

SBEC

Compliances of Labour Laws

- Factories Act, 1948
- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- Employees' State Insurance Act, 1948
- Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Employees Compensation Act, 1923
- Contract Labour (Regulation and Abolition) Act, 1970
- Industrial Disputes Act, 1947
- Trade Unions Act, 1926
- Maternity Relief Act, 1961
- Child and Adolescent Labour (Prohibition and Regulation) Act, 2016
- Rights of persons with disabilities Act, 2016
- Prevention of Sexual Harassment of Women at Workplace (Prevention; Prohibition and Redressal) Act, 2013.

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CHAPTER

9

COMPLIANCES UNDER LABOUR LAWS (PROVISIONS APPLICABLE FOR SETTING UP OF BUSINESS)

Covering-

- Factories Act, 1948
- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- Employees' State Insurance Act, 1948
- Employees' Provident Funds and Miscellaneous Provisions Act, 1952
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**EXPECTED
MARKS COVERAGE
(1 to 5)**

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UNIT-1 FACTORIES ACT, 1948

The law relating to factories is governed under the Factories Act, 1948.

The Act has been enacted primarily with the object of **protecting workers** employed in factories against **industrial and occupational hazards**. For that purpose, it seeks to **impose** upon the **owner** or the **occupier** certain **obligations** to protect the workers and to secure for them employment in conditions conducive to their health and safety.

The **State Governments** assume the **main responsibility** for administration of the Act and its various provisions by utilizing the powers vested in them.

APPLICABILITY OF ACT

The Act applies on all Factories.

• **FACTORY**

“Factory” includes any premises including the precincts thereof:-

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| (a) | whereon ten 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 |
| (b) | whereon twenty or more workers are working, or were working on a 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. |

The following are **not covered** by the definition of factory:

Railway running sheds, (ii) mines, (iii) mobile units of armed forces, (iv) hotels, eating places or restaurants.

ESSENTIAL ELEMENTS OF <u>AFACTORY:-</u>	(a) There must be a premises.
	(b) There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises.
	(c) There must be ten or more workers who are/were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.

Meaning of words “premises and precincts”

The word **“premises”** is a generic term meaning open land or land with building or building alone.

The term **‘precincts’** is usually understood as a **space enclosed by walls**.

CASE LAW



The Supreme Court in **Ardeshir H. Bhiwandiwalla v. State of Bombay**, held that the salt works, in which the work done is of **conversion of sea water into crystals of salt**, come within the meaning of the word ‘premises’ and so the workers engaged in this work are workers within the Factories Act, 1948.

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• **WORKER**

According to Section 2(1) of the Factories Act 1948, “Worker” means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process **but does not include** any member of the armed forces of the Union.

• **OCCUPIER**

“Occupier” means a person who has **ultimate control over the affairs** of the factory.

Provided that:-

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| (a) | in the case of a firm or other association of individuals , any one of the individual <u>partners or members</u> there of shall be deemed to be the occupier; |
| (b) | in the case of a company , any one of the <u>directors</u> , shall be deemed to be the occupier; |
| (c) | in the case of a factory owned or controlled by the Central Government or any State Government/government Company , or any local authority, the person or <u>persons appointed to manage the affairs of the factory</u> shall be deemed to be the occupier. |

CASE LAW



J.K. Industries Ltd. v. Chief Inspector of Factories	Supreme Court held that only a member of Board of Directors of the Company can be occupier of the factory of the Company. The ultimate control of factory owned by company vests in Board of Directors. Company owing factory cannot nominate its employees or officers except Director of the company as occupier of its factory.
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APPROVAL, LICENSING AND REGISTRATION OF FACTORIES

1. The **State Government may make rules:**

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| (a) | requiring, for the purposes of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government; |
| (aa) | requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories; |
| (b) | requiring for the purpose of considering applications for such permission the submission of plans and specifications ; |
| (c) | prescribing the nature of such plans and specifications and by whom they shall be certified; |
| (d) | requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences ; |
| (e) | requiring that no licence shall be granted or renewed <i>unless the notice specified in section 7 has been given.</i> |

2. If on an application for permission referred to in clause (aa) of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, **sent to the state Government or Chief Inspector** by registered post, **no order is communicated to the applicant within three months** from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.

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3. Where a State Government or a Chief Inspector **refuses to grant permission** to the site, construction or extension of a factory or to the registration 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.**

NOTICE BY OCCUPIER

- (1) The occupier shall, **at least fifteen days before** he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing—

(a) the name and situation of the factory;
(b) the name and address of the occupier ;
(bb) the name and address of the owner of the premises or building (including the precincts thereof)
(c) the address to which communications relating to the factory may be sent;
(d) the nature of the manufacturing process-
(i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act; and
(ii) to be carried on in the factory during the next twelve months in the case of all factories;
(e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;
(f) the name of the manager of the factory for the purposes of this Act;
(g) the number of workers likely to be employed in the factory;
(h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;
(i) such other particulars as may be prescribed.

- (2) In respect of all establishments which come within the scope of the Act **for the first time**, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in subsection (1) within **thirty days** from the date of the commencement of this Act.
- (3) Before a factory engaged in a manufacturing process which is ordinarily carried on **for less than one hundred and eighty working days in the year resumes** working, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) at least **thirty days] before the date of the commencement of work.**
- (4) **Whenever a new manager is appointed**, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within **seven days** from the date on which such person takes over charge.
- (5) During any period for **which no person has been designated as manager** of a factory or during which the person designated does not manage the factory, **any person found acting as manager, or if no such person is found, the occupier himself**, *shall be deemed to be the manager of the factory for the purposes of this Act.*

GENERAL DUTIES OF THE OCCUPIER

Section 7 provides that every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

Without prejudice to the generality of the provisions of Sub-section 7(1) the matters to which such duty extends shall include:-

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(a)	The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health ;
(b)	the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
(c)	the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
(d)	the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Except in such cases as may be prescribed, **every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy** with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to **bring the statement and any revision thereof to the notice of all the workers** in such manner as may be prescribed.

MEASURES TO BE TAKEN BY FACTORIES FOR HEALTH, SAFETY AND WELFARE OF WORKERS

(a)	Cleanliness in the factory should be insured.
(b)	All the accumulated dirt should be removed daily.
(c)	Effective method of drainage shall be made and maintained for removing water
(d)	To ensure that interior walls and roofs , etc. are kept clean, white wash or colour wash should be carried at least once in every period of 14 months ;
(e)	All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years .
(f)	The dates on which such processes are carried out shall be entered in the prescribed register.
(g)	factories should make suitable and effective provisions for securing and maintaining adequate ventilation by the circulation of fresh air; and such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health.
(h)	Overcrowding in the work-room should be avoided.
(i)	every factory must provide and maintain sufficient and suitable lighting, natural , artificial or both, in every part of the factory where workers are working or passing;
(j)	every factory should make effective arrangements for sufficient supply of drinking water for all workers in the factory;
(k)	First aid appliances should be available every time (in case of more than 150 workers)
(l)	Canteens facilities should be provided (in case of more than 250 workers)
(m)	Shelters, rest rooms and lunch rooms should be constructed (in case of more than 150 workers)
(n)	in every factory wherein 500 or more workers are ordinarily employed, the occupier should employ such number of welfare officers as may be prescribed.
(o)	Safety officer (in case of 1000 workers or more)
	Section 40-B provides that in every factory (i) where 1,000 or more workers are ordinarily employed or (ii) where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with such duties and qualifications and conditions of service as may be prescribed by State Government.
(p)	Crèches rooms for use of children upto age of 6 years. (in case of more than 30 women workers)
(q)	Ambulance rooms (in case of more than 500 workers)

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(r)	Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers.
(s)	Every factory should have sufficient number of spittoons situated at convenient places. These should be maintained in a clean and hygienic condition.
(t)	water used for artificial humidification should be either purified before use or obtained from a public supply or other source of drinking water

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UNIT – 2 MINIMUM WAGES ACT, 1948

In an **underdeveloped country** which faces the problem of **unemployment** on a very large scale, it is likely that labour may offer to work even on **starvation wages**. So **purpose** of Minimum Wages Act is to **prevent exploitation of labour** and for that purpose it empowers the appropriate Government to take steps to prescribe **minimum rates of wages** in the scheduled industries.

The Minimum Wages Act empowers the Government to fix minimum wages for employees working in specified employments.

SCHEDULED EMPLOYMENT

“Scheduled employment” means an **employment specified in the Schedule** or any process or branch of work forming part of such employment.

FIXATION OF MINIMUM RATES OF WAGES

Section 3 lays down that **the ‘appropriate Government’ shall fix the minimum rates of wages**, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification.

The rates to be **fixed need not be uniform**. **Different rates** can be fixed for different zones or localities.

Section 3 (3) provides that in fixing or revising minimum rates of wages under this section,—

(a) **DIFFERENT MINIMUM RATES OF WAGES** may be fixed for—

(i) different scheduled employments;
(ii) different classes of work in the same scheduled employment;
(iii) adults, adolescents, children and apprentices;
(iv) different localities;

(b) minimum rates of wages may be fixed **BY ANY ONE OR MORE OF THE FOLLOWING WAGE-PERIODS**, namely:—

(i) by the hour,
(ii) by the day,
(iii) by the month, or
(iv) by such other larger wage-period as may be prescribed;
and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated:
<i>Provided that where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936, minimum wages shall be fixed in accordance therewith.</i>

MINIMUM RATES OF WAGES

According to **Section 4** of the Act, any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 **may consist of—**

- (i) a **basic rate of wages** and a **special 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 the “cost of living allowance”); or

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| (ii) a basic rate of wages <u>with or without</u> the cost of living allowance, <u>and</u> the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or |
| (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions , if any. |

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession **rates shall be computed by the competent authority** at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

REVISION OF MINIMUM WAGES

Act provides for review and revision of minimum wages already fixed after suitable intervals not exceeding **five years**.

MANNER OF FIXATION/REVISION OF MINIMUM WAGES

The 'appropriate Government' may fix minimum rate of <u>wages for:</u>	(a) time work, known as a Minimum Time Rate ;
	(b) piece work, known as a Minimum Piece Rate ;
	(c) a " Guaranteed Time Rate " for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis;
	(d) A " Over Time Rate " i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES

METHODS FOR FIXING AND REVISING MINIMUM WAGES

Committee Method

Notification Method

In fixing minimum rates of wages, the appropriate Government can follow either of the two methods described below.

1. 'COMMITTEE METHOD'

The appropriate Government may **appoint as many committees and sub-committees** as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such **date** as may be specified in the **notification**. If **no date** is **specified**, wage rates shall come into force on the expiry of **three months** from the date of the **issue** of the notification. Committee appointed is only an advisory body and Government is not bound to accept its recommendations.

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2. **'NOTIFICATION METHOD'**

When fixing minimum wages the appropriate Government shall by notification, in the Official Gazette **publish** its **proposals** for the information of persons likely to be affected thereby and specify a date not less than **2 months** from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette.

MINIMUM WAGE – WHETHER TO BE PAID IN CASH OR KIND

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in **cash**. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments.

PAYMENT OF MINIMUM WAGES IS OBLIGATORY ON EMPLOYER

Payment of less than the minimum rates of wages notified by the appropriate Government is an offence.

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UNIT – 3 PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and **effective remedy to them against illegal deductions and/or unjustified delay** caused in paying wages to them.

APPLICABILITY OF THE ACT

It applies to the persons employed in a **factory**, '**industrial or other establishment**' or in a railway, whether directly or indirectly, through a sub-contractor.

Employees drawing wages **upto ₹24,000** is covered.

PAYMENT OF WAGES- TIME PERIOD

Wages must be paid:-	(a) Before the expiry of 7 th day after the last day of the wage period, if less than 1000 workmen are employed and in any other case, on or before the 10 th day;
	(b) In currency coins or note and by cheques or by crediting the wages in the employee's bank account after obtaining his written authority;
	(c) On a working day;
	(d) Before the expiry of the second day, to the person whose employment is terminated.

It may be noted that the wage period shall **not exceed one month**.

DEDUCTION FROM THE WAGES OF AN EMPLOYEE

Section 7 of the act allows deductions from the wages of an employee on the account of the following: :	(a) Fines;
	(b) Absence from duty;
	(c) Damage to or loss of goods expressly entrusted to the employee;
	(d) Housing accommodation and amenities provided by the employer;
	(e) Recovery of advances or adjustment of overpayments of wages;
	(f) Recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;
	(g) Subscriptions to and for repayment of advances from any provident fund;
	(h) Income-tax;
	(i) Payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office;
	(j) Deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.

MAINTENANCE OF REGISTERS AND RECORDS

Section 13A provides that every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in prescribed form. Every register and record required to be maintained shall be **preserved** for a period of **three years after the date of the last entry made therein**.

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UNIT – 4 EMPLOYEE'S STATE INSURANCE ACT, 1948

The law relating to employees' State Insurance is governed by the Employees' State Insurance Act, 1948.

The objective of the act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to provide for certain other matters in relation there to.

APPLICABILITY OF ACT

The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories. Employees' State Insurance Act, 1948 applies to factories employing 10 or more persons.

The Act empowers the Government to extend any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise in consultation with the Employees' State Insurance Corporation.

Where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government.

Employees of Factories and establishments covered under the Act drawing monthly wages up to Rs. **21000/- per month** and Rs. **25000/- per month for persons with disabilities** are covered under the scheme

REGISTRATION OF FACTORIES AND ESTABLISHMENTS UNDER THIS ACT

Section 2A of the Act lays down that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

EMPLOYEES' STATE INSURANCE CORPORATION

The ESI Act authorises Central Government to establish Employees State Insurance Corporation for administration of the Employees State Insurance Scheme. Such Corporation shall be **body corporate** having perpetual succession and a common seal and shall sue and be sued by the said name.

EMPLOYEES' STATE INSURANCE

The Act makes compulsory that all the employees in factories or establishments to which this Act applies shall be **insured in the manner provided by this Act**. Such insured persons **shall pay contributions** towards Insurance Fund through their **employers who will also pay their own contribution**. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any **dispute** will be settled by the **Employees' Insurance Court**.

EMPLOYEES' STATE INSURANCE FUND

The Act provides that all **contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund** called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government.

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CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are **3.25 percent and 0.75 percent** of workers wages by employers and employees respectively.

BENEFITS TO THE INSURED

The insured persons, their dependants are entitled to the following benefits on prescribed scale:	(a) periodical payments in case of sickness certified by medical practitioner;
	(b) periodical payments to an insured workman sickness arising out of pregnancy ,
	(c) periodical payment to an insured person suffering from disablement as a result of employment injury ;
	(d) periodical payment to dependants of insured person ;
	(e) medical treatment and attendance on insured person;
	(f) Payment of funeral expenses on the death of insured person at the prescribed rate of ₹10,000/- .

GENERAL PROVISIONS RELATING TO BENEFITS

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| (a) Right to receive benefits is not transferable or assignable. |
| (b) When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment. |

EMPLOYEES' INSURANCE COURT (E. I. COURT)

Section 74 of the E.S.I Act., 1948 provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I. Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and may regulate the distribution of business between them.

Following matters can be decided by E.I Court:

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| <ol style="list-style-type: none">1. Adjudication of disputes: The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employees under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit Under the Act.2. Adjudication of claims: The EI Court also has jurisdiction to decide claims for recovery of contribution from principle employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act. |
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No Civil Court has power to decide the matters falling within the purview/jurisdiction of E.I. Court.

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UNIT– 5 EMPLOYEES’ PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

The Employee’s Provident Funds and Miscellaneous Provisions Act, 1952 is a **welfare legislation** enacted for the purpose of instituting a Provident Fund, Family Pension and Insurance for employees working in factories and other establishments.

The following **three schemes** have been framed under the Act by the Central Government:-

1. The Employees’ Provident Fund Schemes, 1952
2. The Employees’ Pension Scheme, 1995
3. The Employees’ Deposit-Linked Insurance Scheme, 1976.

APPLICATION OF THE ACT

<u>The Act, applies:-</u>	<p>(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed; and</p> <p>(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:</p>
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Once the Act has been made applicable, it does not cease to be applicable even if the number of employees falls below 20.

• **EMPLOYEE**

“Employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer **and includes any person:-**

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| (a) employed by or through a contractor in or in connection with the work of the establishment; |
| (b) Engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961 or under the standing orders of the establishment. |

The Act is applicable to employees drawing pay **not** exceeding **₹15,000/-** per month. The term pay includes basic wages with dearness allowance. However any employee drawing salary of more than **₹15000/-** per month can become member of Provident fund if his employer agrees but subject to permission of Assistant Provident Commissioner.

An employee ceases to be the member of provident fund on attaining the age of 60 years.

EMPLOYEES PROVIDENT FUND SCHEME

EPF or Employee Provident Fund is a **retirement benefit** under which both employer and employee contribute equally in the EPF account.

Further, the employees also **receive interest** on the funds deposited in their EPF account, which is calculated on the monthly balance and is however credited at the end of the financial year.

The **EPF Interest Rate** is determined by EPFO (Employee Provident Fund Organisation) in consultation with the Finance Ministry for every financial year.

As per the scheme the contribution which shall be paid by the employer to the Fund shall be **12%**, of the wages, and the employee’s contribution shall be **equal** to the contribution payable by the employer.

Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement,

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UNIT-6 PAYMENT OF BONUS ACT, 1965

The Payment of Bonus Act, 1965 provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

The term “bonus” is not defined in the Payment of Bonus Act, 1965. However, Webster’s International Dictionary, defines *bonus* as “something given in addition to what is ordinarily received by or strictly due to the recipient”.

APPLICATION OF THE ACT

The Act shall apply to

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| (a) Every factory; and |
| (b) Every other establishment in which twenty or more persons are employed on any day during an accounting year. |

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty.

• **EMPLOYEE**

“Employee” means any person (other than an apprentice) employed on a salary or wages not exceeding **₹21,000** in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work.

ELIGIBILITY FOR BONUS

Two ceilings are available under the Payment of Bonus Act, 1965.

The limit specified under Section 2 (13) which defines an eligible employee under the Act, is generally known as the **eligibility limit**. Similarly, the limit prescribed for calculation of bonus under Section 12 is known as the **calculation ceiling**.

The two ceilings **are revised** to keep pace with the price rise and increase in the salary structure.

The present **Eligibility limit** (Rupees per month) is **Rs. 21,000/-** and **Calculating Ceiling** for bonus (Rupees per month) is Rs. **7,000/-** or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher.

MINIMUM BONUS

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be **8.33 per cent** of salary or wage

MAXIMUM-BONUS

the employer can distribute bonus at higher rates but subject to a maximum of **20 %** of salary or wage. (Section-11).

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TIME LIMIT FOR PAYMENT OF BONUS

Where there is a **dispute regarding payment of bonus** pending before any authority, bonus under this Act shall be paid in cash by his employer, **within a month from the date from which the award** becomes enforceable or the settlement comes into operation, in respect of such dispute;

In any other case, the bonus should be paid within a period of **eight months** from the close of the accounting year.

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UNIT- 7 PAYMENT OF GRATUITY ACT, 1972

The Payment of Gratuity Act provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

“Gratuity” is a retirement benefit. *Gratuity is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service.*

APPLICATION OF THE ACT

The Act applies to:-

(a)	every factory, mine, oilfield, plantation, port and railway company;
(b)	every shop or establishment in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
(c)	such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf.

A shop or establishment, to which the Act has become applicable once, continues to be governed by it, even if the number of persons employed therein at any time after it has become so applicable falls below ten.

WHEN IS GRATUITY PAYABLE

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.

The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

TO WHOM IS GRATUITY PAYABLE

It is payable normally to the **employee himself**.

However, in the case of **death** of the employee, it shall be paid to his nominee and 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 controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

AMOUNT OF GRATUITY PAYABLE

Gratuity is calculated on the basis of continuous service i.e. for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is **₹20, 00,000/-**.

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UNIT-8 EMPLOYEES' COMPENSATION ACT, 1923

The Employees' Compensation Act, 1923 *earlier known as "Workmen's Compensation Act"* is one of the important social security legislations. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions.

The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law.

• **PARTIAL DISABLEMENT**

Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

- | |
|---|
| (a) <u>temporary partial disablement</u> - Such disablement as reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident resulting in the disablement; and |
| (b) <u>Permanent partial disablement</u> - Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time. |

• **TOTAL DISABLEMENT**

"Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement.

EMPLOYER'S LIABILITY FOR COMPENSATION

Section 3 of the Act provides for employers liability for compensation in case of occupational disease or personal injuries to workman.

Compensation shall be payable to a workman in respect of any disease if the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

AMOUNT OF COMPENSATION

Amount of compensation is payable in the event of a workman meeting with an accident resulting into temporary or permanent disability or disease. Compensation shall be paid as soon as it falls due. It is payable to **dependants of employee in case of death** compensation must be paid through the Commissioner of Employees' Compensation, appointed by the Government, in case of death and total disablement

The **compensation has been enhanced to**

Rs.1, 20,000/- in case of <i>death</i> and

Rs.1, 40,000/- in case of <i>disablement resulting from injury</i> .

The amount of <i>funeral expenses</i> has been enhanced to Rs.5, 000/- .

Time Limit for disposal of cases relating to compensation

The Compensation Commissioner shall dispose of the matter relating to compensation within a period of **three months** from the date of reference and intimate the decision in respect thereof within the said period to the employee.

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DUTY OF EMPLOYER TO INFORM EMPLOYEE OF HIS RIGHTS

According to Section 17A of the Employee's Compensation (Amendment) Act, 2017, every employer shall immediately **at the time of employment of an employee**, inform the employee of his rights to compensation under the Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.

PENALTY

Further, under Section 18A, penalty for contravention of Act is **Rs.50, 000/- which may extend to one lakh rupees.**

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UNIT-9 CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

The objective of the Contract Labour (Regulation and Abolition) Act, 1970 is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

APPLICABILITY OF ACT

The Act applies:

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|---|
| (a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour; |
| (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen. |

• CONTRACT LABOUR

A workmen shall be deemed to be employed as contract labour 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.

• CONTRACTOR

“Contractor” in relation to an establishment, means a person who 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 who supplies contract labour for any work of the establishment and includes a sub-contractor.

REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR

Every establishment covered by the Act, if it wants to engage twenty or more persons through a contractor has to get itself registered. Act lays down that every principal employer of an establishment to which the Act applies shall make an application to the registering officer in the prescribed manner for registration of the establishment within the prescribed time limit.

Revocation of registration in certain cases

The registration can be revoked in the following circumstances:-

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|--|
| (a) If the registering officer is satisfied, either on a reference made to him in his behalf or otherwise, that the registration has been obtained by mis-representation or suppression of any material fact, or |
| (b) that the registration has become useless and become ineffective for any other reason and, therefore, requires to be revoked. |

EFFECT OF NON-REGISTRATION

No principal employer of an establishment to which the Act applies can employ contract labour, if:-

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| (a) he has not obtained the certification of registration; or |
| (b) a certificate has been revoked after being issued. |

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APPEAL

The Act makes provision for appeals against orders relating to grant of registration to establishments, revocation of registration and revocation/suspension of licences.

The aggrieved person may **within 30 days** from the date on which the order is communicated to him prefer an appeal to an **appellate officer** who shall be a person nominated in this behalf by the appropriate government.

The appellate officer may entertain an appeal even after the expiry of 30 days, if he is satisfied that there was sufficient cause for the delay.

The appellate officer shall after giving the appellant an opportunity of being heard dispose of the appeal as expeditiously as possible.

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UNIT-10 INDUSTRIAL DISPUTES ACT, 1947

Industrial Disputes Act, 1947 provides **machinery** for **peaceful resolution of disputes** and to **promote harmonious relation** between employers and workers.

OBJECTIVES OF THE ACT

Following are the objectives of the Act:-

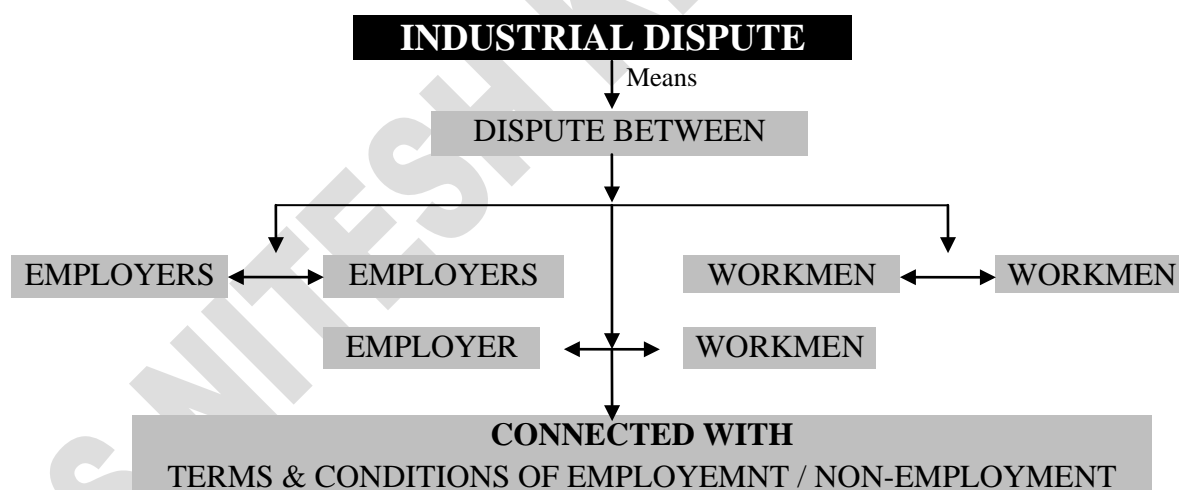
(i)	Promotion of measures of securing and preserving amity and good relations between the employer and workmen.
(ii)	Investigation and settlement of industrial disputes between employers and employees,
(iii)	Prevention of illegal strikes and lock-outs .
(iv)	Relief to workmen in the matter of lay-off and retrenchment .

• INDUSTRIAL DISPUTE

“Industrial Dispute” means any dispute or difference:-

- | | |
|-----|-------------------------------------|
| (a) | between employers and employers, or |
| (b) | between employers and workmen, or |
| (c) | between workmen and workmen, |

Which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person



An Industrial Dispute exists only when the same has been raised by the **workmen with the employer**. A **mere demand to the appropriate government without a dispute** being raised by the workmen with their employer **cannot become** an industrial dispute. (*Sindhu Resettlement Corporation Ltd. v. Industrial bunal*)

DISMISSAL ETC., OF AN INDIVIDUAL WORKMAN TO BE DEEMED TO BE AN INDUSTRIAL DISPUTE

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, **any dispute or difference between that workman 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 workman nor any union of workmen is a party to the dispute.

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STRIKE

“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.

LOCK-OUT

“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.

GENERAL PROHIBITION OF STRIKES AND LOCK-OUTS

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:

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| (a) | during the pendency of conciliation proceedings before a Board and seven days the conclusion of such proceedings; |
| (b) | during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings; |
| (c) | during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, |
| (d) | 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. |

PROHIBITION OF STRIKES AND LOCK-OUTS IN PUBLIC UTILITY SERVICE

1. No person employed in a **PUBLIC UTILITY SERVICE** shall go on **strike** in breach of contract.

- | | |
|-----|--|
| (a) | without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking, i.e., from the date of the notice to the date of strike a period of six weeks should not have elapsed ; or |
| (b) | within 14 days of giving of such notice, i.e., a period of 14 days must have elapsed from the date of notice to the date of strike; or |
| (c) | before the expiry of the date of strike specified in any such notice as aforesaid, i.e., the date specified in the notice must have expired on the day of striking; or |
| (d) | during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings. |

2. No employer carrying on any public utility service shall **lock-out** any of his workmen:-

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|-----|--|
| (a) | without giving them notice of lock-out as hereinafter provided within six weeks before locking-out; or |
| (b) | within 14 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 7 days after the conciliation of such proceedings. |

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PUBLIC UTILITY SERVICE

It may be noted that **public utility service** means-

(i) any railway service or any transport service for the carriage of passengers or goods by air ;
(ia) any service in, or in connection with the working of, any major port or dock ;
(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
(iii) any postal, telegraph or telephone service;
(iv) any industry which supplies power, light or water to the public;
(v) any system of public sanitation ;
(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette , declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification.

JUSTIFICATION OF LOCK-OUT AND WAGES FOR LOCK-OUT PERIOD

A lock-out in violation of the statutory requirements is illegal and unjustified and workers are entitled to wages for the lock-out period. For legal lock-out, no wages are payable to workmen.

LAY-OFF

“Lay-off” means the **failure, refusal or inability of an employer to give employment due to following reasons**, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:-

(a) shortage of coal, power or raw materials, or
(b) accumulation of stocks, or
(c) break-down of machinery, or
(d) natural calamity, or
(e) For any other connected reason.

DIFFERENCE BETWEEN LAY-OFF AND LOCK-OUT

(a) In lay-off, the employer refuses to give employment due to certain specified reasons , but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.
(b) In lay-off, the business continues , but in lock-out, the place of business is closed down for the time being.
(c) In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.
(d) Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining .
(e) Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of **temporary nature** and in both cases the contract of **employment is not terminated** but remains in suspended animation.

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RETRENCHMENT

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

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| (a) | voluntary retirement of the workman; or |
| (b) | retirement of the workman or reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or |
| (c) | termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. |
| (d) | termination of the service of workman on the ground of continued ill-health. |

Thus, the definition contemplates following requirements for retrenchment:

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|-----|--|
| (a) | There should be termination of the service of the workman. |
| (b) | The termination should be by the employer. |
| (c) | The termination is not the result of punishment inflicted by way of disciplinary action. |

AWARD

“Award” means an interim or a **final determination of any industrial dispute** or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A.

SETTLEMENT

“Settlement” means a **settlement arrived at in the course of conciliation proceeding** and includes a written agreement between the employer and workmen 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 the conciliation officer.

AUTHORITIES UNDER THE ACT

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

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| 1. | Works Committee. (in case of 100 or more workers) |
| 2. | Conciliation Officers. |
| 3. | Boards of Conciliation. |
| 4. | Court of Inquiry. |
| 5. | Labour Tribunals. |
| 6. | Industrial Tribunals. |
| 7. | National Tribunals |

JURISDICTION OF INDUSTRIAL TRIBUNALS

As per Section 7A of the Industrial Disputes Act, 1947 the appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or Third Schedule and for performing such other functions as may be assigned to them under this Act.

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The **Third Schedule** of the Industrial Disputes Act, 1947 deals with matters within the jurisdiction of Industrial Tribunals. These are as follows:-

1. Wages, Including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation; and
10. Any other matter that may be prescribed.

ARBITRATION AND ADJUDICATION

Adjudication involves **intervention in the dispute by the third party appointed by the government** for the purpose of deciding the nature of final settlement. On getting a report of failure of conciliation, the government has to decide whether it would be appropriate to refer the dispute to adjudication.

Arbitration is a procedure in which a dispute is submitted, **by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute**. In choosing arbitration, **the parties opt for a private dispute resolution** procedure instead of going to court.

The circumstances under which an **industrial dispute may be voluntarily referred** to arbitration have been stipulated under **Section 10A** of the Industrial Dispute Act, 1947.

VOLUNTARY REFERENCE TO ARBITRATION

Where any industrial dispute exists or is apprehended and the employer and the **workmen agree to refer the dispute to arbitration**, they may, **at an time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement** refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator as may be specified in the arbitration agreement.

An **arbitration agreement** shall be in such form and shall be signed by the parties thereto as prescribed. A copy of the arbitration agreement shall be forwarded to the appropriate Government and a conciliation officer and the appropriate Government shall, within one month from the date of receipt of such copy, publish the same in the official Gazette.

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UNIT-11 TRADE UNION ACT, 1926

The Trade Union Act, 1926:-	(a) Gives legal and corporate status to the registered trade unions.
	(b) deals with the registration of trade unions , their rights, their liabilities and responsibilities
	(c) Ensures that funds of trade unions are utilised properly .
	(d) Seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class.

TRADE UNION- MEANING

Trade union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, 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.

REGISTRATION OF TRADE UNION-PROCEDURE

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 act with respect to registration, apply for registration of the trade union.

APPLICATION FOR REGISTRATION OF TRADE UNION

Section 5 stipulates that every application for registration of a trade union shall be made to the registrar and shall be accompanied by a **copy of the rules of the trade union and a statement of the following particulars, namely:-**

(a) The names, occupations and address of the members making application;
(b) In the case of a trade union of workmen, the names, occupations and addresses of the place of work of the members of the trade union making the application;
(c) The name of the trade union and the address of its head office; and
(d) The titles, names, ages, addresses and occupations of the office-bearers of trade union.

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 **asset and liabilities** of the trade union prepared in such form and containing such particulars as may be prescribed.

CERTIFICATE OF REGISTRATION

The **Registrar, on being satisfied** that the trade union has complied with **all the requirements of the Act in regard to registration**, shall 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.

The registrar, on registering a trade union, shall issue a **certificate of registration** in the prescribed form which shall be conclusive evidence that the trade union has been duly registered under the Act.

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REGISTERED TRADE UNION-LEGAL STATUS

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.

CANCELLATION OF CERTIFICATE OF REGISTRATION

A certificate of registration of a Trade Union may be withdrawn or cancelled by the registrar on the <u>following grounds:-</u>	(a) An application of the trade union for cancellation of certificate of registration;
	(b) If the registrar is satisfied that the certificate has been obtained by fraud or mistake or that the union has ceased to exist;
	(c) If the registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members.

RETURNS UNDER THE ACT

There shall be sent annually to the registrar on or before such date as may be prescribed, a **general statement audited in the prescribed manner, of all receipts and expenditures** of every registered Trade Union during the year ending on the 31st day of December.

Together with the general statement there shall be sent to the registrar a statement showing **all changes of office bearers made by the Trade Union during the year** to which the general statement refers, together with a copy of the rules of the Trade Union corrected up to the date of the dispatch thereof.

A copy of every **alteration made in the rules of a registered Trade Union shall be sent to the registrar within fifteen days** of the making the alteration.

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UNIT-12 MATERNITY RELIEF ACT, 1961

The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. **Maternity Benefits are aimed to protect the dignity of motherhood** by providing for the **full and healthy maintenance of women and her child when she is not working**.

The Maternity Benefit Act, 1961 is applicable to mines, factories, circus industry, plantations, shops and establishments employing **ten or more persons**. It can be extended to other establishments by the state governments.

PERIOD OF MATERNITY BENEFIT

As per the Maternity Benefit (Amendment) Act, 2017, maximum period for which a woman can get paid maternity benefit is **twenty-six weeks** upto two surviving children.

For

1. Adopting
2. commissioning mothers and
3. for more than two surviving children,

12 weeks of paid maternity leave is also available.

“Commissioning Mother” means a biological mother who uses her egg to create an embryo implanted in any other woman

NURSING BREAKS

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 the prescribed duration for nursing the child until the child attains the age of fifteen months.

CRECHE FACILITY

Every establishment **having fifty or more employees** shall have **the facility of creche** within such distance as may be prescribed, either separately or along with common facilities.

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UNIT-13 CHILD & ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986

The Child Labour (Prohibition & Regulation) Amendment Act, 2016 which came into force w.e.f. 1.9.2016.

PURPOSE OF THE ACT

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 **enacted to:-**

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| (a) prohibit the engagement of children in all occupations and |
| (b) 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

1. ADOLESCENT

Adolescent means a person who has **completed his fourteenth year of age but has not completed his eighteenth year.**

2. CHILD

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.*

3. ESTABLISHMENT

Establishment includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

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:-**

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| (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. |

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However **no such work shall effect the school education of the child.**

“family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;

“family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

PROHIBITION OF EMPLOYMENT OF ADOLESCENTS IN CERTAIN 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:

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| (1) Mines. |
| (2) Inflammable substances or explosives. |
| (3) Hazardous process. |

“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 nonhazardous work to which an adolescent may be permitted to work under the Act.

HOURS AND PERIOD OF WORK

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| 1. 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. |
| 2. 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. |
| 3. 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. |
| 4. No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m. |
| 5. No adolescent shall be required or permitted to work overtime. |
| 6. 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. |
| 7. <u>Weekly holidays</u> |

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: –

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1. The name and situation of the establishment
2. The name of the person in actual management of the establishment
3. The address to which communications relating to the establishment should be sent;
4. 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**

1. the name and date of birth of every adolescent so employed or permitted to work;
2. hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;
3. the nature of work of any such adolescent; and
4. Such other particulars as may be prescribed.

DISPLAY OF NOTICE

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.**

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 child/ adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3 or 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 there under,** 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.

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UNIT-14

RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

Over a period of time, the **conceptual understanding of the rights of persons with disabilities** has become more clear and there has been worldwide change in approach to handle the issues concerning persons with disabilities.

The **United Nations** adopted its convention on the rights of persons with disabilities laying down the principles to be followed by the states parties for empowerment of persons with disabilities.

India had **signed the said convention**.

IMPORTANT DEFINITIONS

BARRIER:

It refers to **any factor which hampers the full and effective participation** of persons with disabilities in the society. It includes cultural, economic, environmental, attitudinal and structural factors.

DISCRIMINATION:

It has been defined in relation to disability as any **distinction, exclusion, restriction on the basis of disability** for which there is an impairing or nullifying of recognition, enjoyment or exercise on equal basis with others of all human rights and fundamental freedom.

PERSON WITH DISABILITY:

It has been defined as **any person with long term physical, mental, intellectual or sensory impairments** which on interacting with barriers hinders effective and equal growth in the society.

PERSON WITH BENCHMARK DISABILITY:

It refers to a person who has **40% or more of the specified disability which has not been defined in measurable terms**. In case *such disability has been defined in measurable terms*, **it is said to include a person with disability**.

PERSON WITH DISABILITY HAVING HIGH SUPPORT NEEDS:

It means a **person with benchmark disability** certified under clause (a) of sub-section (2) of section 58, **who needs high support**

RIGHTS AND ENTITLEMENTS

Chapter II of the Rights of Persons with Disabilities Act, 2016 deals with the rights and entitlements for persons with disabilities.

Section 3 speaks about **Equality and Non Discrimination**. It states that it is the **duty of the Government to ensure** that persons with disability enjoy right to equality, and a life of respect and dignity. It mandates the Government to take appropriate steps in this regard. It crucially suggests that **discrimination, in any form whatsoever, shall not be done** on to any person with disability. In fact it also states that it shall be the **duty of the Government to ensure reasonable accommodation** to persons with disabilities.

Section 4 states that the **Government and the Local Authorities** to take measures to ensure **that women and children** with disability enjoy equal rights.

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Section 5 allows such persons with disability to **the right, to live in the community**. It seeks the Government to ensure that such persons with **disabilities are not obliged to live in a particular living arrangement**. It also states that the Government should **provide in-house assistance** to such disabled persons.

Section 6 of this Act ask the Government to take measures, to **protect people with disability, against torture, cruel, inhuman and degrading treatment**.

Section 7 instructs the Government to take measure in **order to protect** persons with disability from any **sort of abuse, violence or exploitation**

Section 8 ensures the protection and **safety of persons with disability in cases of any risk, armed conflict, humanitarian emergencies or natural disasters**. It requires the District, State Disaster Management Authorities as well as the National Disaster Management Authorities to take suitable measures in this regard and maintain a list of persons with disability in every district.

Sections 9 and 10 majorly deal with **home and family right**. Sec 9 **prevents the separation of any child with disability, from his parents** except by an order of the court. . Sec 10, deals with the **providing of information to persons with disability, relating to reproduction and family planning**

Sections 11 to 13 deal with the rights, available to persons with disability, which are promised to every citizen of this country **by the Constitution itself**

EDUCATION

Provisions relating to Education **Chapter III** of the Right of Persons with Disabilities Act, 2016 speaks about provisions relating to education of children with disabilities as well as duties of educational institutions.

Section 16 specifically deal with the **duties of educational institutes**. It states that the State shall endeavor to:

1. To **admit children with disability without any discrimination** and provide equal opportunities to them with regards to education, sports and recreational;
2. Make **buildings, campus and other facility accessible** to children with disability;
3. To provide **specific supports to such children in order to maximise academic** and social development;
4. To make **arrangements for students who are deaf or blind** or both;
5. To provide for **transportation facilities to children with high** support needs.

Section 17 of this Act, deals with measures **to facilitate inclusive education**. It makes the following provisions:

1. To make **surveys** from time to time to assess if special needs of children are being catered to;
2. To **establish schools** for children with disability and to train teachers to teach such students;
3. To provide **books and other assistive** educational tools to students;
4. To provide for **scholarships** to motivate such children;
5. To promote **research to improve** both teaching and learning skills.

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SKILL DEVELOPMENT AND EMPLOYMENT

Chapter IV speaks on topics relating to skill development, vocational trainings and self-employment schemes.

The aim of this chapter is to **allow people with disabilities to make a living for themselves** as well as to be accepted for jobs without such discrimination, where such a disability would not be a barrier

Section 19 of the Act specifically talks about the **duty of the Government to formulate schemes and programmes** for vocational training and self-employment and also provide loans at concessional rates in this regard.

Section 19 speaks about some types of schemes. They are as follows:

1. Inclusion of person with disability in vocational and skill development programmes;
2. To ensure adequate support and facilities to avail specific training for such persons;
3. Loans at concessional rates including microcredit;
4. Marketing products made by such persons with disabilities;
5. Maintenance of data about progress made in these skill development programmes.

SOCIAL SECURITY, HEALTH, REHABILITATION AND RECREATION

Section 24 states that within limits of economic capacity, the government shall formulate schemes and programmes to ensure adequate standard of living for people with disability.

section 24 (3) talks about a variety of schemes in this regard such as:

1. Community Centres having good safety, sanitation and healthcare services;
2. Facilities for persons including children with disability who have no family or homes ;
3. Support persons with disability during any natural disaster;
4. Support women with disability to make a livelihood and to support her children;
5. Ensuring safe drinking water and proper sanitation facilities especially in slum areas;
6. Comprehensive Insurance Schemes with such persons with disability etc.

SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITY REGARDING EMPLOYMENT

Section 31 speaks about the **right to free** education for children with benchmark disability between the age of **six to eighteen years** in a school or special school of their choice.

Sec 32 states that Government Institutions of **higher education and other higher education institutions receiving aid from the Government shall reserve 5% or more seats** for persons with benchmark disability and also ensure upper-age relaxation for them.

Sec 33 instructs the Government, **to identify posts that can be held by persons with benchmark disability**, with the help of an expert committee.

Section 34 states that the appropriate Government **shall ensure that at least 4% of the working strength of every Government Establishment is constituted by persons with benchmark disabilities** such as: 1. Blindness and low vision; 2. Deaf and Hard of Hearing; and 3. Loco motor Disability including cerebral palsy, leprosy (cured) dwarfism, acid attack victims and muscular dystrophy.

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Also, 1% of the total strength of persons with benchmark disability shall be comprised of: 1. Autism, Intellectual Disability, Specific Learning Disability and Mental Illness; 2. Persons having multiple disabilities.

Sec 35 speaks of the appropriate Government providing **incentives to private employers who ensure 5% of their workforce is comprised of people with benchmark disability.**

Section 36 speaks about the **establishment of special employment exchanges** that keep a track of post and vacancies for persons with disability.

Section 37 states that the **appropriate Government shall make schemes** in favour of persons with benchmark disability by **ensuring 5% reservation for allotment of agricultural land, housing related schemes, poverty alleviation and various other developmental schemes.**

SPECIAL PROVISIONS FOR PERSONS WITH DISABILITIES WITH HIGH SUPPORT NEEDS

The provisions **u/s 38** deal specifically with People with Disabilities with High Support Needs.

It states that any person with benchmark disability, who considers himself in need of high support or any person or an organisation, **can approach the appropriate Government** requesting to provide high support. There shall be an **Assessment Board to assess such requests** for high support and provide support in accordance to the guidelines of the appropriate Government

DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENT

Enlisted below are the various duties and responsibilities that this Act seeks to confer on the appropriate Government.

1. The appropriate Government shall **conduct, encourage, support and promote awareness campaigns and sensitisation programmes** to ensure rights of persons with disability. (Sec 39);
2. That the appropriate Government shall **ensure availability of transport for persons with disability.** (Sec 40);
3. That access to **information is made available to persons with disability** in all forms i.e. audio, print, electronic media etc.
4. That the appropriate Government shall take measure to **promote the production and distribution of consumer products specially made for persons with disability** (Sec 43);
5. Ensuring that all **structures of Central Government shall be made accessible to persons having disability** within stipulated time of 5yrs (Sec 45);
6. Finally to **impart training to people of all walks** of life such as doctors, lawyers, judges, teachers etc.
7. about the specific needs and to develop respect for their needs.

INSTITUTIONS FOR PERSONS WITH DISABILITY

Chapter IX of the Act specifically deals with the procedure involving registration of institutions made especially for persons with disabilities. It states that **no institution for persons with disability shall be valid** without obtaining the **Certificate of Registration from the Competent Authority that is established by the State Governments.**

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CERTIFICATION OF SPECIFIED DISABILITIES

According to **Sec 56** of Chapter X of this Act, the **Central Government shall notify the guidelines** for the purpose of assessing the extent of specified disability in a person. **It shall be the duty of the appropriate Government to designate certifying authorities** in this regard. Any person may approach the certifying authority for issuing the Certificate of Disability in such a manner, as may be prescribed by the Central Government.

CENTRAL AND STATE BOARDS ON DISABILITY

Chapter XI speaks about the establishment of a **Central Advisory Board and State Advisory Board** on disability for **advising the Central and the State Governments** on framing policy decisions with respect to persons with disability.

CHIEF COMMISSIONERS AND STATE COMMISSIONERS FOR PERSONS WITH DISABILITY

Chapter XII speaks about the appointment of a **Chief Commissioner and a State Commissioner** to **look into matters of laws** relating to persons with disability, **inquire or suo moto take up matters of discrimination against** such persons and **monitor the implementation of the Act** along with promoting awareness about the rights of people with disabilities

SPECIAL COURTS

Sec 84 and 85 of Chapter XIII states that the **State Government with the advice of the Chief Justice of the High Court** shall specify for *each district*, a **Court of Sessions** which will act as the Special Court to try offences under this Act. For such Special Courts, the State Government **may appoint a Public Prosecutor**.

NATIONAL FUND FOR PERSONS WITH DISABILITIES

There shall be a Fund to be called National Fund for persons with **disabilities u/s 86**. This includes sums grants, gifts, donation, benefactions, bequests or transfers and sums received grants-in-aid.

STATE FUND FOR PERSONS WITH DISABILITIES

A fund called **state fund** for persons with disabilities shall be created by the state government. The state fund for persons with disabilities shall be utilised and managed in the manner prescribed by the state government.

OFFENCES AND PENALTIES

Chapter XVI deals with offences and penalties for punishment for contravention of provisions of this Act or rules and regulations made thereunder.

It provides that for **first contravention** shall be punishable with fine that extends to **ten thousand rupees** and **subsequent contravention** shall be punished with fine not less than **fifty thousand and up to five lakhs**.

For any offence **committed by a company**, the **person in charge**, responsible for the conduct of the business of the company, shall be punishable according to the provisions of the Act

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UNIT-15 PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION; PROHIBITION AND REDRESSAL) ACT; 2013

PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

In 2013, the government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the 'Act') for prevention of sexual harassment against women at the workplaces.

OBJECTIVES OF THE ACT

The Act is enacted to provide **protection against sexual harassment of women at workplace** and prevention and redressal of complaints of sexual harassment and for matters connected there with or incidental thereto.

Sexual harassment is termed as a violation of the **fundamental rights of a woman to equality** under **Articles 14 and 15** of the Constitution of India and **right to life and to live with dignity** under **Article 21** of the Constitution of India.

Sexual harassment is also considered a **violation of a 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.

SEXUAL HARASSMENT- DEFINITION

“Sexual Harassment” **includes** any one or more of the **following unwelcome acts or behavior** (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;.

PREVENTION OF SEXUAL HARASSMENT

According to Section 3 of the Act, *no woman shall be subjected* to sexual harassment at any workplace.

The **following circumstances, among other circumstances**, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment **may amount to sexual harassment**:—

(i) implied or explicit promise of preferential treatment in her employment; or
(ii) implied or explicit threat of detrimental treatment in her employment ; or

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| (iii) implied or explicit threat about her present or future employment status; or |
| (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or |
| (v) humiliating treatment likely to affect her health or safety |

COMPLAINTS COMMITTEE & COMPLAINT PROCEDURE

Internal Complaints Committee

The Act makes it mandatory for every employer to constitute an **internal complaints committee ("ICC")** which entertains the complaints made by any aggrieved women.

The members of the ICC are to be nominated by the employer and ICC should consist of

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| (i) A Presiding Officer; |
| (ii) Not less than two members from amongst employees preferably committed to the cause or women or who have had experience in social work or have legal knowledge and; |
| (iii) One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. |
| In order to ensure participation of women employees in the ICC proceedings, the Act requires that at least one half of the members of ICC nominated by employer are women. |

Local Complaints Committee

Provisions are provided under the Act to form **Local Complaints Committee (LCC)** for **every district** for receiving complaints of sexual harassment **from establishments where the ICC has not been formed due to having less than 10 workers** or if **the complaint is against the employer himself.**

COMPLAINT PROCEDURE

The Act stipulates that aggrieved **woman can make written complaint of sexual harassment** at workplace to the **ICC or to the LCC** (in case a complaint is against the employer), 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.

If the aggrieved woman is unable to make complaint in writing, **reasonable assistance shall be rendered.**

In case the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed inter alia by her **relative or friend or her co-worker or an officer of the National Commission for Woman or State Women's Commission** or any **person who has knowledge** of the incident, **with the written consent of the aggrieved woman.**

DUTIES OF EMPLOYER

Every employer shall—

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| (a) provide a safe working environment at the workplace with 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 |

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(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act
(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 be, as it may require
(g) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL