reopening of cases has been abolished, ensuring timely resolution.

**Reduced EPF Appeal Deposit:** Employers appealing EPFO orders now need to deposit only 25% of the assessed amount (down from 40-70%), reducing financial burden and ensuring ease of business and access to justice.

**Self-assessment for Construction Cess:** Employers can now self-assess cess liabilities in respect to Building and Other Construction Work, previously assessed by the notified Government authority. It reduces procedural delays and official intervention.

**Inclusion of Gig and Platform Workers:** New definitions are included- "aggregator," "gig worker," and "platform worker" to enable social security coverage. Aggregators to contribute 1- 2% of annual turnover (capped at 5% of payments to such workers).

**Social Security Fund:** A dedicated fund to finance schemes for unorganised, gig, and platform workers, covering life, disability, health, and old-age benefits has been proposed. The amount collected through the compounding of offences will be credited to this Fund and used by the Government.

**Expanded Definition of Dependents:** Coverage extended to maternal grandparents and in case of female employees it also includes dependent parents-in-law, broadening family benefit access.

**Uniform Definition of Wages:** "Wages" now include basic pay, dearness allowance, and retaining allowance; 50% of the total remuneration (or such percentage as may be notified) shall be added back to compute wages, ensuring consistency in calculating gratuity, pension, and social security benefits.

**Commuting Accidents Covered:** Accidents during travel between home and workplace are now deemed employment-related, qualifying for compensation.

**Gratuity for Fixed-Term Employees:** Fixed-term employees become eligible for gratuity after one year of continuous service (earlier five years).

**Inspector-cum-Facilitator System:** Introduces randomized web-based, algorithm-driven inspections for transparency and wider compliance. Inspectors now act as facilitators to support adherence and reduce harassment.

**Decriminalization & Monetary Fines:** The code has replaced imprisonment with monetary fines for certain offences. The employer will be given mandatory 30 days' notice for compliance before taking any legal action.

**Compounding of Offences:** First-time offences punishable with fines are compoundable- for fine-only: 50% of maximum fine and for fine/imprisonment cases: 75% of maximum fine- reducing litigation and improving ease of doing business.

**Digitization of Compliance:** Mandates electronic maintenance of records, registers, and returns, cutting costs and improving efficiency.

**Vacancy Reporting:** Employers shall report vacancies to specified career centres before recruitment, promoting transparency in employment opportunities

### Preamble

An Act to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors and for matters connected therewith or incidental thereto.

### Preliminary

Section 1(3) states that the Code on Social Security shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

The Central Government vide its notification dated **21 November 2025** notified the commencement of:

- Sections 1 to 14
- Sections 15 (1) & (2)
- Section 16(1)(c)
- Sections 17 to 141
- Section 143 (with exception)
- Sections 144 to 163
- Specified parts of Section 164

According to the Section 1(4) of the Code the applicability of the Chapters specified in columns (1) and (2) of the First Schedule mentioned below shall, without prejudice to the applicability of the other provisions of this Code, be such as is specified in corresponding entry in column (3) of that Schedule.

### The First Schedule [See sections 1(4), (8) and 152 (1)]

#### Applicability

| Chapter No. | Chapter Heading           | Applicability   |
|-------------|---------------------------|---|
| (1)         | (2)                       | (3)   |
| III         | Employees' Provident Fund | Every establishment in which twenty or more employees are employed. |

| Chapter No. | Chapter Heading  | Applicability   |
|-------------|--|---|
| (1)         | (2)  | (3)   |
| IV          | Employees' State Insurance   | <p>Every establishment in which ten or more persons are Corporation employed other than a seasonal factory:</p> <p>Provided that Chapter IV shall also be applicable to an establishment, which carries on such hazardous or life-threatening occupation as notified by the Central Government, in which even a single employee is employed:</p> <p>Provided further that an employer of a plantation, may opt the application of Chapter IV in respect of the plantation by giving willingness to the corporation, where the benefits available to the employees under that Chapter are better than what the employer is providing to them:</p> <p>Provided also that the contribution from the employers and employees of an establishment shall be payable under section 29 on and from the date on which any benefits under Chapter IV relating to the Employees State Insurance Corporation are provided by the Corporation to the employees of the establishment and such date shall be notified by the Central Government.</p> |
| V           | Gratuity   | <p>(a) every factory, mine, oilfield, plantation, port and railway company; and</p> <p>(b) every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such shops or establishments as may be notified by the appropriate Government from time to time.</p>   |
| VI          | Maternity Benefit  | <p>(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government; and</p> <p>(b) to every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such other shops or establishments notified by the appropriate Government.</p>  |
| VII         | Employee's Compensation  | Subject to the provisions of the Second Schedule, it applies to the employers and employees to whom Chapter IV does not apply.  |
| VIII        | Social Security and Cess in respect of Building and Other Construction Workers | Every establishment which falls under the building and other construction work.   |

| Chapter No. | Chapter Heading                          | Applicability  |
|-------------|--|--|
| (1)         | (2)                                      | (3)  |
| IX          | Social Security for Unorganised Workers' | Unorganised sector, unorganised workers', gig worker, platform worker.               |
| XIII        | Employment Information and Monitoring    | Career centres, vacancies, persons seeking services of career centres and employers. |

Section 1(5) provides that notwithstanding anything contained in sub-section (4), where it appears to the Central Provident Fund Commissioner, whether on an application made to him by the employer of an establishment or otherwise, that the employer and majority of employees of that establishment have agreed that the provisions of Chapter III (Employees' Provident Fund) should be made applicable to that establishment, the Central Provident Fund Commissioner, may, by notification, apply the provisions of the said Chapter to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement.

It may be noted that where the employer of an establishment to which the provisions of Chapter III (Employees' Provident Fund) applied under this sub-section desires to come out of such applicability, he may make an application to the Central Provident Fund Commissioner and the Central Provident Fund Commissioner shall, if satisfied that there is an agreement between the employer and majority of the employees to this effect, make the provisions of that Chapter inapplicable to such establishment, in such manner and subject to such conditions as may be prescribed by the Central Government.

Section 1(6) states that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification, apply the provisions of this Code to any establishment employing not less than such number of persons as may be specified in the notification.

According to Section 1(7) of the Code notwithstanding anything contained in sub-section (4), where it appears to the Director General of the Corporation, whether on an application made to him by the employer of an establishment or otherwise, that the employer and majority of employees of that establishment have agreed that the provisions of Chapter IV (Employees' State Insurance) should be made applicable to that establishment, the Director General of the Corporation, may, by notification, apply the provisions of the said Chapter to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement: Provided that where the employer of an establishment to which the provisions of Chapter IV (Employees' State Insurance) applied under this sub-section desires to come out of such applicability, he may make an application to the Director General of the Corporation and Director General of the Corporation shall, if satisfied that there is an agreement between the employer and majority of the employees to this effect, make the provisions of that Chapter inapplicable to such establishment, in such manner and subject to such conditions as may be prescribed by the Central Government.

Section 1(8) of the Code states that notwithstanding anything contained in sub-section (4), an establishment to which any Chapter of the Code on Social Security applies at the first instance shall continue to be applied thereafter even if the number of employees therein at any subsequent time falls below the threshold specified in the First Schedule in respect of that Chapter.

### Key Definitions

According to Section 2 (1) of the Code "**Agent**" when used in relation to an establishment, means every person, whether appointed as such or not, who acting or purporting to act on behalf of the owner, takes part in the management,

control, supervision or direction of such establishment or part thereof.

Section 2(2) defines **Aggregator** as a digital intermediary or platform that connects customers with service providers working independently.

Examples: Uber, Ola, Zomato, Swiggy, Urban Company.

Section 2(3) defines "**Appropriate Government**" as

- (a) in relation to, an establishment carried on by or under the authority of the Central Government or concerning any such controlled industry as may be specified by notification in this behalf, by the Central Government or the establishment of railways including metro railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or the central public sector undertaking or subsidiary companies set up by the central public sector undertakings, subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies or any company in which not less than fiftyone per cent. of the paid up share capital is held by the Central Government, as the case may be, or in relation to an establishment having departments or branches in more than one State, as the case may be, the Central Government; and
- (b) in relation to any other establishment, the State Government.

*Explanation 1.*—For the purposes of this clause, the expression “metro railway” means the metro railway as defined in sub-clause (i) of clause (1) of section 2 of the Metro Railways (Operation and Maintenance) Act, 2002.

*Explanation 2.*—For the purposes of this clause, the Central Government shall continue to be the appropriate Government for the central public sector undertakings even if the holding of the Central Government reduces to less than fifty per cent. equity in that public sector undertaking after the commencement of this Code;

**“Building or Other Construction Work”** means the construction, alteration, repairs, maintenance or demolition in relation to buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, internet towers, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqua ducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the Central Government, by notification, but does not include any building or other construction work which is related to any factory or mine or any building or other construction work employing less than ten workers in the preceding twelve months or where such work is related to own residential purposes of an individual or group of individuals for their own residence and the total cost of such work does not exceed fifty lakhs rupees or such higher amount and employing more than such number of workers as may be notified by the appropriate Government. {Section 2(6)}

**“Building Worker”** means a person who is employed to do any skilled, semi-skilled or unskilled, manual, technical or clerical work for hire or reward, whether the terms of such employment are express or implied, in connection with any building or other construction work, but does not include any such person who is employed mainly in a managerial or supervisory or administrative capacity. {Section 2(7)}

**“Career Centre”** means any office (including employment exchange, place or portal) established and maintained in the manner prescribed by the Central Government for providing such career services (including registration, collection and furnishing of information, either by the keeping of registers or otherwise, manually, digitally, virtually or through

any other mode) as may be prescribed by the Central Government, which may, *inter alia*, relate generally or specifically to-

- (i) persons who seek to employ employees;
- (ii) persons who seek employment;
- (iii) occurrence of vacancies; and
- (iv) persons who seek vocational guidance and career counselling or guidance to

start self-employment. {Section 2(9)}

**“Completed Year of Service”** means continuous service for twelve months; {Section 2(17)}

**“Confinement”** means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead. {Section 2(18)}

**“Contract Labour”** means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include an employee (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment. {Section 2(19)}

**“Contractor”**, in relation to an establishment means a person, who-

- (i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment through contract labour; or
- (ii) supplies contract labour for any work of the establishment as mere human resource, and includes a sub-contractor. {Section 2(20)}

**“Contribution”** means the sum of money payable by the employer, under this Code, to the Central Board and to the Corporation, as the case may be, and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Code. {Section 2(21)}

**“Dependant”** means any of the following relatives of deceased employee, namely:-

- (a) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother:

Provided that for the purposes of Chapter IV, a legitimate adopted son, who has not attained the age of twenty-five years, shall be dependant of the deceased employee;

- (b) if wholly dependant on the earnings of the employee at the time of his death, a legitimate or adopted son or a daughter who has attained the age of eighteen years and who is infirm; except for the purposes of Chapter IV wherein the word “eighteen” occurring in this sub-clause shall be deemed to have been substituted by the word “twenty-five”;
- (c) if wholly or in part dependent on the earnings of the employee at the time of his death,-
  - (i) a widower;
  - (ii) a parent other than a widowed mother;

- (iii) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor;
- (iv) a minor brother or an unmarried sister or a widowed sister if a minor;
- (v) a widowed daughter-in-law;
- (vi) a minor child of a pre-deceased son;
- (vii) a minor child of a pre-deceased daughter where no parent of the child is alive, or;
- (viii) a grandparent if no parent of the employee is alive.

*Explanation.*—For the purposes of sub-clause (b) and items (vi) and (vii) of sub-clause (c), references to a son, daughter or child include an adopted son, daughter or child, respectively; {Section 2(24)}

**“Employee”** means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union: Provided that for the purposes of Chapter III, except in case of the Employees’ Provident Fund Scheme and Chapter IV, the term “employee” shall mean such employee drawing wages less than or equal to the wage ceiling notified by the Central Government and includes such other persons or class of persons as the Central Government may by notification, specify to be employee, for the purposes of those Chapters:

Provided further that for the purposes of counting of employees for the coverage of an establishment under Chapter III and Chapter IV, as the case may be, the employees, whose wages are more than the wage ceiling so notified by the Central Government, shall also be taken into account:

Provided also that for the purposes of Chapter VII, the term “employee” shall mean only such persons as specified in the Second Schedule and such other persons or class of persons as the Central Government, or as the case may be, the State Government may add to the said Schedule, by notification, for the purposes of that Government. {Section 2(26)}

Section 2(27) of the Code defines **“Employer”** means a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority is so specified, the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

- (a) in relation to an establishment which is a factory, the occupier of the factory;
- (b) in relation to mine, the owner of the mine or agent or manager having requisite qualification under the law for the time being in force and appointed by the owner or agent of the mine as such;
- (c) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;
- (d) contractor; and
- (e) legal representative of a deceased employer;

Section 2 (28) states that **“Employment Injury”** means a personal injury to an employee, caused by accident or an occupational disease, as the case may be, arising out of and in the course of his employment, –

- (i) for the purposes of Chapter IV, if the employee is an insured or insurable employee under section 28 whether such accident occurs or the occupational disease is contracted within or outside the territorial limits of India; and
- (ii) for the purposes of Chapter VII, whether such accident occurs or the occupational disease is contracted within or outside the territorial limits of India;

Section 2 (29) refers to "**Establishment**" as-

- (a) a place where any industry, trade, business, manufacture or occupation is carried on; or
- (b) a factory, motor transport undertaking, newspaper establishment, audiovisual production, building and other construction work or plantation; or
- (c) a mine, port or vicinity of port where dock work is carried out.

*Explanation.*—For the purposes of Chapter III, where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment;

Section 2 (30) defines "**Executive Officer**" means such officer of the appropriate Government as may be notified by that Government for the purposes of Chapter XIII or an officer authorised in writing by such executive officer to discharge his duties under that Chapter;

Section 2 (31) defines "**Exempted Employee**" for the purposes of Chapter III, means an employee to whom any of the schemes referred to in section 15, but for the exemption granted under this Code, would have applied and for the purposes of Chapter IV, means an employee, whose wage is specified in the notification by the Central Government and who is not liable to pay employee's contribution;

As per Section 2 (32) of the Code, "**Factory**" means any premises including the precincts thereof-

- (a) whereon ten or more employees are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (b) whereon twenty or more employees are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine, or a mobile unit belonging to the Armed Forces of the Union, railways running shed or a hotel, restaurant or eating place.

*Explanation 1.*—For computing the number of employees for the purposes of this clause, all the employees in (different groups and relays) a day shall be taken into account.

*Explanation 2.*—For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed as factory if no manufacturing process is being carried on in such premises or part thereof;

"**Family**" means all or any of the following relatives of an employee or an unorganised worker, as the case may be, namely: -

- (a) a spouse;
- (b) a minor legitimate or adopted child dependent upon the employee or an unorganised worker, as the case may be;
- (c) a child who is wholly dependent on the earnings of the employee or an unorganised worker, as the case

may be, and who is–

- (i) receiving education, till he attains the age of twenty-one years; and
- (ii) an unmarried daughter;
- (d) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the employee or an unorganised worker, as the case may be, so long as the infirmity continues;
- (e) dependent parents (including father-in-law and mother-in-law of a woman employee), whose income from all sources does not exceed such income as may be prescribed by the Central Government;
- (f) in case the employee or an unorganised worker, as the case may be, is unmarried and his parents are not alive, a minor brother or sister wholly dependent upon the earnings of the Insured Person. {Section 2(33)}

**“Fixed Term Employment”** means the engagement of an employee on the basis of a written contract of employment for a fixed period:

Provided that–

- (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature; and
- (b) he shall be eligible for all benefits, under any law for the time being in force, available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the required qualifying period of employment; {Section 2(34)}

**“Gig Worker”** means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship. {Section 2(35)}

**“Home-Based Worker”** means a person engaged in, the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs. {Section 2(35)}

**“Inter-State Migrant Worker”** means a person who is employed in an establishment and who–

- (i) has been recruited directly by the employer or indirectly through contractor in one State for employment in such establishment situated in another State; or
- (ii) has come on his own from one State and obtained employment in an establishment of another State (hereinafter called destination State) or has subsequently changed the establishment within the destination State, under an agreement or other arrangement for such employment and drawing wages not exceeding eighteen thousand rupees per month or such higher amount as may be notified by the Central Government from time to time; {Section 2(41)}

**“Manufacturing Process”** means any process for–

- (i) making, altering, repairing, ornamenting, finishing, oiling, washing, cleaning, breaking up, demolishing, refining, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing, offset printing, printing by letter press, lithography, photogravure screen printing, three or

- four dimensional printing, prototyping, flexography or other types of printing process or book binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
  - (vi) preserving or storing any article in cold storage; or
  - (vii) such other activities as the Central Government may notify. {Section 2(42)}

**“Occupier”** in respect of a factory means the person who has ultimate control over the affairs of the factory:

Provided that–

- (a) in the case of a firm or other association of individuals, any one of the individual partners or members thereof;
- (b) in the case of a company, any one of the directors, except any independent director within the meaning of sub-section (6) of section 149 of the Companies Act, 2013;
- (c) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority or such other authority as may be prescribed by the Central Government, shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, the owner of the dock shall be deemed to be the occupier for all purposes except the matters as may be prescribed by the Central Government which are directly related to the condition of ship for which the owner of ship shall be deemed to be the occupier. {Section 2(52)}

**“Organised Sector”** means an enterprise which is not an unorganised sector. {Section 2(54)}

**“Permanent Partial Disablement”** means, where the disablement is of a permanent nature, such disablement as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement: Provided that every injury specified in Part II of the Fourth Schedule shall be deemed to result in permanent partial disablement. {Section 2(55)}

**“Permanent Total Disablement”** means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement: Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of the Fourth Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. {Section 2(56)}

**“Pension Fund”** means the Pension Fund established under clause (b) of sub-section (1) of section 16. {Section 2(57)}

**“Pension Scheme”** means the Employees’ Pension Scheme framed under clause (b) of sub-section (1) of section 15. {Section 2(58)}

**“Platform Work”** means a work arrangement outside of a traditional employer employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment. {Section 2(60)}

**“Platform Worker”** means a person engaged in or undertaking platform work. {Section 2(61)}

**“Seasonal Factory”** means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of ground-nuts, the manufacture of indigo, lac, sugar (including gur) or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year in a

manufacturing process as the Central Government may, by notification, specify. {Section 2(74)}

**“Self-Employed Worker”** means any person who is not employed by an employer, but engages himself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government, as the case may be, from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government. {Section 2(75)}

**“Shop”** in respect of a State, means a shop as defined in any law for the time being in force dealing with the shop in that State. {Section 2(76)}

**“Sickness”** means a condition which requires medical treatment and attendance and necessitates abstention from work on medical ground. {Section 2(77)}

**“Social Security”** means the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code. {Section 2(78)}

**“Social Security Organisation”** means any of the following organisations established under this Code, namely:-

- (a) the Central Board of Trustees of Employees’ Provident Fund constituted under section 4;
- (b) the Employees’ State Insurance Corporation constituted under section 5;
- (c) the National Social Security Board for Unorganised Workers constituted under section 6;
- (d) the State Unorganised Workers’ Social Security Board constituted under section 6;
- (e) the State Building and other Construction Workers’ Welfare Boards constituted under section 7; and
- (f) any other organisation or special purpose vehicle declared to be the social security organisation by the Central Government. {Section 2(79)}

**“Superannuation”**, in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service, as the age on the attainment of which the employee shall vacate the employment: Provided that for the purposes of Chapter III, the age of superannuation shall be fifty-eight years. {Section 2(82)}

**“Temporary Disablement”** means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury. {Section 2(83)}

**“Unorganised Sector”** means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten. {Section 2(85)}

**“Unorganised Worker”** means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code. {Section 2(86)}

**“Wages”** means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,-

- (a) basic pay;
- (b) dearness allowance; and

(c) retaining allowance, if any,

but does not include–

- (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) house rent allowance;
- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance;
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment;
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment, under any law for the time being in force:

Provided that for calculating the wages under this clause, if payments made by the employer to the employee under sub-clauses (a) to (i) exceeds one-half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in sub-clauses (d), (f), (g) and (h) shall be taken for computation of wage.

*Explanation.* –Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee. {Section 2(88)}

**“Wage Worker”** means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and the State Government, as the case may be. {Section 2(90)}

### **Registration and Cancellation of an Establishment (Section 3)**

Every establishment to which this Code applies shall be **electronically or otherwise**, registered within such time and in such manner as may be prescribed by the Central Government.

It may be noted that the establishment which is already registered under any other Central labour law for the time being in force shall not be required to obtain registration again under this Code and such registration shall be

deemed to be registration for the purposes of this Code:

Any establishment to which Chapter III or Chapter IV applies, and whose business activities are in the process of closure, may make an application for cancellation of registration granted under this section.

The manner of making application for cancellation of the registration, the conditions subject to which the registration shall be cancelled and the procedure of cancellation and other matters relating thereto, shall be such as may be prescribed by the Central Government.

## **CHAPTER II - SOCIAL SECURITY ORGANISATIONS**

### **Constitution of Board of Trustees of Employees' Provident Fund (Section 4)**

(1) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, a Board of Trustees of the Employees' Provident Fund to be called the Central Board, for the purposes of Chapter III and the provisions of this Code relating to that Chapter, for the administration of the funds vested in it in such manner as may be prescribed by the Central Government, consisting of the following members, namely: –

- (a) a Chairperson and a Vice-Chairperson to be appointed by the Central Government;
- (b) not more than five persons appointed by the Central Government from amongst its officials;
- (c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, to be appointed by the Central Government;
- (d) ten persons representing employers of the establishments to which the schemes referred to in sub section (1) of section 15 applies, to be appointed by the Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf;
- (e) ten persons representing employees in the establishments to which schemes referred to in sub-section (1) of section 15 applies, who shall be appointed by the Central Government after consultation with such organisations of employees as may be recognised by that Government in this behalf; and
- (f) the Central Provident Fund Commissioner, *ex officio*.

(2) The Central Board shall be a body corporate by the name of Board of Trustees of the Employees' Provident Fund, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Executive Committee from amongst the members of the Central Board to assist the Central Board in performance of its functions in such manner as may be prescribed by the Central Government.

(4) The Central Board may, by order, constitute one or more committees of such composition as may be specified in the order to assist it in the discharge of its functions.

(5) The Central Board may, by order, delegate to its Chairperson or to its Executive Committee or to any of its officers and a State Board constituted under section 12 may, by order, delegate to its Chairperson or to any of its officers, subject to such conditions and limitations, if any, as it may specify in such order, such of its powers and functions under this Code as it may deem necessary for efficient administration of the schemes referred to in sub-section (1) of section 15.

(6) The terms and conditions, including tenure of office, subject to which a member of the Central Board and Executive Committee shall discharge their respective duties may be such as may be prescribed by the Central Government:

Provided that a member of the Central Board shall, notwithstanding the expiry of the tenure of his office, continue to

hold office until his successor is appointed.

(7) The Central Board, apart from the functions specified in this Code, shall also perform such other functions in such manner as may be prescribed by the Central Government.

### **Constitution of Employees' State Insurance Corporation (Section 5)**

(1) The Central Government may, by notification, constitute with effect from such date as may be specified therein, the Employees' State Insurance Corporation to be called the Corporation, for the purposes of Chapter IV and the provisions of this Code relating to that Chapter and the administration thereof, in such manner as may be prescribed by the Central Government, consisting of the following members, namely: –

- (a) a chairperson to be appointed by the Central Government;
- (b) a Vice-Chairperson to be appointed by the Central Government;
- (c) not more than five persons to be appointed by the Central Government from amongst its officials;
- (d) one person representing each of such States in such manner, as may be prescribed by the Central Government;
- (e) one person to be appointed by the Central Government to represent the Union territories;
- (f) ten persons representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be
- (g) recognised for the purpose by the Central Government; ten persons representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government;
- (h) two persons representing the medical profession to be appointed by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government;
- (i) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States; and
- (j) the Director General of the Corporation, *ex officio*.

(2) The Corporation shall be a body corporate by the name of Employees' State Insurance Corporation, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, a Standing Committee from amongst the members of the Corporation, in such manner as may be prescribed by the Central Government.

(4) Subject to the general superintendence and control of the Corporation, the Standing Committee–

- (a) shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation in such manner as may be prescribed by the Central Government;
- (b) shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf; and
- (c) may, in its discretion, submit any other case or matter for the decision of the Corporation.

(5) (a) The Central Government may, by notification, constitute, with effect from such date as may be specified

therein, a Medical Benefit Committee of such composition as may be specified therein, to assist the Corporation and the Standing Committee in performance of its functions relating to administration of medical benefits.

(b) the Medical Benefit Committee shall perform such duties and exercise such powers as may be prescribed by the Central Government.

(6) The Corporation may, by order, constitute one or more committees of such composition as may be specified in the regulations to assist it in the discharge of its functions.

(7) The terms and conditions, including tenure of office, subject to which a member of the Corporation and Standing Committee shall discharge their respective duties may be such as may be prescribed by the Central Government:

Provided that a member of the Corporation shall, notwithstanding the expiry of the tenure of his office, continue to hold office until his successor is appointed.

### **National Social Security Board and State Unorganised Workers' Board (Section 6)**

(1) The Central Government shall, by notification, constitute a National Social Security Board for unorganised workers to exercise the powers conferred on, and to perform the functions assigned to, it under this Code, in such manner as may be prescribed by the Central Government.

(2) The National Social Security Board shall consist of the following members, namely:-

- (a) Union Minister for Labour and Employment as Chairperson;
- (b) Secretary, Ministry of Labour and Employment as Vice-Chairperson;
- (c) forty members to be nominated by the Central Government, out of whom-
  - (i) seven members representing unorganised sector workers;
  - (ii) seven members representing employers of unorganised sector;
  - (iii) seven members representing eminent persons from civil society;
  - (iv) two members representing the Lok Sabha and one from the Rajya Sabha;
  - (v) ten members representing Central Government Ministries and Departments concerned;
  - (vi) five members representing State Governments;
  - (vii) one member representing the Union territories; and
- (d) the Director General Labour Welfare, as Member-Secretary, *ex officio*.

(3) All members except Chairperson of the National Social Security Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(4) The manner in which members shall be nominated from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Social Security Board shall be such as may be prescribed by the Central Government:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.

(5) The term of the National Social Security Board shall be three years.

(6) The National Social Security Board shall meet at least thrice a year, at such time and place and shall observe

such rules of procedure relating to the transaction of business at its meetings, as may be prescribed by the Central Government.

(7) The National Social Security Board shall perform the following functions, namely: –

- (a) recommend to the Central Government for framing suitable schemes for different sections of unorganised workers, gig workers and platform workers;
- (b) advise the Central Government on such matters arising out of the administration of this Code as may be referred to it;
- (c) monitor such social welfare schemes for unorganised workers, gig workers and platform workers as are administered by the Central Government;
- (d) review the record keeping functions performed at the State level;
- (e) review the expenditure from the fund and account; and
- (f) undertake such other functions as are assigned to it by the Central Government from time to time.

(8) The Central Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the Central Government upon such matters arising out of the administration of this Code relating to unorganised workers and such other matters as the Central Government may refer to it for advice.

(9) Every State Government shall, by notification, constitute a State Board to be known as (name of the State) Unorganised Workers' Social Security Board to exercise the powers conferred on, and to perform the functions assigned to, it under this Code, in such manner as may be prescribed by the State Government.

(10) Every State Unorganised Workers' Board shall consist of the following members, namely: –

- (a) Minister of Labour and Employment of the concerned State as Chairperson, *ex officio*;
- (b) Principal Secretary or Secretary (Labour) as Vice-Chairperson;
- (c) one member representing the Central Government in the Ministry of Labour and Employment;
- (d) thirty-one members to be nominated by the State Government, out of whom–
  - (i) seven representing the unorganised workers;
  - (ii) seven representing employers of unorganised workers;
  - (iii) two members representing the Legislative Assembly of the concerned State;
  - (iv) five members representing eminent persons from civil society;
  - (v) ten members representing the State Government Departments concerned; and
- (e) Member-Secretary as notified by the State Government.

(11) All members except Chairperson of the State Unorganised Workers' Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(12) The manner in which members shall be nominated from each of the categories specified in clause (d) of sub-section (10), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Unorganised Workers' Board shall be such as may be prescribed by the State Government:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled

Tribes, the minorities and women.

(13) The term of the State Unorganised Workers' Board shall be three years.

(14) The State Unorganised Workers' Board shall meet at least once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed by the State Government.

(15) The State Board shall perform the following functions, namely: –

- (a) recommend the State Government for framing suitable schemes for different sections of the unorganised sector workers;
- (b) advise the State Government on such matters arising out of the administration of this Code as may be referred to it;
- (c) monitor such social welfare schemes for unorganised workers as are administered by the State Government;
- (d) review the record keeping functions performed at the district level;
- (e) review the progress of registration and issue of cards to unorganised sector workers;
- (f) review the expenditure from the funds under various schemes; and
- (g) undertake such other functions as are assigned to it by the State Government from time to time.

(16) The State Government may, by notification, constitute with effect from such date as may be specified therein, one or more advisory committee to advise the State Government upon such matters arising out of the administration of this Code relating to unorganised workers and such other matters as the State Government may refer to it for advice.

### **Constitution of State Building Workers' Welfare Boards (Section 7)**

(1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the..... (name of the State) Building and Other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this section and Chapter VIII.

(2) The Building Workers' Welfare Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Building Workers' Welfare Board shall consist of a chairperson to be nominated by the State Government, one member to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Building Workers' Welfare Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Building Workers' Welfare Board, and the manner of filling of casual vacancies of the members of the Building Workers' Welfare Board, shall be such as may be prescribed by the State Government.

(5) (a) The Building Workers' Welfare Board shall appoint a Secretary and such officers and employees as it considers necessary for the efficient discharge of its functions under this Code.

(b) The Secretary of the Building Workers' Welfare Board shall be its chief executive officer.

- (c) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Building Workers' Welfare Board shall be such as may be prescribed by the State Government.
- (6) The Building Workers' Welfare Board shall perform the following functions, namely: –
- (a) provide death and disability benefits to a beneficiary or his dependants;
  - (b) make payment of pension to the beneficiaries who have completed the age of sixty years;
  - (c) pay such amount in connection with premium for Group Insurance Scheme of the beneficiaries as may be prescribed by the appropriate Government;
  - (d) frame educational schemes for the benefit of children of the beneficiaries as may be prescribed by the appropriate Government;
  - (e) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed by the appropriate Government;
  - (f) make payment of maternity benefit to the beneficiaries;
  - (g) frame skill development and awareness schemes for the beneficiaries;
  - (h) provide transit accommodation or hostel facility to the beneficiaries;
  - (i) formulation of any other welfare scheme for the building worker beneficiaries by State Government in concurrence with the Central Government; and
  - (j) make provision and improvement of such other welfare measures and facilities as may be prescribed by the Central Government.
- (7) The State Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the State Government upon such matters arising out of the administration of this Code relating to building workers and such other matters as the State Government may refer to it for advice.

### **Disqualification and removal of a member of any Social Security Organisation (Section 8)**

- (1) No person shall be chosen as, or continue to be, a member of a Social Security Organisation, or any Committee thereof who, –
- (a) is or at any time has been adjudged an insolvent; or
  - (b) is found to be a lunatic or becomes of unsound mind; or
  - (c) is or has been convicted of any offence involving moral turpitude; or
  - (d) is an employer in an establishment and has defaulted in the payment of any dues under this Code;
  - (e) is a member of a Social Security Organisation being a member of the Parliament or a member of a State Legislative Assembly, when he ceases to be such member of the Parliament or State Legislative Assembly, as the case may be; or
  - (f) is a member of Social Security Organisation being a member of the Parliament or a member of a State Legislative Assembly, and he becomes a–
    - (i) Minister of Central or State Government; or
    - (ii) Speaker or Deputy Speaker of House of the People or a State Legislative Assembly; or

(iii) Deputy Chairman of the Council of States.

*Explanation 1.* – If any question arises whether any person is disqualified under clause (d), it shall be referred to the appropriate Government and the decision of the appropriate Government on any such question shall be final.

*Explanation 2.* – Clause (f) shall not apply in case of persons who are members of the Social Security Organisation *ex officio*, by virtue of being a Minister.

(2) The Central Government, in case of the Central Board, the Corporation and the National Social Security Board and the State Government in case of the State Unorganised Workers' Board and the Building Workers' Welfare Board, may remove any member of such Social Security Organisation from his office, who, –

- (a) is or has become subject to any of the disqualifications mentioned in sub-section (1); or
- (b) is absent without leave of the Social Security Organisation of which he is a member for more than three consecutive meetings of the Social Security Organisation or a Committee thereof;
- (c) in the opinion of such Government, has so abused the position of his office as to render that member's continuation in the office detrimental to the public interest or is otherwise unfit or unsuitable to continue as such member in the opinion of such Government:

Provided that no person shall be removed under clauses (b) and (c), unless that person has been given an opportunity to show cause as to why he should not be removed:

Provided further that a member of the Executive Committee of the Central Board or the Standing Committee of the Corporation shall cease to hold office if he ceases to be a member of the Central Board or the Corporation, as the case may be.

(3) Any member of a Social Security Organisation or a Committee thereof may at any time resign from his office in writing under his hand addressed to the Central Government or the State Government, as the case may be, which had made his appointment and on acceptance of such resignation, his office shall become vacant.

(4) If in a Social Security Organisation or a Committee thereof, the Central Government or the State Government, as the case may be, is of the opinion that–

- (a) any member thereof representing employers or the employees or the unorganised workers, as the case may be, ceases to adequately represent so; or
- (b) any member thereof representing to be an expert in a specified area, is later on found not to possess sufficient expertise in that area; or
- (c) having regard to exigencies of circumstances or services in such Government, the member thereof representing such Government cannot continue to represent the Government, then, such Government may, by order, remove such member from his office:

Provided that no person shall be removed under clause (a) or clause (b), unless that person has been given an opportunity to show cause as to why he should not be removed.

(5) If any member of a Social Security Organisation or a Committee thereof, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any matter coming up for consideration of the Social Security Organisation or a Committee thereof, then, he shall, as soon as may be possible after such fact of interest has come to his knowledge, disclose the nature of the interest and such disclosure shall be recorded in the proceedings of the Social Security Organisation or the Committee thereof, as the case may be, and such member, thereafter, shall not take part in any proceeding or decision of the Social Security Organisation, or a Committee thereof relating to that matter.

### **Procedure for transaction of business of Social Security Organisation (Section 9)**

- (1) A Social Security Organisation or any Committee thereof shall meet at such intervals and observe such procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed by the Central Government.
- (2) All orders and decisions of the Social Security Organisation shall be authenticated by the Central Provident Fund Commissioner, Director General, Director General Labour Welfare, State Principal Secretary or Secretary (Labour) of the respective Social Security Organisations or such other officer as may be notified by the appropriate Government and all other instruments issued by the Social Security Organisation shall be authenticated by the signature of such officer as may be authorised by an order by the respective Social Security Organisations.
- (3) No act done or proceeding taken by a Social Security Organisation or any Committee thereof shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Social Security Organisation or the Committee thereof, as the case may be.
- (4) Such members of a Social Security Organisation or any Committee thereof shall be entitled for such fee and allowances as may be prescribed by the Central Government

### **Executive Heads of Central Board and Corporation (Section 10)**

The Central Provident Fund Commissioner and the Director General shall be the whole-time officer of the Central Board and the Corporation, respectively, and such officer shall not undertake any work unconnected with his office without the prior approval of the Central Government.

### **Supersession of Corporation, Central Board, National Social Security Board or State Unorganised Workers' Board or the Building Workers' Welfare Board (Section 11)**

(1) If the Central Government in case of the Central Board, the Corporation or the National Social Security Board and the State Government, in case of the State Unorganised Workers' Board or the Building Workers' Welfare Board, is of the opinion that the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers' Board or the Building Workers' Welfare Board or any of the Committee thereof, as the case may be, is unable to perform its functions, or, has persistently made delay in the discharge of its functions or has exceeded or abused its powers or jurisdiction, then such Government may, by notification, supersede the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers' Board or the Building Workers' Welfare Board, or any of the Committees thereof, as the case may be, and reconstitute it in such manner as may be prescribed by the Central Government:

Provided that, before issuing a notification under this sub-section on any of the grounds specified herein, such Government shall give an opportunity to the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers' Board or the Building Workers' Welfare Board or any Committee thereof, as the case may be, to show cause as to why it should not be superseded and shall consider the explanations and objections raised by it and take appropriate action thereon.

- (2) After the supersession of the Corporation, or the Central Board or the National Social Security Board, the State Unorganised Workers' Board or the Building Workers' Welfare Board, or any of the Committee thereof, as the case may be, and until it is reconstituted, the Central Government or the State Government, as the case may be, shall make such alternate arrangements for the purpose of administration of the relevant provisions of this Code, as may be prescribed by the Central Government.
- (3) The Central Government or the State Government, as the case may be, shall cause, a full report of any action taken

by it under this section and the circumstances leading to such action, to be laid before each House of Parliament or the State Legislature, as the case may be, at the earliest opportunity and in any case not later than three months from the date of the notification of supersession issued under sub-section (1).

### **CHAPTER III: EMPLOYEES' PROVIDENT FUND**

#### **Appointment of Officers of Central Board (Section 14)**

(1) The Central Government may appoint a Central Provident Fund Commissioner who shall be the Chief Executive Officer of the Central Board and shall also function as head of the Employees' Provident Fund Organisation.

*Explanation:* –For the purposes of this Code, the expression “Employees' Provident Fund Organisation” means the organisation consisting of officers and employees of the Central Board.

(2) The Central Provident Fund Commissioner shall be subject to the general control and superintendence of the Central Board in the discharge of his functions under this Code.

(3) The Central Government shall also appoint a Financial Advisor and Chief Accounts Officer to assist the Central Provident Fund Commissioner in the discharge of his duties.

(4) The Central Board may appoint, as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and such other officers and employees as it may consider necessary for the efficient administration of the Provident Fund Scheme, the Pension Scheme and the Insurance Scheme or other responsibilities assigned to the Central Board from time to time by the Central Government.

(5) No appointment to the post of the Central Provident Fund Commissioner or an Additional Central Provident Fund Commissioner or a Financial Adviser and Chief Accounts Officer or any other post under the Central Board carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government shall be made except after consultation with the Union Public Service Commission:

Provided that no such consultation shall be necessary in regard to any such appointment–

- (a) for a period not exceeding one year; or
- (b) if the person to be appointed is, at the time of his appointment, –
  - (i) a member of the Indian Administrative Service, or
  - (ii) in the service of the Central Government or the Central Board in a Group 'A' or Group 'B' post.

(6) The method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner and the Financial Adviser and Chief Accounts Officer shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the Provident Fund.

(7) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant

Provident Fund Commissioners and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central

Government:

Provided further that the salary and allowances of the officers specified in this clause shall not exceed the scale of pay respectively provided in the Provident Fund Scheme.

- (b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.

### **Schemes (Section 15)**

The Central Government may, by notification—

- (a) frame a scheme to be called the Employees' Provident Fund Scheme for which the provident funds shall be established under this Chapter for employees or for any class of employees and specify the establishments or class of establishments to which the said scheme shall apply;
  - (b) frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for—
    - (i) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Chapter applies;
    - (ii) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees; and
    - (iii) nominee pension;
  - (c) frame a scheme to be called the Employees' Deposit Linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Chapter applies;
  - (d) frame any other scheme or schemes for the purposes of providing social security benefits under this Code to self-employed workers or any other class of persons; and
  - (e) modify any scheme referred to in clauses (a), (b), (c) and (d) by adding thereto, amending or varying therein, either prospectively or retrospectively.
- (2) Subject to the provisions of this Chapter, the schemes referred to in clauses (a), (b) and (c) of sub-section (1) may provide for all or any of the matters respectively specified in Part A, Part B and Part C of the Fifth Schedule.
- (3) The schemes may provide that all or any of its provisions shall take effect either prospectively or retrospectively on and from such date as may be specified in that behalf in the scheme.

### **Funds (Section 16)**

(1) The Central Government may, for the purposes of—

- (a) the Provident Fund Scheme, establish a Provident Fund where the contributions paid by the employer to the fund shall be ten per cent. of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent. of the wages, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification, specify, this section shall be subject to the modification that for the words "ten per cent." at both the places where they occur, the words

“twelve per cent.” shall be substituted:

Provided further that the Central Government, after making such inquiry as it deems fit, may, by notification, specify rates of employees' contributions and the period for which such rates shall apply for any class of employee

- (b) the Pension Scheme, establish a Pension Fund in the manner specified in that scheme by that Government into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—
  - (i) such sums from the employer's contribution under clause (a) not exceeding eight and one-third per cent. of the wages or such per cent. of wages as may be notified by the Central Government;
  - (ii) such sums payable as contribution to the Pension Fund, as may be specified in the Pension Scheme, by the employers of the exempted establishments under section 143 to which the pension scheme applies;
  - (iii) such sums as the Central Government after due appropriation by Parliament by law in this behalf, specify;
- (c) the Insurance Scheme, establish a Deposit-Linked Insurance Fund in the manner specified in that scheme by that Government into which there shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent. of the wages or such per cent. of wages as may be notified by the Central Government for the time being payable in relation to such employee:

Provided that the employer shall pay into the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which he is required to make under this clause, as the Central Government may, from time to time, determine to meet all the expenses in connection with the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under the Insurance Scheme.

(2) The Provident Fund, the Pension Fund and the Insurance Fund shall vest in, and be administered by, the Central Board in such manner as may be specified in the respective schemes.

### **Contribution in respect of Employees and Contractors (Section 17)**

(1) The amount of contribution (that is to say, the employer's contribution as well as the employee's contribution in pursuance of any scheme and the employer's contribution in pursuance of the Insurance Scheme) and any charge for meeting the cost of administering the fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him may recover from such employee, the employee's contribution under any scheme by deduction from the wages payable to such employee.

(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the wages payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

### **Fund to be recognised under Act 43 of 1961 (Section 18)**

For the purposes of the Income-tax Act, 1961, the Provident Fund shall be deemed to be a recognised provident fund within the meaning of clause (38) of section 2 of that Act:

Provided that nothing contained in the said Act shall operate to render ineffective any provision of the Provident Fund Scheme (under which the Provident Fund is established) which is repugnant to any of the provisions of that Act or of the rules made thereunder.

### **Priority of Payment of Contributions Over Other Debts (Section 19)**

Notwithstanding anything contained in any other law for the time being in force, any amount due under this Chapter shall be the charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

### **Chapter III not to apply to Certain Establishments (Section 20)**

(1) Chapter III shall not apply–

- (a) to any establishment registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or
- (b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
- (c) to any other establishment set up under any Central or State or any other law for the time being in force and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that law governing such benefits; or
- (d) to the employees who, immediately before the commencement of this Code, were receiving benefits of Provident Fund under any Central or State enactment.

(2) If the Central Government is of the opinion that having regard to the financial position of any class of establishment or other circumstances of the case, it is necessary or expedient so to do, it may, by notification and subject to such conditions, as may be specified in the notification, exempt, whether prospectively or retrospectively, that class of establishments from the operation of this Chapter for such period as may be specified in the notification.

### **Authorising Certain Employers to Maintain Provident Fund Accounts (Section 21)**

(1) The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer by an order in writing, to maintain a provident fund account in relation to the establishment, in such manner as may be prescribed by the Central Government and subject to such terms and conditions as may be specified in the Provident Fund Scheme:

Provided that no authorisation shall be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Code during the three years immediately preceding the date of such authorisation.

(2) Where an establishment is authorised to maintain a provident fund account under sub-section (1), the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Provident Fund Scheme.

(3) Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any

offence under any provision of this Code:

Provided that before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard.

### **Transfer of accounts (Section 22)**

Where an employee, –

- (a) employed in an establishment to which this Chapter applies, relinquishes his employment therefrom and obtains employment in any other establishment to which Chapter III applies or not; or
- (b) employed in an establishment to which this Chapter does not apply, relinquishes his employment therefrom and obtains employment in an establishment to which this Chapter III applies, then, his accumulated amount in provident fund account or pension account, as the case may be, shall be transferred or dealt with in the manner as may be specified in the Provident Fund Scheme or the Pension Scheme, as the case may be.

### **Appeal to Tribunal (Section 23)**

(1) Any person aggrieved by an order passed by any authority in regard to the following matters may prefer an appeal to the Tribunal constituted by the Central Government, namely: –

- (a) determination and assessment of dues under section 125 relating to Chapter III; and
- (b) levy of damages under section 128 relating to Chapter III.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and accompanied by such fees as may be prescribed by the Central Government.

(3) No appeal under clause (a) of sub-section (1) by the employer shall be entertained by the Tribunal unless he has deposited with Social Security Organisation concerned twenty-five per cent. of the amount due from him as determined by an officer under section 125.

(4) The Tribunal shall endeavour to decide the appeal within a period of one year from the date on which the appeal has been preferred.

## **CHAPTER IV-EMPLOYEES' STATE INSURANCE FUND (SECTION 25)**

(1) All contributions and user charges paid under Chapter IV and all other moneys received on behalf of the Corporation shall be paid into a fund (hereinafter referred to as the Employees' State Insurance Fund) which shall be held and administered by the Corporation for the purposes of this Code:

Provided that the user charges collected from the other beneficiaries referred to in section 44 shall be deemed to be contribution and shall form part of Employees' State Insurance Corporation.

(2) The Corporation may accept grants, donations, Corporate Social Responsibility Fund and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Chapter.

(3) Subject to the other provisions contained in this Code and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be deposited in such bank or banks as may be approved by the Central Government to the credit of an account styled the account of the Employees' State Insurance Fund.

(4) The Employees State Insurance Fund or any other money which is held by the Corporation shall be deposited or

invested in the manner prescribed by the Central Government and the account referred to in sub-section (3) shall be operated by such officers as may be authorised by the Committee constituted under sub-section (3) of section 5 (hereinafter referred to as the Standing Committee) with the approval of the Corporation.

### **Purposes for which Employees' State Insurance Fund may be Expended (Section 26)**

Subject to the provisions of Chapter IV and the rules and regulations relating thereto, made under this Code, the Employees' State Insurance Fund shall be expended only for the following purposes, namely: –

- (a) payment of benefits and provision of medical treatment and attendance to Insured Persons referred to in section 28 and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Chapter and the rules and regulations relating thereto and defraying the charges and costs in connection therewith;
- (b) payment of fees and allowances to members of the Corporation, the Standing Committee, the Medical Benefit Committee or other Committees thereof;
- (c) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and staff of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Code relating to this Chapter;
- (d) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of Insured Persons referred to in section 28 and, where the medical benefit is extended to their families;
- (e) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to Insured Persons referred to in section 28 and, where the medical benefit is extended to their families, their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- (f) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- (g) defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Chapter;
- (h) payment of any sums under any contract entered into for the purposes of this Code by Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- (i) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or staff for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
- (j) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Code relating to this Chapter;
- (k) defraying expenditure, within the limits prescribed by the Central Government after consultation with the Corporation, on measures for the improvement of the health and welfare of Insured Persons and for the rehabilitation and re-employment of Insured Persons referred to in section 28 who have been disabled or injured; and
- (l) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

### **All employees to be Insured (Section 28)**

- (1) Subject to the provisions of the Code, every employee in an establishment to which this Chapter applies shall be insured in such manner whether electronically or otherwise, as may be prescribed by the Central Government.
- (2) An employee whether insured or insurable under sub-section (1) in respect of whom contributions are or were payable and who is by reason thereof, entitled to any of the benefits provided under this Chapter, shall be called "Insured Person".

### **Contributions (Section 29)**

- (1) The contribution payable under Chapter IV in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.
- (2) The contributions (employer's contribution and the employee's contribution both) shall be paid at such rates as may be prescribed by the Central Government.
- (3) The wage period in relation to an employee shall be the unit as specified in the regulations (hereinafter referred to as the wage period) in respect of which all contributions shall be payable under this Chapter.
- (4) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

### **Provisions as to Payment of Contributions by Employer (Section 31)**

- (1) The employer shall pay in respect of every employee, whether directly employed by him or by or through a contractor, both the employer's contribution and the employee's contribution.
- (2) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of the Code and the rules and regulations, if any, made thereunder in this behalf, the employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by reduction from his wages and not otherwise:

Provided that no such deduction shall be made from any wages other than such as relates to the period or part of the period in respect of which the contribution is payable or in excess of the sum representing the employee's contribution for the period.

- (3) Notwithstanding any contract to the contrary, neither the employer nor the contractor shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.
- (4) Any sum deducted by the employer from wages under Chapter IV shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.
- (5) The employer shall bear the expenses of remitting the contributions to the Corporation.
- (6) An employer, who has paid contribution in respect of an employee employed by or through a contractor, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the contractor, either by deduction from any amount payable to him by the employer under any contract, or as a debt payable by the contractor.
- (7) The contractor shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the employer before the settlement of any amount payable under sub-section (6).
- (8) In the case referred to in sub-section (6), the contractor shall be entitled to recover the employee's contribution from

the employee employed by or through him by deduction from wages and not otherwise, subject to such conditions as specified in the proviso to sub-section (2).

(9) Subject to the provisions of this Code, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Chapter.

### **Benefits (Section 32)**

Subject to the provisions of this Code, the Insured Persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely: –

- (a) periodical payments to any Insured Person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by the regulations, specify in this behalf (hereinafter referred to as sickness benefit);
- (b) periodical payments to an Insured Person being a woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);
- (c) periodical payments to an Insured Person suffering from disablement as a result of an employment injury sustained by him as an employee for the purposes of this Chapter and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);
- (d) periodical payments to such dependants of an Insured Person who dies as a result of an employment injury sustained by him as an employee for the purposes of this Chapter, as are entitled under this Chapter (hereinafter referred to as dependants' benefit);
- (d) periodical payments to such dependants of an Insured Person who dies as a result of an employment injury sustained by him as an employee for the purposes of this Chapter, as are entitled under this Chapter (hereinafter referred to as dependants' benefit);
- (e) medical treatment for and attendance on Insured Persons (hereinafter referred to as medical benefit); and
- (f) payment to the eldest surviving member of the family of an Insured Person who has died, towards the expenditure on the funeral of the deceased Insured Person, or, where the Insured Person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased Insured Person (to be known as funeral expenses):

Provided that the amount of payment under this clause shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the Insured Person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

(2) The Corporation may, subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an Insured Person.

(3) The qualification of a person to claim sickness benefit, maternity benefit, disablement benefit and dependants' benefit and the conditions subject to which such benefit may be given and the rate and period thereof, shall be such as may be prescribed by the Central Government.

(4) Subject to the provisions of this Code and the rules made thereunder relating to this Chapter, the Corporation may make regulations for any matter relating or incidental to the accrual and payment of benefits payable under this

### **Corporation's Power to Promote Measures for Health of Insured Persons (Section 33)**

The Corporation may, in addition to the benefits specified in Chapter IV, promote measures for the improvement of the health and welfare of Insured Persons and for the rehabilitation and re-employment of Insured Persons who have been disabled or injured and may incur in respect of such measures, expenditure from the Employees' State Insurance Fund within such limits as may be prescribed by the Central Government.

### **Presumption as to Accident Arising in Course of Employment (Section 34)**

- (1) For the purposes of Chapter IV, an accident arising in the course of an employee's employment shall be presumed, in the absence of evidence to the contrary, to have arisen out of that employment.
- (2) An accident happening to an employee in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.
- (3) An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.
- (4) An accident happening while an employee is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if-
  - (a) the accident would have been deemed so to have arisen had he been under such obligation; and
  - (b) at the time of the accident, the vehicle-
    - (i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer; and
    - (ii) is not being operated in the ordinary course of public transport service.

Explanation. – In this section, "vehicle" includes a vessel and an aircraft.

### **Accidents Happening while Acting in Breach Of Law (Section 35)**

An accident shall be deemed to arise out of and in the course of an employee's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if-

- (a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and
- (b) the act is done for the purpose of and in connection with the employer's trade or business.

### **Occupational Disease (Section 36)**

(1) If an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any

disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify by regulations in respect of each such employment, contracts any disease specified in such Part C as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an "employment injury", arising out of and in the course of employment.

(2) Save as provided by sub-section (1), no benefit shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

3) The provisions of sub-section (1) of section 34 shall not apply to the cases to which this section applies.

### **References to Medical Board (Section 37)**

(1) Any question—

- (a) whether the relevant accident has resulted in permanent disablement; or
- (b) whether the extent of loss of earning capacity can be assessed provisionally or finally; or
- (c) whether the assessment of the proportion of the loss of earning capacity is provisional or final; or
- (d) in the case of provisional assessment, as to the period for which such assessment shall hold good, shall be determined by a medical board constituted in accordance with the provisions of the regulations (hereinafter referred to as medical board) and any such question shall hereafter be referred to as the "disablement question".

(2) The case of any Insured Person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement in question and if, on that or any subsequent reference, the extent of loss of earning capacity of the Insured Person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.

(3) Any decision under Chapter IV of a medical board may be reviewed at any time by the medical board if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the employee or any other person of a material fact whether the non-disclosure or misrepresentation was or was not fraudulent.

(4) Any assessment of the extent of the disablement resulting from the relevant employment injury may also be reviewed by a medical board if it is satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the results of the relevant injury:

Provided that an assessment shall not be reviewed under this sub-section unless the medical board is of the opinion, having regard to the period taken into account by the assessment and the probable duration of the aggravation aforesaid, that substantial injustice will be done by not reviewing it.

(5) Except with the leave of a medical appeal tribunal constituted by regulations, an assessment shall not be reviewed under sub-section (4) on any application made less than five years, or in the case of a provisional assessment, six months, from the date thereof and on such a review the period to be taken into account by any revised assessment shall not include any period before the date of the application.

(6) Subject to the foregoing provisions of this section, a medical board may deal with a case of review in any manner in which it could deal with it on an original reference to it, and in particular may make a provisional assessment notwithstanding that the assessment under review was final and the provisions of sub-section

(2) shall apply to an application for review under this sub-section and to a decision of a medical board in connection with such application as they apply to a case for disablement benefit under that sub-section and to a decision of the

medical board in connection with such case.

- (7) (a) If the Insured Person or the Corporation is aggrieved by any decision of the medical board, the Insured Person or the Corporation, as the case may be, may appeal in such manner and within such time as may be prescribed by the Central Government to—
- (i) the medical appeal tribunal constituted in accordance with the provisions of the regulations; or
  - (ii) the Employees' Insurance Court directly:

Provided that no appeal by an Insured Person shall lie under this sub-section if such person has applied for commutation of disablement benefit on the basis of the decision of the medical board and received the commuted value of such benefits:

Provided further that no appeal by the Corporation shall lie under this sub-section if the Corporation paid the commuted value of the disablement benefit on the basis of the decision of the medical board.

- (b) Where the Insured Person or the Corporation preferred appeal to the medical appeal tribunal under sub-clause (i) of clause (a) instead of to the Employees' Insurance Court under sub-clause (ii) of that clause, then, he or it, as the case may be, shall have the further right to file second appeal to the Employees' Insurance Court in such manner and within such time as may be prescribed by the appropriate Government.

### **Dependants' Benefit (Section 38)**

(1) If an Insured Person dies as a result of an employment injury sustained as an employee under this Chapter (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury), dependants' benefit shall be payable to his dependants specified in sub-clause (a) and sub-clause (b) of clause (24) of section 2 at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.

(2) In case the Insured Person dies without leaving behind him the dependants as aforesaid, the dependants' benefit shall be paid to the other dependants of the deceased at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.

(3) Any decision awarding dependants' benefit under this Chapter may be reviewed at any time by the Corporation if it is satisfied by fresh evidence that the decision was given in consequence of non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) or that the decision is no longer in accordance with this Chapter due to any birth or death or due to the marriage, re-marriage, or ceasing of infirmity, or attainment of the age of twenty-five years by, a claimant.

(4) Subject to the provisions of this Chapter IV, the Corporation may, on such review under sub-section (3), direct that the dependants' benefit be continued, increased, reduced or discontinued.

### **Medical Benefit (Section 39)**

(1) An Insured Person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the Insured Person or treatment as in-patient in a hospital or other institution.

(3) The qualification of an Insured Person and (where such medical benefit is extended to his family) his family, to claim medical benefit and the conditions subject to which such benefit may be given, the scale and period thereof

shall be such as may be prescribed by the Central Government:

Provided that a person in respect of whom contribution ceases to be payable under this Chapter may be allowed medical benefit for such period and of such nature as may be provided by the regulations:

Provided further that an Insured Person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be specified in the regulations:

Provided also that an Insured Person who ceases to be in insurable employment on account of permanent disablement caused due to employment injury shall continue to receive medical benefits, subject to payment of contribution and other conditions as may be prescribed by the Central Government:

Provided also that the conditions for grant of medical benefits to the Insured Person during employment injury shall be as specified in the regulations.

(4) (a) The Corporation may establish medical education institutions, including colleges, dental colleges, nursing colleges and the training institutes for its officers and staff with a view to improve the quality of their services.

(b) The medical education institutions referred to in clause (a) shall require its students to furnish a bond for serving the Corporation for such time and in such manner, as may be specified in the regulations.

(5) The medical education institutions and training institutes referred to in sub-section (4) may be run by the Corporation itself or on the request of the Corporation, by the Central Government, any State Government, Public Sector Undertaking of the Central Government or the State Government or any other body notified by the Central Government.

Explanation. –For the purposes of this sub-section, the expression “other body” means any such organisation of persons which the Central Government considers capable to run colleges and training institutes referred to in sub-section (4).

(6) The Corporation may, in order to take preventive and curative measures for welfare of the Insured Persons, carry out such occupational and epidemiological surveys and studies for assessment of health and working conditions of Insured Persons in such manner as may be specified in the regulations.

#### **Provision of Medical Treatment by State Government or by Corporation (Section 40)**

(1) The State Government shall provide for Insured Persons and (where such benefit is extended to their families) their families in the State, reasonable medical, surgical and obstetric treatment:

Provided that the State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

(2) Where the incidence of sickness benefit payment to Insured Persons in any State is found to exceed the all- India average, the amount of such excess shall be shared between the Corporation and the State Government in such proportion as may be fixed by agreement between them:

Provided that the Corporation may in any case waive the recovery of the whole or any part of the share which is to be borne by the State Government.

(3) The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to Insured Persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines, and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to Insured Persons between the Corporation and

the State Government.

(4) In default of agreement between the Corporation and any State Government as aforesaid, the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that Government, shall be determined by an arbitrator who shall be appointed by the Central Government in consultation with the State Government.

(5) The State Government may, in addition to the Corporation under this Code, with the previous approval of the Central Government, establish such organisation (by whatever name called) to provide for certain benefits to employees in case of sickness, maternity and employment injury:

Provided that any reference to the State Government in this Code relating to this Chapter shall also include reference to the organisation as and when such organisation is established by the State Government.

(6) The organisation referred to in sub-section (5) shall have such structure, discharge functions, exercise powers and undertake such activities as may be prescribed by the Central Government.

(7) The Corporation may establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of Insured Persons and (where such medical benefit is extended to their families), their families.

(8) The Corporation may enter into agreement with any local authority, private body or individual in regard to the provision of medical treatment and attendance for Insured Persons and (where such medical benefit is extended to their families) their families, in any area and sharing the cost thereof.

(9) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to Insured Persons and (where such medical benefit has been extended to their families), to their families.

(10) Notwithstanding anything contained in any other provision of this Chapter, the Corporation may, in consultation with the State Government, undertake the responsibility for providing medical benefit to Insured Persons and (where such medical benefit is extended to their families), to the families of such Insured Persons in the State subject to the condition that the State Government shall share the cost of such medical benefit in such proportion as may be agreed upon between the State Government and the Corporation.

(11) In the event of the Corporation exercising its power under sub-section (10), the provisions relating to medical benefit under this Chapter shall apply, so far as may be, as if a reference therein to the State Government were a reference to the Corporation.

(12) Notwithstanding anything contained in this Code, in respect of establishments located in the States where medical benefit is provided by the Corporation, the Central Government shall be the appropriate Government.

#### **General Provisions as to Benefits (Section 41)**

(1) Save as may be provided in the regulations, no person shall be entitled to commute for a lump sum any disablement benefit admissible under this Chapter IV.

(2) Save as may be provided in the regulations, no person shall be entitled to sickness benefit or disablement benefit for temporary disablement on any day on which he works or remains on leave or on a holiday in respect of which he receives wages or on any day on which he remains on strike.

(3) A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement) –

- (a) shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under this Chapter, and shall carry out the instructions given by the medical officer or medical attendant in-charge thereof;
  - (b) shall not while under treatment do anything which might retard or prejudice his chances of recovery;
  - (c) shall not leave the area in which medical treatment provided by this Chapter is being given, without the permission of the medical officer, medical attendant or such other authority as may be specified in this behalf by the regulations; and
  - (d) shall allow himself to be examined by any duly appointed medical officer or other person authorised by the Corporation in this behalf.
- (4) An Insured Person shall not be entitled to receive for the same period-
- (a) both sickness benefit and maternity benefit; or
  - (b) both sickness benefit and disablement benefit for temporary disablement; or
  - (c) both maternity benefit and disablement benefit for temporary disablement.
- (5) Where a person is entitled to more than one of the benefits mentioned in sub-section (4), he shall be entitled to choose which benefit he shall receive.
- (6) If a person dies during any period for which he is entitled to a cash benefit under this Chapter, the amount of such benefit up to and including the day of his death shall be paid to any person nominated by the deceased person in writing in such form as may be specified in the regulations or, if there is no such nomination, to the heir or legal representative of the deceased person.
- (7) (a) Any person eligible for availing dependant or disablement benefit under this Chapter shall not be entitled to claim Employees' Compensation from his employer under Chapter VII.
- (b) Any women employee eligible for availing maternity benefit under this Chapter shall not be entitled to claim maternity benefit from her employer under Chapter VI.
- (8) Where any person has received any benefit or payment under this Chapter when he is not lawfully entitled thereto, he shall be liable to repay to the Corporation the value of the benefit or the amount of such payment, or in the case of death, his legal representative shall be liable to repay the same from the assets of the deceased devolved on him.
- (9) The value of any benefits received other than cash payments shall be determined by such authority as may be specified in the regulations made in this behalf and the decision of such authority shall be final.
- (10) The amount recoverable under this section may be recovered in the manner specified under sections 129 to 132.

#### **Corporation's Rights when an Employer Fails to Register (Section 42)**

- (1) If any employer, -
- (a) fails or neglects to insure under section 28, an employee at the time of his appointment or within such extended period as may be prescribed by the Central Government, as a result of which the employee becomes disentitled to any benefit under this Chapter IV; or
  - (b) insures under section 28, an employee on or after the date of accident which resulted in personal injury to such employee which has the effect of making such employee disentitled to receive any dependant benefit

or disablement benefit from the Corporation; or

- (c) fails or neglects to pay any contribution which under this Chapter IV he is liable to pay in respect of any employee and by reason thereof such employee becomes disentitled to any benefit or becomes entitled to a benefit on a lower scale, then, the Corporation may, on being satisfied in the manner prescribed by the Central Government that the benefit is payable to the employee, pay to the employee benefit at such rate to which he is entitled or would have been entitled if the failure or neglect would not have occurred, and the Corporation shall be entitled to recover from the employer, subject to the employer being given an opportunity of being heard, the capitalised value of the benefit paid to the employee, to be calculated in such manner as may be prescribed by the Central Government:

Provided that the capitalised value to be calculated may be adjusted for the payment of any contribution and interest or damages that the employer is liable to pay for delay in the payment of or non-payment of such contribution.

- (2) The amount recoverable under this section may be recovered as if it were an arrear of land revenue or recovered in the manner specified under sections 129 to 132.

#### **Liability of Owner or Occupier of Factories for Excessive Sickness Benefit (Section 43)**

- (1) Where the Corporation considers that the incidence of sickness among Insured Persons is excessive by reason of-

- (a) insanitary working conditions in a factory or other establishment or the neglect of the owner or occupier of the factory or other establishment to observe any health regulations enjoined on him by or under any enactment for the time being in force, or
- (b) insanitary conditions of any tenements or lodgings occupied by Insured Persons and such insanitary conditions are attributable to the neglect of the owner of the tenements or lodgings to observe any health regulations enjoined on him by or under any enactments for the time being in force, then, the Corporation may send to the owner or occupier of the factory or other establishment or to the owner of the tenements or lodgings, as the case may be, a claim for the payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit; and if the claim is not settled by agreement, the Corporation may refer the matter, with a statement in support of its claim, to the appropriate Government.

- (2) If the appropriate Government is of the opinion that a prima facie case for inquiry is made out, it may appoint a competent person or persons to hold an inquiry into the matter referred under sub-section (1).

- (3) If upon inquiry under sub-section (2), it is proved to the satisfaction of the person or persons holding the inquiry that the excess in incidence of sickness among the Insured Persons is due to the default or neglect of the owner or occupier of the factory or other establishment or the owner of the tenements or lodgings, as the case may be, the said person or persons shall determine, the amount of the extra expenditure incurred as sickness benefit as well as the person or persons by whom the whole or any part of such amount shall be paid to the Corporation.

- (4) A determination under sub-section (3) may be enforced as if it were a decree for payment of money passed in a suit by a Civil Court.

- (5) For the purposes of this section, "owner" of tenements or lodgings shall include any agent of the owner and any person who is entitled to collect the rent of the tenements or lodgings as a lessee of the owner.

#### **Scheme for other Beneficiaries (Section 44)**

Notwithstanding anything contained in this Chapter IV, the Central Government may, by notification, frame, amend, vary or rescind scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is underutilised on payment of user charges, and prescribe the terms and conditions subject to which the scheme may be operated.

Explanation. – For the purposes of this section, –

- (a) “other beneficiaries” means persons other than employees insured under section 28;
- (b) “underutilised hospital” means any hospital not fully utilised by the employees insured under section 28; and
- (c) “user charges” means the amount which is to be charged from other beneficiaries for medical facilities as may be specified in the regulations after prior approval of the Central Government.

#### **Schemes for Unorganised Workers, Gig Workers and Platform Workers (Section 45)**

(1) Notwithstanding anything contained in this Chapter IV, the Central Government may, by notification, frame scheme for unorganised workers, gig workers and platform workers and the members of their families for providing benefits admissible under this Chapter by the Corporation.

(2) The contribution, user charges, scale of benefits, qualifying and eligibility conditions and other terms and conditions subject to which the scheme may be operated shall be such as may be specified in the scheme.

#### **Exemption of factories or other establishments belonging to Government or any local authority (Section 46)**

The appropriate Government may, after consultation with the Corporation, by notification and subject to such conditions as may be specified in the notification, exempt any factory or other establishment belonging to the Government or any local authority, from the operation of this Chapter if the employees in any such factory or other establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Chapter IV.

#### **Contributions, etc., due to Corporation to have priority over other debts (Section 47)**

Notwithstanding anything contained in any other law for the time being in force, any amount due under this Chapter IV shall be the charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

#### **Constitution of Employees’ Insurance Court (Section 48)**

- (1) The State Government shall, by notification, constitute an Employees’ Insurance Court for such local area as may be specified in the notification.
- (2) The Employees’ Insurance Court shall consist of such number of Judges as the State Government may think fit.
- (3) Any person who is or has been a judicial officer or is a legal practitioner of five years’ standing shall be qualified to be a Judge of the Employees’ Insurance Court.
- (4) The State Government may appoint the same Court for two or more local areas or two or more Employees’ Insurance Courts for the same local area.
- (5) Where more than one Employees’ Insurance Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them.

### **Matters to be decided by Employees' Insurance Court (Section 49)**

- (1) If any question or dispute or claim arises as to—
- (a) whether any person is an employee within the meaning of this Code relating to this Chapter or whether he is liable to pay the employee's contribution; or
  - (b) the rate of wages or average daily wages of an employee for the purposes of this Chapter; or
  - (c) the rate of contribution payable by an employer in respect of any employee under this Chapter; or
  - (d) the person who is or was the employer in respect of any employee for the purposes of this Chapter; or
  - (e) the right of any person to any benefit under this Chapter and as to the amount and duration thereof; or
  - (f) any direction issued by the Corporation on a review of any payment of dependants' benefit under this Chapter; or
  - (g) any other matter which is in dispute between an employer and the Corporation relating to this Chapter, or between an employer and a Contractor relating to this Chapter or between a person and the Corporation relating to this Chapter or between an employee and an employer or Contractor relating to this Chapter, in respect of any contribution or benefit or other dues payable or recoverable under this Code relating to this Chapter; or
  - (h) claim for the recovery of contributions from the employer under this Code relating to this Chapter; or
    - (i) claim under sub-section (8) of section 41 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; or
    - (j) claim against an employer under section 42; or
  - (k) order of the appellate authority under section 126 in respect of Chapter IV; or
    - (l) claim by an employer to recover contributions from any contractor under this Code relating to this Chapter; or
  - (m) any other claim for the recovery of any benefit admissible under this Chapter, such matter shall be decided by the Employers' Insurance Court.

(2) No matter which is in dispute between an employer and the Corporation in respect of any contribution or any other dues under this Chapter shall be raised by the employer in the Employees' Insurance Court unless he has deposited with that Court fifty per cent. Of the amount due from him as claimed by the Corporation:

Provided that the Employees' Insurance Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as specified in sub-section (1) or to adjudicate on any liability which by or under this Code relating to this Chapter is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

### **Powers of Employees' Insurance Court (Section 50)**

(1) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such court shall be deemed to be a Civil Court within the meaning of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

- (2) The Employees' Insurance Court shall follow such procedure as may be prescribed by the State Government.
- (3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of that court.
- (4) An order of the Employees' Insurance Court shall be enforceable by it as if it were a decree passed in a suit by a Civil Court.

### **Proceedings of Employees' Insurance Courts (Section 51)**

(1) The manner of commencement of proceedings before the Employees' Insurance Court, fees and procedure thereof shall be such as may be prescribed by the appropriate Government:

Provided that the limitation for initiating the proceedings by the aggrieved person in the Employees' Insurance Court shall be three years from the date on which the cause of action arises:

Provided further that the "arising of cause of action" in respect of a claim by the Insured Person or dependants; by the Corporation for recovering contribution (including interests and damages) from the employer; and the claim by the employer for recovering contributions from a Contractor and the time within which such claims, recovery or contribution, from employer by the Corporation and recovery of contribution by the employer from the Contractor, shall be as specified in the regulations.

- (2) Any application, appearance or act required to be made or done by any person to, or before, an Employees' Insurance Court (other than appearance of a person required for the purpose of his examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or with the permission of that Court, by any other person so authorised.
- (3) An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

### **Appeal to High Court (Section 52)**

- (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.
- (2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court, if it involves a substantial question of law.
- (3) The appeal shall be filed under this section within a period of sixty days from the date of the order made by the Employees' Insurance Court.
- (4) The provisions of sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under this section.
- (5) Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court, shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

## **CHAPTER V- GRATUITY**

### **Payment of Gratuity (Section 53)**

- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, –
  - (a) on his superannuation; or

- (b) on his retirement or resignation; or
- (c) on his death or disablement due to accident or disease; or
- (d) on termination of his contract period under fixed term employment; or
- (e) on happening of any such event as may be notified by the Central Government:

Provided that in case of working journalist as defined in clause (f) of section 2 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955, the expression "five years" occurring in this sub-section shall be deemed to be three years:

Provided further that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment or happening of any such event as may be notified by the Central Government:

Provided also that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the competent authority as may be notified by the appropriate Government who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed by the appropriate Government, until such minor attains majority.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages or such number of days as may be notified by the Central Government, based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season:

Provided also that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1)–

- (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
- (b) the gratuity payable to an employee may be wholly or partially forfeited–
  - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided such offence is committed by him in the course of his employment.

*Explanation 1. – For the purposes of this Chapter V, employee does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.*

*Explanation 2. – For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease, resulting in such disablement.*

*Explanation 3. – For the purposes of this section, it is clarified that in the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.*

### **Continuous Service (Section 54)**

For the purposes of this Chapter V–

- (A) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Code;
- (B) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (A), for any period of one year or six months, he shall be deemed to be in continuous service under the employer–
  - (a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than–
    - (i) one hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than–
    - (i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
    - (ii) one hundred and twenty days, in any other case.

*Explanation. – For the purposes of this clause, the number of days on which an employee has actually worked under an employer shall include the days on which–*

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

- (ii) he has been on leave with full wages, earned in the previous year;
  - (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
  - (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twenty-six weeks;
- (C) where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (A), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent. of the number of days on which the establishment was in operation during such period.

### **Nomination (Section 55)**

- (1) Each employee, who has completed one year of service, shall make, a nomination within such time, in such form and in such manner, as may be prescribed by the appropriate Government.
- (2) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Chapter amongst more than one nominee.
- (3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.
- (4) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed by the appropriate Government, a fresh nomination in favour of one or more members of his family.
- (5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving to his employer a written intimation in such form and in such manner as may be prescribed by the appropriate Government, of his intention to do so.
- (6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the form prescribed by the appropriate Government, in respect of such interest.
- (7) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

### **Determination of Amount of Gratuity (Section 56)**

- (1) A person who is eligible for payment of gratuity under this Chapter or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed by the appropriate Government, for payment of such gratuity.
- (2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the competent authority specifying the amount of gratuity so determined.
- (3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.
- (4) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for

repayment of long-term deposits:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the competent authority for the delayed payment on this ground.

- (5) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Chapter or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the competent authority such amount as he admits to be payable by him as gratuity.
  - (b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the competent authority in the form prescribed by the appropriate Government for deciding the dispute.
  - (c) The competent authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the competent authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.
  - (d) The competent authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.
  - (e) As soon as may be after a deposit is made under clause (a), the competent authority shall pay the amount of the deposit—
    - (i) to the applicant where he is the employee; or
    - (ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the competent authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.
- (6) For the purpose of conducting an inquiry under sub-section (5), the competent authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely: –
- (a) enforcing the attendance of any person or examining him on oath;
  - (b) requiring the discovery and production of documents;
  - (c) receiving evidence on affidavits;
  - (d) issuing commissions for the examination of witnesses.

(7) Any inquiry under this section shall be a judicial proceeding within the meaning of section 193, section 228 and for the purpose of section 196 of the Indian Penal Code.

(8) Any person aggrieved by an order under sub-section (5) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf: Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the competent authority to the effect that the appellant has deposited with

him an amount equal to the amount of gratuity required to be deposited under sub-section (5), or deposits with the appellate authority such amount.

(9) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the competent authority.

### **Compulsory Insurance (Section 57)**

(1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed by the Central Government, for his liability for payment towards the gratuity under this Chapter, from any insurance company regulated by the Authority as defined under clause (b) of sub-section (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999:

Provided that different dates may be appointed for different establishments or class of establishments or for different areas.

(2) The appropriate Government may, subject to such conditions as may be prescribed by the Central Government, exempt any employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed by the Central Government from the provisions of sub-section (1).

(3) For the purposes of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed by the Central Government get his establishment registered with the competent authority in the manner prescribed by the appropriate Government and no employer shall be registered under the provisions of this section unless he has taken an insurance referred to in sub-section (1) or has established an approved gratuity fund referred to in sub-section (2).

(4) The appropriate Government may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the competent authority of the amount of the gratuity payable to an employee from the insurer with whom an insurance has been taken under sub-section (1), or as the case may be, the Board of Trustees of the approved gratuity fund, in such manner as may be prescribed.

(5) Where an employer fails to make any payment by way of premium in respect of the insurance referred to in sub-section (1) or by way of contribution to an approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under this Chapter (including interest, if any, for delayed payments) forthwith to the competent authority.

*Explanation.* – In this section, “approved gratuity fund” shall have the same meaning as assigned to it in sub-section (5) of section 2 of the Income-tax Act, 1961.

### **Competent Authority (Section 58)**

(1) The Appropriate Government may, by notification, appoint any officer of that Government having such qualifications and experience as may be prescribed by that Government to be a competent authority for implementation of any provision of this Chapter for such area as may be specified in the notification.

(2) Where more than one competent authority has been appointed for any area, the appropriate Government may, by general or special order, regulate the distribution of business among them.

(3) Any competent authority may, for the purpose of deciding any matter referred to him for decision under this

Chapter, choose one or more persons possessing special knowledge of any matter relevant to the matter under reference to assist him in holding the inquiry relating thereto.

## **CHAPTER VI- MATERNITY BENEFIT**

### **Employment of, or Work by, Women Prohibited During Certain Period (Section 59)**

- (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.
- (2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.
- (3) Without prejudice to the provisions of section 62, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do, during the period specified in sub-section (4), any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise to adversely affect her health.
- (4) The period referred to in sub-section (3) shall be—
  - (a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;
  - (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 62.

*Explanation.* – For the purposes of this section, the expression “any work of arduous nature” shall mean any work which involve or require strenuous effort or is difficult and tiring in nature.

### **Right to Payment of Maternity Benefit (Section 60)**

- (1) Subject to the other provisions of Wage Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day.

*Explanation.* –For the purposes of this sub-section, “the average daily wage” means the average of the woman’s wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019.

- (2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

*Explanation.* – For the purposes of calculating the period under this sub-section, the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages, during the period of twelve months immediately preceding the expected date of her delivery shall be taken into account.

- (3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery:

Provided that the maximum period entitled to maternity benefit by a woman having two or more surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

*Explanation: For the purposes of this sub-section, "child" includes a stillborn child.*

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case the work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

#### **Continuance of Payment of Maternity Benefit in Certain Cases (Section 61)**

Every woman entitled to the payment of maternity benefit under this Chapter VI, shall, notwithstanding the application of Chapter IV to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 32.

#### **Notice of Claim for Maternity Benefit and Payment Thereof (Section 62)**

(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Chapter may give notice in writing in such form as may be prescribed by the Central Government, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Chapter may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than eight weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after her delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed by the Central Government that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed by the Central Government that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Chapter if she is otherwise entitled to such benefit or amount and in any such case an Inspector-cum-Facilitator may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

### **Payment of Maternity Benefit in Case of Death of a Woman (Section 63)**

If a woman entitled to maternity benefit or any other amount under this Chapter VI, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 60, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 62 and in case there is no such nominee, to her legal representative

### **Payment of Medical Bonus (Section 64)**

Every woman entitled to maternity benefit under this Chapter VI shall also be entitled to receive from her employer a medical bonus of three thousand five hundred rupees or such amount as may be notified by the Central Government, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

### **Leave for Miscarriage (Section 65)**

(1) In case of miscarriage, or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed by the Central Government, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy.

(2) In case of tubectomy operation, a woman shall, on production of such proof as may be prescribed by the Central Government, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.

(3) A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy shall, on production of such proof as may be prescribed by the Central Government, be entitled, in addition to the period of absence allowed to her under section 62, or, as the case may be, under sub-section (1), to leave with wages at the rate of maternity benefit for a maximum period of one month.

### **Nursing Breaks (Section 66)**

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of such duration as may be prescribed by the Central Government, for nursing the child until the child attains the age of fifteen months.

### **Creche Facility (Section 67)**

(1) Every establishment to which this Chapter V applies, in which **fifty employees** or such number of employees as may be prescribed by the Central Government, are employed shall have the facility of crèche within such distance as may be prescribed by the Central Government, either separately or along with common facilities:

Provided that the employer shall allow four visits a day to the crèche by the woman, which shall also include the intervals of rest allowed to her:

Provided further that an establishment may avail common crèche facility of the Central Government, State Government, municipality or private entity or provided by non-Governmental organisation or by any other organisation or group of establishments who may pool their resources for setting up of common crèche in the manner as they may agree for such purpose.

(2) Every establishment to which this Chapter applies shall intimate in writing and electronically to every woman at the time of her initial appointment in such establishment regarding every benefit available under this Chapter.

### **Dismissal for Absence During Pregnancy (Section 68)**

(1) When a woman absents herself from work in accordance with the provisions of this Chapter VI, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service:

Provided that the discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus under this Chapter, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided further that where the dismissal is for any gross misconduct as may be prescribed by the Central Government, the employer may, by order in writing, communicated to the woman, deprive her of the maternity benefit or medical bonus, or both.

(2) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed under sub-section (1), may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to the competent authority, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both, or discharged or dismissed, shall be final.

### **No deduction of Wages in Certain Cases (Section 69)**

No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Chapter shall be made by reason only of-

- (a) the nature of work assigned to her by virtue of the provisions contained in section 59; or
- (b) breaks for nursing the child allowed to her under the provisions of section 66.

### **Forfeiture of maternity benefit (Section 70)**

A woman who works for remuneration during the period she has been permitted by an employer to absent herself for availing the maternity benefits provided under this Chapter VI shall not be entitled to receive maternity benefit for such period.

### **Duties of Employer (Section 71)**

An abstract of the provisions of this Chapter VI and the rules relating thereto in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed

### **Power of Inspector cum- Facilitator to Direct Payments to be Made (Section 72)**

(1) Any woman claiming that, -

- (a) maternity benefit or any other amount to which she is entitled under this Chapter VI and any person claiming that payment due under this Chapter has been improperly withheld;
- (b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Chapter, may make a complaint to the Inspector-cum-Facilitator.

(2) The Inspector-cum-Facilitator may, on receipt of a complaint referred to in sub-section (1), make an inquiry or cause an inquiry to be made and if satisfied that-

- (a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his order in writing;
  - (b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Chapter, may pass such orders as he deems just and proper according to the circumstances of the case.
- (3) Any person aggrieved by the order of the Inspector-cum-Facilitator under sub-section (2) may, within thirty days from the date on which such order is communicated to such person, appeal to the authority prescribed by the appropriate Government.
- (4) The decision of the authority referred to in sub-section (3), where an appeal has been preferred to it under that sub-section or of the Inspector-cum-Facilitator where no such appeal has been preferred, shall be final.

## CHAPTER VII- EMPLOYEE'S COMPENSATION

### Reports of Fatal Accidents and Serious Bodily Injuries (Section 73)

(1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring in his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the competent authority giving the circumstances attending the death or serious bodily injury:

Provided that where the State Government has so specified, the person required to give the notice may instead of sending such report to the competent authority send it to the authority to whom he is required to give the notice.

Explanation. – For the purposes of this sub-section, “*serious bodily injury*” means an injury which involves, or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.

- (2) The State Government may, by notification, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the competent authority.
- (3) This section shall not apply to establishments to which Chapter IV, relating to Employees’ State Insurance Corporation, applies.

### Employer’s Liability for Compensation (Section 74)

(1) If personal injury is caused to an employee by accident or an occupational disease listed in the Third Schedule arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter VII:

Provided that the employer shall not be so liable–

- (a) in respect of such injury which does not result in the total or partial disablement of the employee for a period exceeding three days; and
- (b) in respect of such injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to–
  - (i) the employee having been at the time thereof under the influence of drink or drugs, or
  - (ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for

the purpose of securing the safety of employees, or

- (iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

(2) An accident or an occupational disease referred to in sub-section (1) shall be deemed to arise out of and in the course of an employee's employment notwithstanding that he is at the time of the accident or at the time of contracting the occupational disease, referred to in that sub-section, acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if-

- (a) such accident or contracting of such occupational disease would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and
- (b) the act is done for the purpose of, and in connection with, the employer's trade or business.

(3) If an employee employed in any employment specified in the Second Schedule contracts any disease specified in the Third Schedule, being an occupational disease peculiar to that employment whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months, then, such disease shall be deemed to be an injury by accident within the meaning of this section and unless the contrary is proved, the accident shall be deemed to have arisen out of and in the course of the employment.

(4) An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and his employment is established.

(5) The Central Government or the State Government, after giving, by notification, not less than three months' notice of its intention so to do, may, by a like notification, modify or add any description of employment to the employments specified in the Second Schedule, and occupational diseases specified in the Third Schedule and shall specify in the case of employments so modified or added, the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Code extends or, in case of a notification by the State Government, within that State as if such diseases had been declared by this Code to be occupational diseases peculiar to those employments.

(6) Save as provided by sub-sections (2), (3) and (4), no compensation shall be payable to an employee in respect of any accident or disease unless the accident or disease is directly attributable to a specific injury by accident or disease arising out of and in the course of his employment.

(7) Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any accident or disease if he has instituted in a civil court a suit for damages in respect of the accident or disease against the employer or any other person; and no suit for damages shall be maintainable by an employee in any Court of law in respect, of such accident or disease-

- (a) if he has instituted a claim to compensation in respect of the accident or disease before a competent authority; or
- (b) if an agreement has been made between the employee and his employer providing for the payment of compensation in respect of the accident or disease in accordance with the provisions of this Chapter

## Compensation in case of Death of Or Injury in Plantation (Section 75)

If death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided by the employer in a plantation, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation under section 76 and the Sixth Schedule, so far as may be applicable.

Explanation. – For the purposes of this section, the expression “worker” means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, and includes a person employed on contract for more than sixty days in a year, but does not include–

- (i) a medical officer employed in the plantation;
- (ii) any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed the amount as determined by the appropriate Government, by notification, from time to time;
- (iii) any person employed in the plantation primarily in a managerial or administrative capacity, notwithstanding that his monthly wages do not exceed the amount as determined by the appropriate Government, by notification, from time to time;
- (iv) any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of buildings, roads, bridges, drains or canals.

## Amount of Compensation (Section 76)

(1) Subject to the provisions of this Chapter VII, the amount of compensation shall be,–

- (a) where death results from the injury, an amount equal to fifty per cent. of the monthly wages of the deceased employee multiplied by the relevant factor or an amount as may be notified by the Central Government from time to time, whichever is more;
- (b) where permanent total disablement results from the injury, an amount equal to sixty per cent. of the monthly wages of the injured employee multiplied by the relevant factor or an amount as may be notified by the Central Government from time to time, whichever is more:

Provided that the Central Government may, by notification, from time to time, enhance the amount of compensation specified in clauses (a) and (b).

*Explanation. – For the purposes of clauses (a) and (b), “relevant factor”, in relation to a employee means the factor specified in column (3) of the Sixth Schedule relating to factors against the corresponding entry in column (2) thereof, specifying the number of years which are the same as the completed years of the age of the employee on his last birthday immediately preceding the date on which the compensation fell due;*

- (c) where permanent partial disablement results from the injury, –
  - (i) in the case of an injury specified in Part II of the Fourth Schedule, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and
  - (ii) in the case of an injury not specified in the Fourth Schedule, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the medical practitioner) permanently caused by the injury.

Explanation 1– For the purposes of this clause, where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed

the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation 2- In assessing the loss of earning capacity under sub-clause (ii), the medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in the Fourth Schedule;

- (d) where temporary disablement, whether total or partial, results from the injury, a half-monthly payment of the sum equivalent to twenty-five per cent. Of monthly wages of the employee, to be paid in accordance with the provisions of sub-section (4).
- (2) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to an employee in respect of an accident which occurred outside India, the competent authority shall take into account the amount of compensation, if any, awarded to such employee in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the employee in accordance with the law of that country.
- (3) The Central Government may, by notification, specify for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.
- (4) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day-
- (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more; or
  - (ii) after the expiry of a waiting period of three days from the date of disablement, where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever is shorter:

Provided that-

- (a) there shall be deducted from any lump sum or half-monthly payments to which the employee is entitled, the amount of any payment or allowance which the employee has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and such payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation;
  - (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the employee before the accident exceeds half the amount of such wages which he is earning after the accident.
- (5) The employee shall be reimbursed, the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment, by his employer.
- (6) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.
- (7) If the injury of the employee results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the competent authority a sum of not less than fifteen thousand rupees or such amount as may be prescribed by the State Government, for payment of the same to the eldest surviving dependant of the employee towards the expenditure of the funeral of such employee or where the employee did not have a dependant or was not living with his dependant at the time of his death, to the person who actually incurred such expenditure:

Provided that the Central Government may, by notification from time to time, enhance the amount specified in this sub-section.

### **Compensation to be Paid When Due and Damages for Default (Section 77)**

- (1) Compensation under section 76 shall be paid as soon as it falls due.
- (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the competent authority or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.
- (3) Where any employer is in default in paying the compensation due under this Chapter within one month from the date it fell due, the competent authority shall—
  - (a) direct that the employer shall, in addition to the amount of the arrears, pay interest at such rate as may be prescribed by the Central Government, on the amount due; and
  - (b) if in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount of arrears by way of damages: Provided that an order for the payment of damages shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause as to why it should not be passed.
- (4) The interest and the damages payable under sub-section (3) shall be paid to the employee or his dependant, as the case may be.

### **Method of Calculating Monthly wages for Purposes of Compensation (Section 78)**

For the purposes of this Chapter VII, the expression “monthly wages” means the amount of wages deemed to be payable for a month’s service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely: –

- (a) where the employee has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
- (b) where the whole of the continuous period of service immediately preceding the accident during which the employee was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the employee shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality;
- (c) in other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b), the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period

*Explanation.* –For the purposes of this section, “a period of service” shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

### **Review (Section 79)**

- (1) Any half-monthly payment payable under this Chapter VII, either under an agreement between the parties or under the order of a competent authority, may be reviewed by the competent authority, on the application either of the employer or of the employee accompanied by the certificate of a medical practitioner that there has been a

change in the condition of the employee or, subject to such conditions as may be prescribed by the State Government, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Chapter, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the employee is entitled less any amount which he has already received by way of half monthly payments.

### **Commutation of Half Monthly Payments (Section 80)**

Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the competent authority be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the competent authority, as the case may be.

### **Distribution of Compensation (Section 81)**

(1) No payment of compensation in respect of an employee whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the competent authority, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased employee, an employer may make to any dependant, advances on account of compensation of an amount equal to three months' wages of such employee and so much of such amount as does not exceed the compensation payable to that dependant shall be deducted by the competent authority from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than five thousand rupees which is payable as compensation may be deposited with the competent authority on behalf of the person entitled thereto.

(3) The receipt of the competent authority shall be a sufficient discharge in respect of any compensation deposited with him.

(4) (a) On the deposit of any money under sub-section (1) as compensation in respect of a deceased employee, the competent authority shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation.

(b) If the competent authority is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid.

(c) The competent authority shall, on an application by the employer, furnish a statement showing in detail all disbursements made.

(5) The compensation deposited in respect of a deceased employee shall, subject to any deduction made under sub-section (1), be apportioned by order by the competent authority among the dependants of the deceased employee or any of them in such proportion as the competent authority thinks fit, or may, in the discretion of the competent authority, be allotted to any one dependant:

Provided that the competent authority shall not make any order under this sub-section without hearing the dependants and shall record reasons in the order for the apportionment of such compensation among dependants or any of them, as the case may be.

(6) Where any compensation deposited with the competent authority is payable to any person, other than a woman

or a person under legal disability, the competent authority may pay the compensation to the person entitled thereto.

(7) Where any lump sum deposited with the competent authority is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the competent authority may direct; and where a half-monthly payment is payable to any person under a legal disability, the competent authority may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the employee or to any other person, whom the competent authority thinks fit to provide for the welfare of the employee.

(8) Where, on application made to him in this behalf or otherwise, the competent authority is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the competent authority as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the competent authority may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause as to why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(9) Where the competent authority varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner as specified in sub-section (10).

(10) The competent authority may recover as an arrear of land revenue any amount referred to in sub-section (9), and for such purpose the competent authority shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890.

## **Notice and Claim (Section 82)**

(1) No claim for compensation shall be entertained by a competent authority unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (3) of section 74 are applicable, the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer:

Provided also that if an employee who, having been employed in an employment for a continuous period specified under sub-section (3) of section 74 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.

(2) The want of or any defect or irregularity, in a notice given under sub-section (1), shall not be a bar to the entertainment of a claim—

- (a) if the claim is preferred in respect of the death of an employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or
- (b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided that the competent authority may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred in due time as provided under sub-section (1), if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(3) Every such notice shall give the name and address of the person injured and shall state the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed.

(4) The appropriate Government may require that any class of employers as may be prescribed by that Government shall maintain, at their premises at which employees are employed, a notice-book, in such form as may be prescribed by that Government, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting bona fide on his behalf.

(5) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or where possible, electronically or, where a notice-book is maintained, by entry in the notice-book.

### **Special Provisions Relating to Accidents Occurring Outside Indian Territory (Section 83)**

(1) The provisions of this section shall, subject to the modifications specified in this section, apply in case of employees who are—

- (a) masters of ships or seamen; or
- (b) captain and other members of crew of aircraft;
- (c) persons recruited by companies registered in India and working as such abroad;
- (d) persons sent for work abroad along with motor vehicles registered under the Moto Vehicles Act, 1988 as drivers, helpers, mechanics, cleaners or other employees.

(2) The notice of the accident and the claim for compensation by a person injured may be served on the following persons, as if they were the employer—

- (a) in case of accident where the person injured is a seamen, but not the master of the ship, on the master of the ship;
- (b) in case of accident where the person injured is a member of crew of an aircraft, but not the captain of the aircraft, on the captain of the aircraft;
- (c) in case of persons recruited by companies registered in India and working as such abroad, on the local agent of the company;

- (d) in case of persons sent for work abroad along with motor vehicles as drivers, helpers, mechanics, cleaners or other employees, on the local agent of the owner of the motor vehicle, in the country of the accident:

Provided that where the accident happened and the disablement commenced on board, the ship or aircraft, as the case may be, then, it shall not be necessary for any seaman or members of the crew of aircraft to give any notice of the accident.

(3) The claim of compensation shall be made—

- (a) in the case of the death of an employee referred to in sub-section (1), one year after the news of the death has been received by the claimant;
- (b) in the case where the ship or the aircraft as the case may be, has been or is deemed to have been lost with all hands, eighteen months of the date on which the ship or the aircraft was, or is deemed to have been, so lost:

Provided that the competent authority may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(4) Where an injured employee referred to in sub-section (1) is discharged or left behind in any part of India or in any foreign country, then, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

- (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
- (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused, and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(5) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law for the time being in force relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this section shall not be a bar to the maintenance of proceedings under this Chapter in respect of any personal injury, if such proceedings under this Chapter are commenced within one month from the date on which the certificate of the State to that effect Government was furnished to the person commencing the proceedings.

### **Medical Examination (Section 84)**

(1) Where an employee has given notice of an accident, he, shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a medical practitioner, submit himself for such examination, and any employee who is in receipt of a half-monthly payment under this Chapter shall, if so required, submit himself for such examination from time to time:

Provided that an employee shall not be required to submit himself for examination by a medical practitioner at more than such frequent interval as may be prescribed by the State Government.

(2) If an employee, on being required to do so by the employer under sub-section (1) or by the competent authority at any time, refuses to submit himself for examination by a medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If an employee, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves the vicinity of the place in which he was employed without having been so examined, his right to compensation shall be suspended until he returns and offers himself for such examination:

Provided that where such employee proves before the medical practitioner that he could not so submit himself for medical examination due to the circumstances beyond his control and he was also handicapped to communicate such information in writing, the medical practitioner may after recording such reasons in writing, condone the delay and his right to compensation shall be revived as if no such suspension was made. (4) Where an employee, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the competent authority may, if he thinks fit, direct the payment of compensation to the dependants of the deceased employee.

(5) Where under sub-section (2) or sub-section (3), a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (ii) of sub-section (4) of section 76, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured employee has refused to be attended by a medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the employee has not thereafter been regularly attended by a medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the employee had been regularly attended by a medical practitioner, whose instructions he had followed, and compensation, if any, shall be payable accordingly.

### **Contracting (Section 85)**

(1) Where any employer in the course of or for the purposes of his trade or business contracts with a contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the employer, the employer shall be liable to pay to any employee employed in the execution of the work any compensation, which he would have been liable to pay if that employee had been immediately employed by him; and that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2) Where the employer is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the employee could have recovered the compensation and where a contractor who is himself an employer is liable to pay compensation or to indemnify an employer under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered the compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the competent authority.

(3) Nothing in this section shall be construed as preventing an employee from recovering compensation referred to in sub-section (2) from the contractor instead of the employer.

(4) The provisions of this section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the employer has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

### **Remedies of Employer Against Stranger (Section 86)**

Where an employee has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 85 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

### **Insolvency of Employer (Section 87)**

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Chapter to any employee, then, in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the employee, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the employee than they would have been under the employer.

(2) If the liability of the insurers to the employee is less than the liability of the employer to the employee, the burden of proof shall lie on the employee for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1), the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premium), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the employee:

Provided that the provisions of this sub-section shall not apply in any case in which the employee fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under the Insolvency and Bankruptcy Code, 2016 or under the provisions of the Companies Act, 2013 are in the distribution of the assets of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation, the liability accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and the provisions of that Code and Act shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if applications were made for that purpose under section 80, and a certificate of the competent authority as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) The provisions of this section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

### **Power to require from Employers' Statements Regarding Fatal Accidents (Section 88)**

(1) Where a competent authority receives information from any source that an employee has died as a result of an accident arising out of and in the course of his employment, he may send by registered post or where possible, electronically a notice to the employee's employer requiring him to submit, within thirty days of the service of the notice, a statement, in such form as may be prescribed by the State Government, giving the circumstances attending the death of the employee, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death and a copy of such notice shall also be sent by the competent authority in the same manner to the dependants of such employee ascertained by the competent authority.

(2) If the employer is of the opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of the opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the competent authority, after such inquiry as he may think fit, may inform any of the dependants of the deceased employee, that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

(5) Where in the opinion of the competent authority, a dependant of the deceased employee is not in a position to engage an advocate to file a claim for compensation, the competent authority may provide an advocate to such dependant, from the panel of advocates maintained by the State Government.

### **Registration of Agreements (Section 89)**

(1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability, a memorandum thereof shall be sent by the employer to the competent authority, who shall, on being satisfied as to its genuineness, record the memorandum in a register, electronically or otherwise, in such manner as may be prescribed by the Appropriate Government:

Provided that—

- (a) no such memorandum shall be recorded before seven days after communication by the competent authority of notice to the parties concerned;
- (b) the competent authority may at any time rectify the register;
- (c) where it appears to the competent authority that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, the competent authority may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement, as the competent authority thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Code notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

(3) Where a memorandum of any agreement, the registration of which is required under this section, is not sent to the competent authority as required by this section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Chapter VII, and notwithstanding anything contained in the proviso to sub-section (1) of section 76, shall not, unless the competent authority otherwise directs, be entitled to deduct more than half of any amount paid to the employee by way of compensation whether under the agreement or otherwise.

#### **Reference to Competent Authority (Section 90)**

(1) If any question arises in any proceedings under this Chapter VII as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not an employee) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a competent authority.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Chapter required to be settled, decided or dealt with by a competent authority or to enforce any liability incurred under this Chapter.

#### **Appointment of Competent Authority (Section 91)**

(1) The State Government may, by notification, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personnel management, human resource development, industrial relations and legal affairs or such other experience and qualifications as may be prescribed by the appropriate Government to be a competent authority for the purposes of this Chapter and for such area as may be specified in the notification.

(2) Where more than one competent authority has been appointed for any area, the State Government may, by general or special order, regulate the distribution of business amongst them.

(3) Any competent authority may, for the purpose of deciding any matter referred to him for decision under this Chapter, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

#### **Venue of Proceedings and Transfer (Section 92)**

(1) Where any matter under this Chapter VII is to be done by or before a competent authority, the same shall, subject to the provisions of this Chapter and in the manner prescribed in this behalf by the State Government, be done by or before the competent authority for the area in which—

- (a) the accident took place which resulted in the injury; or
- (b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; or
- (c) the employer has his registered office:

Provided that no matter shall be processed before or by a competent authority, other than the competent authority having jurisdiction over the area in which the accident took place, without his giving notice electronically or otherwise in the manner prescribed by the Central Government to the competent authority having jurisdiction over the area and the State Government concerned:

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India, any such matter may be done by or before a competent authority for the area in which the owner or agent of the ship, aircraft

or motor vehicle resides or carries on business or the registered office of the company is situated, as the case may be.

(2) If a competent authority, other than the competent authority with whom any money has been deposited under section 81, proceeds with a matter under this Chapter, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.

(3) If a competent authority is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other competent authority, whether in the same State or not, he may, subject to rules made under this Code relating to this Chapter, order such matter to be transferred to such other competent authority either for report or for disposal, and, if he does so, shall forthwith transmit to such other competent authority all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the manner as may be prescribed by the Central Government any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the competent authority shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard.

(4) The competent authority to whom any matter is so transferred shall, subject to rules made under this Code relating to this Chapter, inquire therein to and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(5) On receipt of a report from a competent authority to whom any matter has been transferred for report under sub-section (3), the competent authority by whom it was referred shall decide the matter referred to in conformity with such report.

(6) The State Government may transfer any matter from any competent authority appointed by it to any other competent authority appointed by it.

### **Form of Application (Section 93)**

(1) Where an accident occurs in respect of which liability to pay compensation under this Chapter arises, a claim for such compensation may, subject to the provisions of this Chapter, be made before the competent authority.

(2) Subject to the provisions of sub-section (1), no application for the settlement of any matter by competent authority, other than an application by a dependant or joint application by dependants for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(3) An application to a competent authority for claim under sub-section (1) or settlement under sub-section (2) may be made electronically or otherwise in such form and in such manner accompanied by such fee, if any, as may be prescribed by the Central Government.

(4) The time-limit for the disposal of applications under this section and the costs incidental to the proceedings under this section to be imposed by the competent authority shall be such as may be prescribed by the State Government.

### **Power of Competent Authority to require Further Deposit in Cases of Fatal Accident (Section 94)**

(1) Where any sum has been deposited by an employer as compensation payable in respect of an employee whose

injury has resulted in death, and in the opinion of the competent authority such sum is insufficient, the competent authority may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the competent authority, the competent authority may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

### **Appeal against order of Competent Authority (Section 99)**

(1) An appeal shall lie to the High Court from the following orders of a competent authority under this Chapter VII, namely: –

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- (b) an order awarding interest or damages under section 77;
- (c) an order refusing to allow redemption of a half-monthly payment;
- (d) an order providing for the distribution of compensation among the dependants of a deceased employee, or disallowing any claim of a person alleging himself to be such dependant;
- (e) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 85; or
- (f) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order referred to in clause (c), unless the amount in dispute in the appeal is not less than ten thousand rupees or such higher amount as the Central Government may, by notification, specify

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the competent authority, or in which the order of the competent authority gives effect to an agreement arrived at by the parties:

Provided also that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the competent authority to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days from the date of passing of the order.

(3) The provisions of section 5 of the Limitation Act, 1963, shall be applicable to appeal under this section.

## **CHAPTER IX – SOCIAL SECURITY FOR UNORGANISED WORKERS, GIG WORKERS AND PLATFORM WORKERS**

### **Framing of Schemes for Unorganised Workers (Section 109)**

(1) The Central Government shall frame and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to–

- (i) life and disability cover;
- (ii) health and maternity benefits;
- (iii) old age protection;

- (iv) education; and
- (v) any other benefit as may be determined by the Central Government.

(2) The State Government shall frame and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to–

- (i) provident fund;
- (ii) employment injury benefit;
- (iii) housing;
- (iv) educational schemes for children;
- (v) skill upgradation of workers;
- (vi) funeral assistance; and
- (vii) old age homes.

(3) Any scheme notified by the Central Government under sub-section (1), may be–

- (i) wholly funded by the Central Government; or
- (ii) partly funded by the Central Government and partly funded by the State Government; or
- (iii) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the Central Government; or
- (iv) funded from any source including corporate social responsibility fund within the meaning of the Companies Act, 2013 or any other such source as may be specified in the scheme.

(4) Every scheme notified by the Central Government under sub-section (1) shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to all or any of the following, namely: –

- (i) scope of the scheme;
- (ii) authority to implement the scheme;
- (iii) beneficiaries of the scheme;
- (iv) resources of the scheme;
- (v) agency or agencies that will implement the scheme;
- (vi) redressal of grievances; and
- (vii) any other relevant matter,

and a special purpose vehicle may also be constituted by the Central Government for the purpose of implementation of any such scheme.

### **Funding of State Government Schemes (Section 110)**

(1) Any scheme notified by the State Government under sub-section (2) of section 109 may be–

- (a) wholly funded by the State Government; or
- (b) partly funded by the State Government, partly funded through contributions collected from the

beneficiaries of the scheme or the employers as may be specified in the scheme by the State Government;  
or

- (c) funded from any source including corporate social responsibility fund referred to in clause (iv) of sub-section (3) of section 109 or any other such source as may be specified in the scheme.

(2) The State Government may seek financial assistance from the Central Government for the schemes framed by it.

(3) The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

### **Record Keeping (Section 111)**

The Government formulating and notifying the scheme under this Chapter shall provide therein the form and manner of keeping the records electronically or otherwise relating to the scheme and the authority by whom such records shall be maintained:

Provided that such records shall, as far as may be possible, bear continuous number for the purpose of proper management of the scheme and for avoiding any duplication and overlapping in records.

### **Helpline, Facilitation Centre for Unorganised Workers, Gig Workers and Platform Workers (Section 112)**

The appropriate Government may set up a toll-free call centre or helpline or such facilitation centres as may be considered necessary from time to time to perform any or more of the following functions, namely: –

- (a) to disseminate information on available social security schemes for the unorganised workers, gig workers and platform workers;
- (b) to facilitate filing, processing and forwarding of application forms for registration of unorganised workers, gig workers and platform workers;
- (c) to assist unorganised workers, gig workers and platform workers to obtain registration; and
- (d) to facilitate the enrolment of the registered unorganised workers, gig workers and platform workers in the social security schemes.

### **Registration of Unorganised Workers, Gig Workers and Platform Workers (Section 113)**

(1) Every unorganised worker, gig worker or platform worker shall be required to be registered for the purposes of this Chapter, subject to the fulfilment of the following conditions, namely: –

- (a) he has completed sixteen years of age or such age as may be prescribed by the Central Government;
- (b) he has submitted a self-declaration electronically or otherwise in such form and in such manner containing such information as may be prescribed by the Central Government.

(2) Every eligible unorganised worker, gig worker or platform worker referred to in sub-section (1) shall make an application for registration in such form along with such documents including Aadhaar number as may be prescribed by the Central Government and such worker shall be assigned a distinguishable number to his application:

Provided that the system of electronic registration maintained by the appropriate Government shall also provide for self-registration by any such worker in such manner as may be prescribed by the Central Government.

(3) A registered unorganised worker, gig worker or platform worker shall be eligible to avail the benefit of the

concerned scheme framed under this Chapter.

(4) The Central Government, or as the case may be, the State Government shall make such contribution in a scheme as may be specified therein.

*Explanation.* –For the purposes of this section, the term “Aadhaar” shall have the same meaning as is assigned to it in section 142.

### **Schemes for Gig Workers and Platform Workers (Section 114)**

(1) The Central Government may frame and notify, from time to time, suitable social security schemes for gig workers and platform workers on matters relating to–

- (a) life and disability cover;
- (b) accident insurance;
- (c) health and maternity benefits;
- (d) old age protection;
- (e) crèche; and
- (f) any other benefit as may be determined by the Central Government.

(2) Every scheme framed and notified under sub-section (1) may provide for–

- (a) the manner of administration of the scheme;
- (b) the agency or agencies for implementing the scheme;
- (c) the role of aggregators in the scheme; (d) the sources of funding of the scheme; and
- (e) any other matter as the Central Government may consider necessary for the efficient administration of the scheme.

(3) Any scheme notified by the Central Government under sub-section (1), may be–

- (a) wholly funded by the Central Government; or
- (b) partly funded by the Central Government and partly funded by the State Government; or
- (c) wholly funded by the contributions of the aggregators; or
- (d) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the aggregators, as may be specified in the scheme framed by the Central Government; or
- (e) funded from corporate social responsibility fund within the meaning of Companies Act, 2013; or
- (f) any other source.

(4) The contribution to be paid by the aggregators for the funding referred to in clause (ii) of sub-section (1) of section 141, shall be at such rate not exceeding two per cent., but not less than one per cent., as may be notified by the Central Government, of the annual turnover of every such aggregator who falls within a category of aggregators, as are specified in the Seventh Schedule.

Classification of Aggregator as per Seventh Schedule are as under:

1. Ride sharing services

2. Food and grocery delivery services
3. Logistic services
4. e-Market place (both market place and inventory model) for wholesale/ retail sale of goods and/or services (B2B/B2C)
5. Professional services provider
6. Healthcare
7. Travel and hospitality
8. Content and media services
9. Any other goods and services provider platform

Provided that the contribution by an aggregator shall not exceed five per cent. of the amount paid or payable by an aggregator to gig workers and platform workers.

Explanation. –For the purposes of this sub-section, the annual turnover of an aggregator shall not include any tax, levy and cess paid or payable to the Central Government.

(5) The date of commencement of contribution from aggregator under this section shall be notified by the Central Government.

(6) The National Social Security Board constituted under sub-section (1) of section 6 shall be the Board for the purposes of the welfare of gig workers and platform workers under the provisions of this Code: Provided that while such Board serves the purposes of welfare of, or matters relating to, gig workers and platform workers, the following members shall constitute the Board instead of the members specified in clauses (c) and (d) of sub-section (2) of section 6, namely: –

- (a) five representatives of the aggregators as the Central Government may nominate;
  - (b) five representatives of the gig workers and platform workers as the Central Government may nominate;
  - (c) Director General of the Corporation;
  - (d) Central Provident Fund Commissioner of the Central Board;
  - (e) such expert members as the Central Government may consider appropriate;
  - (f) five representatives of the State Governments by such rotation as the Central Government may consider appropriate;
  - (g) Joint Secretary to the Government of India in the Ministry of Labour and Employment, who shall be the Member Secretary to the Board.
- (7) (i) The Central Government may provide that–
- (a) the authority to collect and to expend the proceeds of contribution collected;
  - (b) the rate of interest to be paid by an aggregator in case of delayed payment, less payment or non-payment of contribution;
  - (c) self-assessment of contribution by aggregators;
  - (d) conditions for cessation of a gig worker or a platform worker; and
  - (e) any other matter relating to smooth functioning of the social security scheme notified under this

section, shall be such as may be prescribed by that Government.

- (ii) The Central Government may by notification, exempt such aggregator or class of aggregators from paying of contribution under sub-section (4), subject to such conditions as may be specified in the notification.

*Explanation.*—For the purposes of this section, an aggregator having more than one business shall be treated as a separate business entity or aggregator.

### **Maintenance of Records, Registers, Returns (Section 123)**

An employer of an establishment shall—

- (a) maintain records and registers in the form prescribed by the appropriate Government, electronically or otherwise, containing such particulars and details with regard to persons employed, muster roll, wages and such other particulars and details, in such manner, as may be prescribed by the appropriate Government including—
  - (i) number of days for which work performed by employees;
  - (ii) number of hours of work performed by the employees;
  - (iii) wage paid;
  - (iv) leave, leave wages, wages for overtime work and attendance;
  - (v) employees identification number, by whatever nomenclature it may be called;
  - (vi) number of dangerous occurrences, accidents, injuries in respect of which compensation has been paid by the employer and the amount of such compensation relating to Chapter IV and Chapter VII, respectively;
  - (vii) statutory deductions made by employer from the wages of an employee in respect of Chapter III and Chapter IV;
  - (viii) details as to cess paid in respect of building and other construction work;
  - (ix) total number of employees (regular, contractual or fixed term employment) on the day specified;
  - (x) persons recruited during a particular period;
  - (xi) occupational details of the employees; and
  - (xii) vacancies for which suitable candidates were not available during the specified period.
- (b) display notices at the workplaces of the employees in such manner and form as may be prescribed by the appropriate Government;
- (c) issue wage slips to the employees, in electronic forms or otherwise; and
- (d) file such return electronically or otherwise to such officer or authority in such manner and during such periods as may be prescribed by the appropriate Government.

Provided that matters to be provided under the rules required to be made under this section relating to Chapter III shall, instead of providing them in rules to be made by the Central Government, be provided in the Provident Fund Scheme or the Pension Scheme or the Insurance Scheme, as the case may be.

Provided further that the forms of records and registers and that of the returns to be filed under Chapter IV shall be specified in the regulations instead of providing them in the rules.

### **Offences by Companies (Section 135)**

(1) Where an offence has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, secretary or other officer of the company, such director, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. –For the purposes of this section, –

(a) “company” means any body corporate, and includes a firm or other association of individuals; and (b) “Director”, in relation to a firm, means a partner in the firm.

### **Compounding of Offences (Section 138)**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence committed for the first time, punishable under this Chapter, being an offence–

- (i) punishable with fine only; or
- (ii) punishable with imprisonment for a term which is not more than one year and also with fine,

may, on an application made, either before or after the institution of any prosecution, be compounded by an officer authorised by the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government, in such manner as may be prescribed by the Central Government on payment by the offender to the appropriate Government the amount–

- (i) in the case of an offence punishable with fine only, the half of the maximum fine provided for that offence; and
- (ii) in the case of an offence punishable with imprisonment for a term which is not more than one year and also with fine, the three-fourth of the maximum fine provided for that offence.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of three years from the date–

- (i) of commission of a similar offence which was earlier compounded; or
- (ii) of commission of similar offence for which such person was earlier convicted.

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government.

(4) Every application for the compounding of an offence shall be made in such form and in such manner as may be prescribed by the appropriate Government.

- (5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
- (6) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought to the notice of the court in which the prosecution is pending in writing by the officer referred to in sub-section (1), and on such notice of the compounding of the offence being given to the court, the person against whom the offence is so compounded shall be discharged.
- (7) Any person who fails to comply with the order made by the officer referred to in sub-section (1), shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

## Lesson 20- The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

### Introduction

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.

It prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibits employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

### Definition

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under:

**Appropriate Government** means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.

**Adolescent means** a person who has completed his fourteenth year of age but has not completed his eighteenth year.

**Child** means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

**Day** means a period of twenty-four hours beginning at midnight.

**Establishment** includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

**Occupier** in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop.

**Workshop** means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

### Prohibition of Employment of Children in any Occupations and Processes

Section 3 of the Act provides that no child shall be employed or permitted to work in any occupations or process except:-

- (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
- (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.

However, no such work shall effect the school education of the child. It may be noted that the *expression*:

- (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;
- (b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;
- (c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”

### **Prohibition of Employment of adolescents in hazardous Occupations and Processes**

Section 3A provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.

The hazardous occupations or processes set forth in the Schedule are as under:

- (1) Mines.
- (2) Inflammable substances or explosives.
- (3) Hazardous process.

*Explanation.* – For the purposes of this Schedule, “hazardous process” has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

However, the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under the Act.

### **Hours and Period of Work**

Section 7 provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that :

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

### **Weekly Holidays**

As per section 8 every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

### **Notice to inspector**

Section 9 provides that every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars namely:

- The name and situation of the establishment;

- The name of the person in actual management of the establishment;
- The address to which communications relating to the establishment should be sent; and
- The nature of the occupation or process carried on in the establishment.

### **Maintenance of Register**

Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –

- the name and date of birth of every adolescent so employed or permitted to work;
- hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;
- the nature of work of any such adolescent; and
- such other particulars as may be prescribed

### **Display of Notice Containing Abstract of Sections 3A and 14**

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3A and 14.

### **Penalties**

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

The parents or guardians of any child or adolescent shall not be liable for punishment, in case of the first offence.

Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards; he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

The parents or guardians having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.

Whoever fails to comply with or contravenes any other provisions of the Act or the rules made thereunder, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

## **District Magistrate to Implement the Provisions**

Section 17A of the Act provides that the appropriate Government may confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

## Lesson 21- Apprentices Act, 1961

*The Apprentices Act, 1961 enacted to regulate and control the programme of training of apprentices and for matters connected therewith. It extends to whole of India.*

### INTRODUCTION

The Apprentices Act, 1961 was enacted with the objective of regulating the programme of training of apprentices in the industry by utilising the facilities available therein for imparting on-the-job training. The Act was amended in 1973 and 1986 to include training of graduates, technicians and technician (vocational) apprentices respectively under its purview. It was further amended in 1997 and 2007 to amend various sections of the Act as regards definition of “establishment”, “worker”, number of apprentices for a designated trade and reservation for candidates belonging to Other Backward Classes, etc. Comparing the size and rate of growth of economy of India, the performance of Apprenticeship Training Scheme is not satisfactory and a large number of training facilities available in the industry are going unutilised depriving unemployed youth to avail the benefits of the Apprenticeship Training Scheme. Employers are of the opinion that provisions of the Act are too rigid to encourage them to engage apprentices and provision relating to penalty create fear amongst them of prosecution and they have suggested to modify the Apprentices Act suitably. In order to make the apprenticeship more responsive to youth and industry, the Apprentices Act, 1961 has been amended and brought into effect from 22nd December, 2014. The Apprentices (Amendment) Act, 2014 expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.

### Definitions

Section 2 of the Act defines various terms used in the Act; Some of the definitions are given here under:

**Apprentice** means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. (Section 2(aa))

**Apprenticeship training** means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. (Section 2 (aaa))

**Appropriate Government** means —

- (1) in relation to —
  - (a) the Central Apprenticeship Council, or
  - (aa) the Regional Boards, or
  - (aaa) the practical training of graduate or technician apprentices or of technician (vocational) apprentices, or;
    - (b) any establishment of any railway, major port, mine or oilfield, or
    - (bb) any establishment which is operating business or trade from different locations situated in four or more States, or
    - (c) any establishment owned, controlled or managed by —
      - (i) the Central Government or a department of Central Government,
      - (ii) a company in which not less than fifty-one per cent of the share capital is held by the Central

Government on partly by that Government and partly by one or more State Governments,

- (iii) a corporation (including a co-operative society) established by or under a Central Act which is owned, controlled or managed by the Central Government;

the Central Government;

(2) in relation to —

- (a) a State Apprenticeship Council, or
- (b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Govt; {Section 2(d)}.

Designated trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act. [Section 2(e)].

Employer means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment. [Section 2 (f)]

Establishment includes any place where any industry is carried on and where an establishment consists of different departments or have branches, whether situated in the same place or at different places, all such departments or branches shall be treated as part of that establishment. [Section 2 (g)]

Graduate or technician apprentice means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or non-engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any designated trade. {Section 2(j)}

Industry means any industry or business in which any trade, occupation or subject field in engineering or non-engineering or technology or any vocational course may be specified as a designated trade or optional trade or both. {Section 2(k)}

Optional trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act. {Section 2(II)}

Portal-site means a website of the Central Government for exchange of information under this Act. [Section 2(III)]

**Technician (vocational) apprentice** means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognised by the All-India Council and undergoes apprenticeship training in designated trade. [Section 2(pp)]

Trade **Apprentice** means an apprentice who undergoes apprenticeship training in any designated trade. [Section 2(q)]

Worker means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer but shall not include an apprentice referred to in clause (aa). [Section 2(r)].

## **Qualifications for being engaged as an apprentice**

Section 3 of the Act provides that a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he —

- (a) is not less than fourteen years of age, and for designated trades related to hazardous industries, not less than eighteen years of age; and
- (b) satisfies such standards of education and physical fitness as may be prescribed: Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

## **Contract of apprenticeship**

Section 4 of the Act deals with Contract of apprenticeship. Section 4 states that -

- (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.
- (2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).
- (3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract: Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.
- (4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration.
- (4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.
- (4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

## **Novation of contracts of apprenticeship**

Section 5 of the Act provides that where an employer with whom a contract of apprenticeship has been entered into, is for any reason unable to fulfil his obligations under the contract and with the approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as apprentice under the other employer for the un-expired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser, shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer, and on and from the date of such registration, the contract of apprenticeship with the first employer shall terminate and no obligation under the contract shall be enforceable at the instance of any party to the contract against the other party thereto.

## **Regulation of optional trade**

Section 5A of the Act provides that the qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentices in optional trade shall be such as may be prescribed.

## **Engagement of apprentices from other States**

Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

## **Period of apprenticeship training**

As per section 6 of the Act the period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows —

- (a) In the case of trade apprentices who, having undergone institutional training in a school or other institution recognised by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognised by that Council, the period of apprenticeship training shall be such as may be prescribed.
- (aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority or courses approved under any scheme which the Central Government may, by notification in the Official Gazette specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority or by any other agency authorised by the Central Government, the period of apprenticeship training shall be such as may be prescribed;
- (b) in the case of other trade apprentices, the period of apprenticeship training shall be such as may be prescribed;
- (c) in the case of graduate or technician apprentices, technician (vocational) apprentices and the period of apprenticeship training shall be such as may be prescribed.

## **Number of apprentices for a designated trade and optional trade**

Section 8 empowers the Central Government to prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Several employers may join together either themselves or through an agency, approved by the Apprenticeship Adviser, according to the guidelines issued from time to time by the Central Government in this behalf, for the purpose of providing apprenticeship training to the apprentices under them.

## **Practical and basic training of apprentices**

Section 9 deals with practical and basic training of apprentices. Section 9 states that:

- Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.
- The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser authorised

by the State Apprenticeship Adviser in writing in this behalf shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.

- Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.
- In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne –
  - (i) If such employer employs two hundred and fifty workers or more, by the employer;
  - (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;
- Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.
- Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentice technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in non-engineering.

### **Obligations of employers**

Every employer shall have the following obligations in relation to an apprentice, namely: –

- to provide the apprentice with the training in his trade in accordance with the provisions of the Act and the rules made thereunder;
- if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;
- to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices;
- to carry out his obligations under the contract of apprenticeship.

## **Obligations of apprentice**

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

- to learn his trade conscientiously and diligently and endeavor to qualify himself as a skilled craftsman before the expiry of the period of training;
- to attend practical and instructional classes regularly;
- to carry out all lawful orders of his employer and superiors in the establishment; and
- to carry out his obligations under the contract of apprenticeship.
- Every graduate or technician apprentice, technician (vocational) apprentice undergoing apprenticeship training shall have the obligations to learn his subject field in engineering or technology or vocational course conscientiously and diligently at his place of training; to attend the practical and instructional classes regularly; to carry out all lawful orders of his employer and superiors in the establishment; to carry out his obligations under the contract of apprenticeship.

## **Hours of work, overtime, leave and holidays**

Section 15 of the Act deals with hours of work, overtime, leave and holidays. Section 15 provides that:

- (1) The weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed.
- (2) No apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.
- (3) An apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training.

## **Apprentices are trainees and not workers**

Every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

## **Records and returns**

Section 19 of the Act provides that every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed.

Until a portal-site is developed by the Central Government, every employer shall furnish such information and return in such form as may be prescribed, to such authorities at such intervals as may be prescribed.

Every employer shall also give trade-wise requirement and engagement of apprentices in respect of apprenticeship training on portal-site developed by the Central Government in this regard.

## **Settlement of disputes**

As per section 20 of the Act any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be referred to the Apprenticeship Adviser for decision.

Any person aggrieved by the decision of the Apprenticeship Adviser may, within thirty days from the date of communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council and such appeal shall be heard and determined by a Committee of that Council appointed for the purpose. The decision of the Committee and subject only to such decision, the decision of the Apprenticeship Adviser shall be final.

### **Holding of test and grant of certificate and conclusion of training**

Section 21(1) provides that every trade apprentice who has completed the period of training may appear for a test to be conducted by the National Council or any other agency authorised by the Central Government to determine his proficiency in the designated trade in which he has undergone apprenticeship training.

Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council or by the other agency authorised by the Central Government.

The progress in apprenticeship training of every graduate or technician apprentice shall be assessed by the employer from time to time. Every graduate or technician apprentice or technician (vocational) apprentice who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

### **Offer and acceptance of employment**

As per section 22(1) of the Act every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

Section 22(2) states that notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to be the period of remuneration agreed to between the apprentice and the employer.

### **Authorities under the Act**

In addition to the Government, there are the following authorities under the Act, namely : –

- (a) The National Council,
- (b) The Central Apprenticeship Council,
- (c) The State Council,
- (d) The State Apprenticeship Council,
- (e) The All India Council,
- (f) The Regional Boards,
- (g) The Boards or State Councils of Technical Education
- (h) The Central Apprenticeship Adviser,
- (i) The State Apprenticeship Adviser.

Every State Council shall be affiliated to the National Council and every State Apprenticeship Council shall be affiliated to the Central Apprenticeship Council. Every Board or State Council of Technical Education and every

Regional Board shall be affiliated to the Central Apprenticeship Council.

Each of the authorities specified above shall, in relation to apprenticeship training under the Act, perform such functions as are assigned to it by or under the Act or by the Government. However, a State Council shall also perform such functions as are assigned to it by the National Council and the State Apprenticeship Council and the Board or State Council of Technical Education shall also perform such functions as are assigned to it by the Central Apprenticeship Council.

## **Offence and penalties**

Section 30 deals with offences and penalties. Section 30 provides that-

- (1) If any employer contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate Government, for explaining the reasons for such contravention.
- (1A) In case the employer fails to reply the notice within the period specified under sub-section (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats are filled up.
- (2) If any employer or any other person –
  - (a) required to furnish any information or return- (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and which is either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or give a false answer to any question necessary for obtaining any information required to be furnished by him, or
  - (b) refuses or willfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or
  - (c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or
  - (d) employs an apprentice on any work which is not connected with his training, or
  - (e) makes payment to an apprentice on the basis of piece-work, or
  - (f) requires an apprentice to take part in any output bonus or incentive scheme.
  - (g) engages as an apprentice a person who is not qualified for being so engaged, or
  - (h) fails to carry out the terms and conditions of a contract of apprenticeship he shall be punishable with fine of one thousand rupees for every occurrence.
- (2A) The provisions of this section shall not apply to any establishment or industry which is under the Board for Industrial and Financial Reconstruction established under the Sick Industrial Companies (Special Provisions) Act, 1985.

## **Lesson 22-The Labour Laws (Simplification of Procedure for furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988**

*The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.*

### **INTRODUCTION**

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 amended the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. The Amendment Act now includes 7 more Labour Acts under the purview of the Principal Act. Also, the coverage of Principal Act has been expanded from the establishments employing upto 19 workers to 40 workers. The Amendment Act also gives an option to maintain the registers electronically and to file the returns electronically which leads to ease of compliance as well as better enforcement of the labour laws.

### **Definitions**

Section 2 of the Act defines various terms used in the Act, the definitions are given here under:

#### **Employer**

Employer, in relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act {Section 2 (a)}.

#### **Establishment**

Establishment has the meaning assigned to it in a Scheduled Act, and includes — (i) an “industrial or other establishment” as defined in Sec. 2 of the Payment of Wages Act, 1936 ; (ii) a “factory” as defined in Sec. 2 of the Factories Act, 1948 ;(iii) a factory, workshop or place where employees are employed or work is given out to workers, in any scheduled employment to which the minimum wages Act, 1948, applies. (iv) a “plantation” as defined in Sec. 2 of the Plantations Labour Act, 1951; and (v) a “newspaper establishment” as defined in Sec. 2 of the Working Journalists and other Newspaper Employees (conditions of Service) and Miscellaneous Provisions Act, 1955{Section 2 (b)}.

#### **Form**

Form means a Form specified in the Second Schedule (Section 2 (c)). Following forms are specified in the second schedule. They are as under:

- Form I -Annual Return(To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 30th April of the following year)

- Form II -Register of persons employed-cum-employment card
- Form III- Muster roll-cum-wage register

### **Scheduled Act**

Scheduled Act means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made thereunder{Section 2 (d)}.

Following are the sixteen Acts specified in the first schedule. They are as under:

1. The Payment of Wages Act, 1936
2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961
8. The Payment of Bonus Act, 1965
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

### **Small establishment**

Small establishment means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months{Section 2 (e)}.

### **Very small establishment**

Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.{Section 2 (f)}.

### **Exemption from furnishing or maintaining of returns and registers required under certain labour laws**

Section 4(1) of the Act provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain

Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small

establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act.

It may be noted that such employer –

- (a) furnishes, in lieu of such returns, annual return in Form I; and
- (b) maintains at the work spot, in lieu of such registers, –
  - (i) registers in Form II and Form III, in the case of small establishments, and
  - (ii) a register in Form III, in the case of very small establishments.

Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

#### **Furnishing or maintaining of returns and registers in electronic form**

As per Section 4 (2) of the Act, the annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.

It may be noted that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

Under section 4(3) the employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

#### **Penalty**

As per section 6 of the Act, any employer who fails to comply with the provisions of the Act shall, on conviction, be punishable, in the case of the first conviction, with fine which may extend to rupees five thousand; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both.

## Lesson 23-Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

*An Act for provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of 'sexual harassment and or matters connected therewith or incidental thereto.*

### REGULATORY FRAMEWORK

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

### HISTORY OF THE LEGISLATION

Sexual harassment of a woman in workplace is of serious concern to humanity on the whole. It cannot be construed to be in a narrow sense, as it may include sexual advances and other verbal or physical harassment of a sexual nature. The victims of sexual harassment face psychological and health effects like stress, depression, anxiety, shame, guilt and so on.

“...the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree” Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013.

Sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of *Vishaka v. State of Rajasthan, 1997 6 SCC 241: AIR 1997 SC 3011* (“Vishaka Judgment”), wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. In the absence of a specific law in India, the Supreme Court, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment (“Vishaka Guidelines”) which were being followed by employers until the enactment of the Act.

---

The Vishaka Judgement: In 1992, Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women’s rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka. The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified.

As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

As per the Vishaka judgment,

‘Sexual Harassment’ includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a. Physical contact and advances;
- b. A demand or request for sexual favours;
- c. Sexually coloured remarks;
- d. Showing pornography;
- e. Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.’

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw out wide open an issue that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this respect was the case of *Apparel Export Promotion Council v. A.K Chopra, (1999) 1 SCC 759*. In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that “sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her.”

In light of the above judgment, the very first efforts, towards implementing a law for protection of women from sexual harassment at workplace, were taken in 2007 when the Protection of Women against Sexual Harassment at Workplace Bill, 2007, was introduced in the Parliament. However, this Bill never saw the light of the day. On December 7, 2010, the Protection of Women against Sexual Harassment at Work Place Bill, 2010 (the “Original Bill”) was introduced in Lok Sabha and was referred to a Parliamentary Standing Committee on Human Resource Development, led by Shri Oscar Fernandes (“Standing Committee”), on December 30, 2010 for examination, and the Standing Committee came out with its report in December, 2011.

Further to the report, subsequent changes were made to the Original Bill, including to the title of the Bill, which was changed to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2013 (the “Bill”). The change of title clearly reflects the objective of the Ministry for passing this legislation i.e. to not just focus on

redressal of complaints of sexual harassment but also focus on prevention and prohibition of sexual harassment.

As already stated above, since several bills related to prevention of sexual harassment, one after the other, were always pending in either of the Houses of the Parliament (the Lok Sabha or the Rajya Sabha), Medha Kotwal Lele, coordinator of Aalochana, a centre for documentation and research on women filed a petition in the Supreme Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. The Supreme Court was specifically required to consider whether individual state governments had made the changes to procedure and policy required by the Vishaka Guidelines or not.

The Supreme Court then, in *Medha Kotwal Lele vs. Union of India*, AIR 2013 SC 93 stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. Further, the Court held that a number of states were falling short in this regard and reiterated that there is an obligation to prevent all forms of violence. It stated that “lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population — the women”.

This case further stated that States governments must make the necessary amendments to the Central Civil Services (Conduct) Rules, 1964 and Standing Orders within two months of the date of judgment and entrusted a responsibility upon the Bar Council of India to ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka Guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes were required to ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the Vishaka Guidelines.

The protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India.

So, it was expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

India’s first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) was enacted by the Ministry of Women and Child Development, India in 2013 — after 16 years of the Supreme Court judgment in the case of *Vishaka & Ors. vs. State of Rajasthan & Ors.* (1997 (7) SCC 323). The Act came into force w.e.f. 9th December, 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“POSH Rules”). The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 (“Criminal Law Amendment Act”) which has criminalized offences such as sexual harassment, stalking and voyeurism.

## **OBJECT OF THE ACT**

The Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment.

### **The Preamble of the Act reads as under:**

“An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe

environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.”

### ***What is Workplace Sexual Harassment?***

Workplace sexual harassment is sexual, unwelcome and the experience is subjective. It is the impact and not intent that matters and it almost always occurs in a matrix of power. The impact of sexual harassment at workplace is far reaching and is an injury to equal right of women. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today’s competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and emotional suffering.

## **FORMS OF WORKPLACE SEXUAL HARASSMENT**

Generally workplace sexual harassment refers to Mo common forms of inappropriate behaviour:

- Quid Pro Quo (literally ‘this for that’) - Implied or explicit promise of preferential/detrimental treatment in employment - Implied or express threat about her present or future employment status.
- Hostile Work Environment - Creating a hostile, intimidating or an offensive work environment - Humiliating treatment likely to affect her health or safety.

## **APPLICABILITY**

The Act applies to both the organized and unorganized sectors (self-employed or having less than 10 workers) in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

## **DEFINITIONS (SECTION 2)**

“Aggrieved woman” means—

- i. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
- ii. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house. [Section 2(a)]

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, ad-hoc, or daily wages basis is protected under the Act. It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.

**“Appropriate Government”** means —

- i. in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly —
  - a. by the Central Government or the Union territory administration, the Central Government;
  - b. by the State Government, the State Government
- ii. in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government; i.e. for the private sector, appropriate Government is the concerned State Government. [Section 2(b)]

**“Domestic worker”** means

- a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis;
- but does not include any member of the family of the employer.

[Section 2(e)]

**“Employee”** means

- a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and
- includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

[Section 2(f)]

**“Employer”** means:’ —

- i. in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
- ii. in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

*Explanation.* — For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

- iii. in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
- iv. in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.

[Section 2(g)]

**“Respondent”** means a person against whom the aggrieved woman has made a complaint under section 9.

[Section 2(m)]

**“Sexual harassment”** includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: –

- i. physical contact and advances; or
- ii. a demand or request for sexual favours; or
- iii. making sexually coloured remarks; or
- iv. showing pornography; or
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

[Section 2(n)]

The POSH Act defines ‘sexual harassment’ in line with the Supreme Court’s definition of ‘sexual harassment’ in the Vishaka Judgment. The definition of ‘sexual harassment’ under the POSH Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient. The definition also includes reference to creating an ‘intimidate, offensive or hostile working environment’. An example would be a work environment where an individual is subject to unwelcome comments about her body type resulting in the woman employee feeling embarrassed and unable to work properly.

The Act has defined what constitutes sexual harassment under Section 2 (n) and under Section 3, has further widened the definition of sexual harassment by providing that any of the following circumstances, related to sexual harassment, may also amount to Sexual Harassment: (1) implied or explicit promise of preferential treatment in the victim’s employment; (2) implied or explicit threat of detrimental treatment in the victim’s employment; (3) implied or explicit threat about the victim’s present or future employment status; (4) interferes with the victim’s work or creating an intimidating or offensive or hostile work environment for her and (5) humiliating treatment likely to affect the victim’s health or safety.

The definition is very wide, as it provides for direct or implied sexual conduct, which may mean that what is “implied” sexual behaviour for one person, may not be the same for another person. Hence, the implied behaviour will depend only upon the interpretation of a person. The definition also provides that harassment may be a verbal or non-verbal conduct. Hence, a mere statement in a case where the plaintiff requested defendant No. 1 to instruct the attendants to switch off the A. C. Machine, but in reply defendant No. 1 said “... come close to me, you will start feeling hot”, can also be construed to be sexual harassment [*Albert Davit Limited vs. Anuradha Chowdhury and Ors., (2004) 2 CALLT 421 (HC)*].

According to section 2(o) **“workplace”** includes –

- a. any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- b. any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- c. hospitals or nursing homes;

- d. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- e. any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- f. a dwelling place or a house;

Workplace [section 2 (o)] has been defined as private sector organisation / private venture / undertaking / enterprise / institution / establishment/ society/trust/ non-governmental organisation / unit or service provider and places visited by employee (arising out of or during the course of employment, including transportation provided by employer for undertaking journey). Hence, if harassment takes place even during transportation or during a lunch meeting at a restaurant, the same will be covered under the Act.

As such, a logical meaning should be given to the expression “workplace” so that the purpose for which those guidelines have been framed, is not made unworkable. Workplace cannot be given a restricted meaning so as to restrict the application of the said guidelines within the short and narrow campus of the school compound. Workplace should be given a broader and wider meaning so that the said guidelines can be applied where its application is needed even beyond the compound of the workplace for removal of the obstacle of like nature which prevents a working woman from attending her place of work and also for providing a suitable and congenial atmosphere to her in her place of work where she can continue her service with honour and dignity.

In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*, WP(C) No. 8649/2007, the respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual harassment at workplace as the alleged misconduct took place not at the workplace but at an official mess where the woman officer was residing. It was also argued that the complainant was even senior to the respondent and therefore no ‘favour’ could be extracted by the respondent from the complainant and thus the alleged act would not constitute ‘sexual harassment’. The Delhi Court while considering this matter held this as ‘clearly misconceived’. The Delhi Court observed that ‘the aim and objective of formulating the Vishaka Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term ‘workplace’ by confining the meaning to the commonly understood expression “office”. It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of videoconferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at ‘workplace’ but at his ‘residence’ and get away with the same. Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the ‘workplace’:

- Proximity from the place of work;
- Control of the management over such a place/residence where the working woman is residing; and
- Such a residence has to be an extension or contiguous part of the working place.

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under ‘workplace’.

**“Unorganised sector”** in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.**[Section 2(p)]**

## COMPLAINTS COMMITTEE

The Act provides for two kinds of complaints mechanisms:

- (i) Internal Complaints Committee (ICC); and
- (ii) Local Complaints Committee (LCC).

### Constitution Internal Complaints Committee

According to section 4 the Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. The section provides for the following regarding the ICC:

**1. Mandatory constitution of Internal Complaints Committee by order in writing:**

Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

**2. Composition of the ICC:** The Internal Committee shall consist of the following members to be nominated by the employer, namely: —

- a. **Presiding Officer:** a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees. However, in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section.

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

- b. **Members:** not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
- c. **External member:** one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

**3. Tenure of office:**

The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

**4. Fees of external members:**

The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

**5. Casual vacancy in the office of Presiding Officer or any member of Internal Committee:** Where the Presiding Officer or any Member of the Internal Committee-

- a. contravenes the provisions of section 16; or

- b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- c. he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be,

shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

In *Vidya Akhave ("Petitioner") v. Union of India and Ors*, Writ Petition 796 of 2015, The Bombay High Court ("Court") ruled that it would not interfere with an order of punishment passed by the Internal Complaints Committee ("ICC") in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.

### **Constitution of Local Complaints Committee**

At the district level, the Government is required to set up a 'Local Complaints Committee' ("LCC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee. The provisions of the Act w.r.t. LCC are as follows:

#### **(i) Notification of District Officer.**

According to section 5, the Appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

#### **(ii) Constitution and jurisdiction of Local Committee**

According to section 6, every District Officer shall constitute in the district concerned, a committee to be known as the "Local Committee" to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself. The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Committee within a period of seven days. The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

#### **(iii) Composition, tenure and other terms and conditions of Local Committee**

Pursuant to section 7, the Local Committee shall consist of the following members to be nominated by the District Officer, namely:- —

- a. a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
- b. one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
- c. two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal

knowledge. It is provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

- d. the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio. [Section 7(1)]

The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer. Where the Chairperson or any Member of the Local Committee commits any of the following acts, he shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section:

- a. contravenes the provisions of section 16; or
- b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- c. has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be.

The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

## **Grants and Audit**

In accordance with section 8, the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in section 7.

The State Government may set up an agency and transfer the grants so made to that agency. The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to section 7.

The accounts of such agency shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

## **COMPLAINT**

### **Complaint of Sexual harassment**

Section 9 of the Act provides for the procedure for filing and hearing of complaints under the Act as follows:

1. Any aggrieved woman may make, in writing, a complaint of sexual harassment at work place to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

2. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. In fact the more prompt the complaint is, the more authentic can it be treated.

In *Manjeet Singh vs. Indraprastha Gas Limited 236 (2017) DLT 396*, the Delhi High Court observed that anonymous complaints under the Act are bound to be rejected.

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.

## **CONCILIATION**

According to section 10, the Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman, take steps to settle the matter between her and the respondent through conciliation. It is provided that no monetary settlement shall be made as a basis of conciliation.

Where a settlement has been so arrived, the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement so recorded to the aggrieved woman and the respondent. No further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be in case where such settlement is arrived.

## **Inquiry into Complaint**

Section 11 of the Act states the procedure for conducting inquiry into the complaint made under the Act. Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable.

It is provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.

It is provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

The POSH Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:-

- a. summoning and enforcing the attendance of any person and examining him on oath;
- b. requiring the discovery and production of documents; and
- c. any other matter which may be prescribed.

Such an inquiry shall be completed within a period of ninety days.

### **Action during pendency of inquiry.**

Section 12 provides for the relief that can be given by IC to the aggrieved woman during pendency of inquiry. During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to —

- a. transfer the aggrieved woman or the respondent to any other workplace; or
- b. grant leave to the aggrieved woman up to a period of three months; or
- c. grant such other relief to the aggrieved woman as may be prescribed.

The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

On such recommendation of the Internal Committee or the Local Committee, as the case may be, the employer shall implement the recommendations so made and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

### **Inquiry Report**

Section 13 of the Act provides for the action report to be submitted by IC or LC after conducting inquiry under the Act. On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be –

- i. to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
- ii. to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15.

It is provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman. It is provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

### **Punishment for false or malicious complaint and false evidence**

There are strict provisions under section 14 of the Act for false or malicious complaint and false evidence under the Act. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

It is provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section. It is provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

### **Determining of Compensation**

Section 15 provides that for the purpose of determining the sums to be paid to the aggrieved woman section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman; (b) the loss in the career opportunity due to the incident of sexual harassment; (c) medical expenses incurred by the victim for physical or psychiatric treatment; (d) the income and financial status of the respondent; (e) feasibility of such payment in lump sum or in installments.

### **Prohibition of publication or making known contents of complaint and inquiry proceedings**

According to section 16, Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner.

It is provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

## **Penalty for publication or making known contents of complaint and inquiry proceedings**

According to section 17, where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

## **APPEAL**

Section 18 provides for the appeal by aggrieved person under the Act. Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (1) of section 13 or subsection (I) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed. Such appeal shall be preferred within a period of ninety days of the recommendations.

## **DUTIES OF EMPLOYER**

The law has provided for several duties of the employer under section 19 of the Act. Such duties begin at the time when an employer has to set up an internal complaints committee to ensure that aggrieved can file their complaints and seek redressal to such complaints and end at the time when the employer has provided certain data, in accordance with the provisions of the law, in relation to sexual harassment in its annual report. According to the section, every employer shall —

- a. provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- b. display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (I) of section 4;
- c. organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- d. provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- e. assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- f. make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- g. provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code 1860 or any other law for the time being in force;
- h. cause to initiate action, under the Indian Penal Code 1860 or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- i. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- j. monitor the timely submission of reports by the Internal Committee.

## **Duties and Powers of Districts Officer**

Section 20 cast upon the following mandatory duties on the District Officer who shall, —

- a. monitor the timely submission of reports furnished by the Local Committee;
- b. take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

## **MISCELLANEOUS**

### **Committee to submit annual report**

According to section 21, the Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

The District Officer shall forward a brief report on the annual reports so received to the State Government.

### **Employer to include information in annual report**

According to section 22, the employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Appropriate Government to monitor implementation and maintain data.

Pursuant to the provisions of section 23, the appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

### **Appropriate Government to take measures to publicise the Act**

In accordance with section 24, the appropriate Government may, subject to the availability of financial and other resources, — (a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace, (b) formulate orientation and training programmes for the members of the Local Committee.

### **Poser to call for information and inspection of records**

Section 25 lists out the power of the appropriate Government under the Act. The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing, —

- a. call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;
- b. authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

### **Penalty for non-compliance with provisions of Act**

Section 26 provides for a penalty with a fine up to rupees fifty thousand where the employer fails to-

- a. constitute an Internal Committee under sub-section (1) of section 4;
- b. take action under sections 13, 14 and 22; and
- c. contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under.

If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence.

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment.

In addition to above, he shall be liable for cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, by the Government or local authority, as the case may be, for carrying on his business or activity.

### **Cognizance of offence by courts**

According to section 27, every offence under this Act are non-cognizable which means one cannot be arrested without a warrant. No court shall take cognizance of any offence punishable under this Act or any rules made there under, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

### **Act not in derogation of any other law**

Section 28 states that the purpose of the Act is to provide additional safeguard to women at work. According to the section, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

### **Power of appropriate Government to make rules**

Section 29 states that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- a. the fees or allowances to be paid to the Members under sub-section (4) of section 4;
- b. nomination of members under clause (c) of sub-section (1) of section 7;
- c. the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;
- d. the person who may make complaint under sub-section (2) of section 9;
- e. the manner of inquiry under sub-section (1) of section 11;
- f. the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- g. the relief to be recommended under clause (c) of sub-section (1) of section 12;
- h. the manner of action to be taken under clause (i) of sub-section (3) of section 13;

- i. the manner of action to be taken under sub-sections (1) and (2) of section 14;
- j. the manner of action to be taken under section 17;
- k. the manner of appeal under sub-section (1) of section 18;
- l. the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
- m. The form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (I) of section 21.

In 2019, POSH saw an amendment. In general notification issued by Women Development and Child Welfare Department it stated that all businesses in Telangana with ten or more employees are required to register their IC with the State Shebox portal by no later than July 15, 2019. This was done in an effort to help officials better monitor local firms' compliance levels, this is being done.

Maharashtra government also mandated all companies to complete and submit to the Sub-Divisional Magistrate by July 20, 2019, a form explaining their compliance status and internal committee.

In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Central Government made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

## CASE LAWS

### ***Binoy Jacob vs. State of Kerala and Ors. (01.11.2022 - KERHC): CrI.MC No. 847 of 2022***

In this case, petition has been filed to quash the proceedings on the ground that since the very same complaint raised by the 2nd respondent considered by the Internal Complaints Committee and found to be not proved, the criminal prosecution on same set of facts before a court will not stand. Court held that

*"Section 28 of the Act of 2013 stipulates that provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Thus, it is clear that the action under the Act of 2013 by the employer and a complaint registered at the instance of the employee for the offence under the Indian Penal Code is independent to each other. Two fold actions are permissible for the sexual harassment complaint. Hence, both actions are independent and permissible under law. There is absolutely no bar in proceeding with the criminal prosecution initiated against the petitioner."*

### ***Rayala Satyanarayana vs. SBI Funds Management Pvt. Ltd. and Ors. (19.10.2022 - APHC) : Writ Petition No. 8042 of 2019***

In this case, Andhra Pradesh High Court decided on whether the termination of services is, in fact, a major punishment, which cannot be imposed without conducting a separate departmental enquiry or without affording an opportunity of hearing or issuing a separate charge memo. Court held that Conclusions by Committee cannot be the basis for imposing a major penalty of removal from service, because it is a finding/ report in an enquiry into the misconduct of the delinquent and cannot be treated as a mere preliminary investigation or inquiry leading to a disciplinary action. Court stated-

*"the conclusions arrived at by the Committee cannot be the basis for imposing a major penalty of removal from service, mainly on the ground that the conclusions arrived at by the Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action, but shall be treated as a finding/ report in an enquiry into the misconduct of the delinquent. The impugned proceedings further suffer from severe illegality as the said proceedings were issued without there being any regular departmental enquiry and without giving any opportunity as per the Service Rules, which mandate that initiation of disciplinary proceedings is a mandatory requirement and without conducting any enquiry, no employee can be imposed any major penalties."*

## Case Laws

### Caselaw 1

|                   |  |  |
|-------------------|--|--|
| March 28,<br>2025 | Dr. Chetna Rajput (Petitioners)<br>Versus<br>Modern Education Society & Ors<br>(Respondents) | High Court of Judicature at<br>Bombay<br>Writ Petition No.11027 of 2024<br>2025: BHC-AS:14501-DB |
|-------------------|--|--|

### Delayed in Payment of Gratuity Attract Ten Percent Interest

#### Brief Facts

Petitioner initially appointed as a part-time teacher, the said post was a 100% aided and a sanctioned post. Further, the Petitioner was appointed as a full-time Assistant Teacher w.e.f. 17.06.2019 which appointment has the approval of the Regional Deputy Director of Education. Petitioner has rendered service of 25 years (since the year 1998 to September 2023) with the Respondents and that the Petitioner has more than 10 years of qualifying service as per the Pension Rules, therefore, the Petitioner is entitled to pension and also gratuity which the Respondents have delayed, without any justification, thereby compelling the Petitioner to approach High Court.

#### Judgement

Hon'ble High Court noted that "Gratuity" under the provisions of the Payment of Gratuity Act, 1972, is payable to an employee on termination of his employment after having rendered continuous service for not less than five years. Due date for payment of gratuity would be after one month, either upon superannuation or retirement or resignation or death or disablement due to accident or disease. The Hon'ble Supreme Court in the case of *Netram Sahu Vs. The State of Chhattisgarh and Anr. 2018 (5) SCC 430* has held that the provisions of the Payment of Gratuity Act, 1972 being a welfare legislation meant for the benefit of the employees who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the employee rather than to force the employee to approach the Court to get his genuine claim.

As High Court found the delay in payment of the gratuity amount to the Petitioner, being unjustified and the Petitioner being compelled to approach this Court the Respondent Nos.1 and 2 are liable to pay interest. The question is the rate of interest that would be payable on the said amount. Section 7(3A) of the Payment of Gratuity Act, 1972 deals with such an eventuality.

The Ministry of Labour, Government of India, in exercise of powers conferred by Sub-section (3A) of Section 7 of the Payment of gratuity Act, 1972 has issued notification dated 01.10.1987 notifying 10% as the rate of simple interest payable by the employer to his employee in cases where the gratuity is not paid within the specific period. Recently, the Hon'ble Supreme Court has held in it's order dated 3rd March, 2025 passed in SLP No.4468 of 2022 holding that interest on the delayed payment of gratuity, has to be @ 10%, without any excuse. Therefore, Hon'ble High Court directed the Respondent Nos.1 and 2 to pay the amount of gratuity payable to the Petitioner with interest component of 10% p.a. from 30.10.2023 till actual payment.

## Caselaw 2

|                |   |  |
|----------------|---|--|
| April 04, 2025 | Little World Higher Secondary School<br>(Appellant)<br>Versus<br>The State of Madhya Pradesh and Others<br>(Respondent) | High Court of Madhya Pradesh<br>at Jabalpur<br>Writ Appeal No. 563 of 2023 |
|----------------|---|--|

### **Can an employee directly approach the Controlling Authority under the Payment of Gratuity Act without first applying to the employer?**

#### **Brief Facts**

Respondent No. 3 employee was working as teacher in the Appellant institution and that the employee worked from the period 08.06.2001 till 01.07.2011 in the Appellant institution as teacher. However, despite having rendered more than 5 years of qualifying service she was not made payment of gratuity and therefore, she filed an application under Section 7(4) of the Payment of Gratuity Act 1972 before the Controlling Authority seeking payment of gratuity under Payment of Gratuity Act 1972. The said application has been allowed by the Controlling Authority vide order dated 07.10.2021 directing the Appellant school to make payment of gratuity to the Respondent No. 3 to the tune on Rs. 1,09,385/- along with interest @ 10% per annum from the date of exit from the employment till its realization. The Controlling Authority's order was upheld by single-judge bench of this court vide order dated 08-02-2023. The school challenged these decisions through the present writ appeals.

#### **Judgement**

Hon'ble High Court observed that as per Section 7(1) of the Payment of Gratuity Act 1972, a person who is eligible for payment of gratuity is required to send written application to the employer for payment of gratuity in the manner as may be prescribed. However, as per Section 7(2), there is obligation cost on the employer to determine the amount of gratuity and give notice in writing to the person to whom gratuity is payable and further as per Section 7(3), to arrange payment of the said amount of gratuity within 30 days from the date it become payable to the person entitled to receive the gratuity.

Hon'ble Court noted that when Section 7(1) is read along with Section 7(2) and (3) it becomes clear that the obligation on the employer to pay gratuity does not depend on application to be submitted by the employee who has exited from the employment. The application to be submitted by the employee is right given to the employee to submit an application to the employer merely so that the employer may be reminded of his statutory obligation. However, in the same breath Section 7(2) & (3) make position abundantly clear that without waiting for application of the employee it is the obligation of the employer to determine the amount of the gratuity and arrange the payment of the same within 30 days from the date it becomes payable. Section & (2) and (3) are independent provisions and do not depend on prior compliance of section 7 (1). Section 7 (2) operates as soon as gratuity "becomes payable" and not upon submission of application to the employer.

**Caselaw 3**

|                |  |   |
|----------------|--|---|
| March 19, 2025 | Lal Chand Jindal<br>(Petitioner)<br>Versus<br>Regional Manager, Bank of<br>Baroda (Respondent) | High Court of Judicature for<br>Rajasthan, Bench at Jaipur S.B.<br>Civil Writ Petition No.<br>1334/2015 |
|----------------|--|---|

***Sundays and other paid holidays should be taken into count for the purpose of treating Continuous Service of the Workman under Section 25B of the ID Act 1947***

**Brief Facts**

Appellant's statement of claim has been rejected by the Central Industrial Tribunal, on a technical count that he has failed to prove the fact on the record that he worked for more than 240 days in the preceding calendar year as per Section 25-B of the Industrial Disputes Act, 1947(Continuous service). Thereafter, Appellant approached to the High Court and submitted that while counting the service period of the petitioner, the period of the holidays i.e., Sundays and other holidays were not taken into count.

**Judgement**

Hon'ble High Court observed that upon perusal of the record indicates that on the basis of the certificate, the total working period of the petitioner was calculated as 227 days in the last preceding year and on the basis of the same, the Tribunal recorded a finding that the petitioner has failed to prove that he has worked for more than 240 days in a calendar year. While passing the order impugned, the Tribunal has lost sight of the provision contained under Section 25-B (2) of the Act of 1947 and as per the judgment passed by the Hon'ble Apex Court in the case of Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation reported in AIR 1986 SC 458, the Sundays and other paid holidays should be taken into count for the purpose of treating continuous service of the workman. High Court held that in absence of the said finding recorded by the Tribunal the impugned award is not sustainable in the eye of law and is liable to be and is hereby quashed and set aside. The matter is remitted back to the Tribunal by the High Court for its fresh adjudication after affording due opportunity of hearing to both the parties.

**Case Law 4**

|                  |  |   |
|------------------|--|---|
| 05th March, 2025 | M/s J Fibre Corporation<br>(Petitioner)<br>v/s.<br>Shri Maruti Harishchandra Amrute<br>and ors.<br>(Respondents) | High Court of Bombay<br>Writ Petition NO.10454 OF<br>2024 |
|------------------|--|---|

## **Employee crossing the age of superannuation being granted a lumpsum compensation by the court on failure of following the retrenchment procedure by the employer**

### **Brief facts:**

Petitioner is a partnership firm and the Respondent No.1 was employed as Shift Supervisor with the Petitioner. According to Petitioner, the nature of duties of the Respondent No.1 were to supervise production, marking of attendance of workmen, writing of Supervisor report in daily record book etc. That he was drawing gross salary of Rs.12,650/- and therefore, not a 'workman' within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. Respondent No.1 was terminated from the services of vide letter dated 17th May 2018 on account of cost cutting.

Respondent No.1 sent demand letter for his reinstatement and sought intervention of the

Conciliation Officer. The Conciliation Officer made a failure report. The Deputy Commissioner of Labour, Thane referred the dispute relating to termination. The Labour Court declared award directing reinstatement of the Respondent No.1 with effect from 17th May, 2018 with full backwages and continuity of service. The Petitioner did not immediately challenge the award and attempted to settle the matter with the Respondent No.1. In the meantime, Tahasildar attempted to recover amount of Rs.7,23,450/- from the Petitioner towards the execution of the Award.

The Petitioner has filed the present Petition challenging the award.

### **Judgement**

Though the Labour Court has directed reinstatement of Respondent No.1, according to the Petitioner, Respondent No.1 has already crossed the age of retirement and thus there is no question of his reinstatement. It appears that before the Labour Court, PAN Card of Respondent No.1 was produced reflecting his date of birth as 24th June 1961. However, the Labour Court held that the first party had reported before the Court that the second party has already gone beyond the age of 58 years at the time of filing evidence affidavit as his date of birth is 24th June 1961.

In the view of the Hon'ble High Court the Labour Court, has grossly erred in directing reinstatement of Respondent No.1. Even if the age of retirement is assumed as 60 years, Respondent No.1 has attained the age of 60 years on 24<sup>th</sup> June 2021. The direction for reinstatement of Respondent No.1 is thus clearly erroneous. The only issue that arises is in respect of his monetary entitlements during the period from 17th May, 2018, when he was terminated till 24th June, 2021.

It is held that predominant work of the Respondent No.1 was of technical nature. It is

further held that entries made in the reports written by the Respondent No.1 could at best be treated as clerical work and not supervisory work.

Thus, the Hon'ble court directed that:

- i. Award dated 02<sup>nd</sup> November 2022 passed by Labour Court, Thane is modified to the extent Respondent No.1 shall be entitled to lumpsum compensation of Rs.3,58,073/- in lieu of reinstatement and backwages.

- ii. Beyond the amount of Rs. 3,58,073/-, Respondent No.1 shall not be entitled to any service-related benefits from the Petitioner.
- iii. Respondent No.1 is permitted to withdraw the entire amount deposited in this Court alongwith accrued interest.
- iv. Since the order of the Labour Court is modified, the Tahasildar shall forthwith remove the seal/lock put on Petitioner's premises.

Thus, the Writ Petition is partly allowed and disposed of.

**Case Law 5**

|              |   |   |
|--------------|---|---|
| May 23, 2025 | K. Umadevi {Appellant(s)}<br>Versus<br>Government of tamil nadu &<br>ors. {Respondent(s)} | Supreme Court of India Civil<br>Appeal No. 2526 OF 2025<br>(Arising Out of SLP(Civil) No.<br>20178 of 2022) |
|--------------|---|---|

***Concept of Maternity Leave is a matter of not Just Fair Play and Social Justice but is also a Constitutional Guarantee to the Women Employees.***

**Brief Facts:**

A government English teacher named K. Umadevi had two children from a prior marriage and then a third child from a second marriage. A state policy restricting maternity leave to two children led to the rejection of her application for maternity leave for the third child.

Aggrieved by rejection of her request for grant of maternity leave, appellant preferred a writ petition before the High Court. the High Court vide the judgment and order dated 25.03.2022 held that appellant was entitled to grant of maternity benefit. Therefore, rejection of her claim for grant of such benefit was illegal. A Division Bench of the High Court found the judgment of the learned Single Judge to be unsustainable. Division Bench held that the appellant was not entitled to maternity relief as claimed by her. Accordingly, the judgment and order of the learned Single Judge has been set aside. Consequently, the writ appeal was allowed.

**Judgement**

In the above case, Supreme Court overturned a Madras High Court decision that denied maternity leave to a government school teacher for the birth of her third child and inter alia observed that a careful perusal of the above provision would reveal that grant of maternity benefit is per se not denied to a woman employee having more than two children. Following amendment in the year 2017, a restriction has been introduced in Section 5 by inserting a proviso under sub-section (3) as to the entitlement of the period of maternity leave. A woman employee having less than two surviving children is entitled to a maximum period of benefit i.e. 26 weeks and for a woman employee having two or more than two surviving children, the benefit is restricted to 12 weeks. Thus, there is no ceiling or cap on the number of children to claim maternity benefit. Only thing is that in case of a woman employee having two or more than two surviving children seeking maternity leave, period of the benefit is reduced: from a maximum period of 26 weeks to a maximum of 12 weeks. Thus, as can be seen from the above, through various international conventions, the world community has recognized the broad spectrum of reproductive rights which includes maternity benefits. Maternity leave is integral to

maternity benefits. Reproductive rights are now recognized as part of several intersecting domains of international human rights law viz. the right to health, right to privacy, right to equality and non-discrimination and the right to dignity. In a recent decision, Delhi High Court in Commissioner of Police Vs. Raveena Yadav MANU/DE/4823/2024 explained the purpose of maternity benefit. It is to ensure that a working lady may overcome the state of motherhood honourably, peaceably and undeterred by the fear of being victimized for forced absence from work during pre and post-natal periods. Women now constituting a sizable portion of the work force in our country, must be treated with honour and dignity at places where they work to earn their livelihood. The High Court went on to explain the impact of pregnancy on the physiological and psychological state of a woman employee undergoing pregnancy. It is not just motherhood but also childhood that require special attention. Health issues of both mother as well as that of the child are to be kept in consideration while providing maternity leave. Concept of maternity leave is a matter of not just fair play and social justice but is also a constitutional guarantee to the women employees of this country towards fulfilment whereof the State is bound to act.

### Case Law 6

|               |   |  |
|---------------|---|--|
| July 29, 2025 | K Daivshala & Ors {Appellant (s)}<br>Versus<br>Oriental insurance company ltd. & Anr<br>{Respondent(s)} | Supreme Court of India<br>Civil Appeal No. 6986 of 2015 (@<br>Special Leave Petition (C) No.<br>16573 of 2012) |
|---------------|---|--|

### *Phrase “accident arising out of and in the course of his employment” under the Employees’ Compensation Act, 1923*

#### **Brief Facts**

Shahu Sampatrao Jadhavar was employed as a watchman in the Respondent no. 2-Sugar Factory. His duty hours were from early morning 3 am to 11 am. On 22nd April 2003, he left home on his Motorcycle to report for duty. However, unfortunately, he never reached his place of work. When he was 5 kms away from the factory his motorcycle was involved in a fatal accident. He left a large family behind. A widow, four children and his mother. In a claim filed under the Employees’ Compensation Act, 1923 the employer and the insurance company set up the defence that the accident had not arisen out of or in the course of his employment, since the accident occurred outside the precincts of the factory. Overruling the same, the Commissioner for Workmen’s Compensation and Civil Judge, Senior Division awarded a sum of Rs 3,26,140/- along with interest @ 12 per cent per annum from 22.05.2003 to the family members. The High Court has reversed the findings of the Commissioner and set aside the order holding that since the deceased was on his way to his employment, the accident cannot be said to have its origin in the employment. The aggrieved family members are in appeal by way of special leave before the Supreme Court.

#### **Judgement**

Hon’ble Apex Court inter alia observed that the Employees’ Compensation Act, 1923 was enacted to provide for the payment by certain classes of employers to their employees of compensation for injury by accident. Section 3, as set out earlier, provides that if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of the Act. Section 4 sets out that where death results from the injury an amount equal to 50

per cent of the monthly wages of the deceased employee multiplied by the relevant factor ought to be paid. The EC Act is also a beneficial piece of legislation. In 2016, Supreme Court in *Jaya Biswal & Others v. Branch Manager, IFFCO Tokio General Insurance Company Limited & Another*, (2016) 11 SCC 201, while holding that the EC Act was a social welfare legislation meant to benefit the workers and their dependents and to give the employees a sense of security held as under: -

*“20. The EC Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act which reads as under: “An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.”*

XX XX XX XX

*“21. Thus, the EC Act is a social welfare legislation meant to benefit the workers and their dependants in case of death of workman due to accident caused during and in the course of employment should be construed as such.”*

Applying the principle Statutes in *pari materia*, Supreme Court interpret the phrase “accident arising out of and in the course of his employment” occurring in Section 3 of The Employees’ Compensation Act, 1923 to include accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, provided the nexus between the circumstances, time and place in which the accident occurred and the employment is established.

Apex Court held that the deceased was a night watchman and was dutifully proceeding to his workplace to be well on time, there was a clear nexus between the circumstances, time and place in which the accident occurred and his employment as watchman. The accident having clearly arisen out of and in the course of employment, the Commissioner for Workmen’s Compensation and Civil Judge, Senior Division was justified in ordering the claim under the EC Act by his judgment of 26.06.2009.

\*\*\*\*