
UNIT 8 LABOUR LEGISLATION

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8.0 OBJECTIVES

After studying this unit you should be able to:

- provide an overview of labour legislation in India;
- explain the provisions of Factories Act; enumerate the provisions of laws relating to wages and bonus;
- outline the coverage of laws bearing on social security of workers;
- describe the provisions of laws aimed at regulating industrial relations in India; and
- explain the concept of workers' participation in management and the various schemes introduced in India for such participation.

8.1 INTRODUCTION

You have learnt about the basic business laws, the Companies Act, the environment protection laws and the other corporate laws like IDR Act, MRTP Act. Competition Act, etc. which regulate the working of business firms in India. Another important component of legal environment is the labour legislation which refers to all measures that may extend statutory recognition to the interest of labour. In India, such legislative measures include laws enacted by the Parliament and the State legislatures, numbering about 150. These include laws relating to factories and specific industries, wages and bonus, social security, and trade unions and industrial relations. In this unit you will have an overview of these laws and learn about the provisions of some important

enactments in detail. In addition, you will learn about the concept of workers' participation in management and its working in practice.

8.2 LABOUR LEGISLATION IN INDIA : AN OVERVIEW

The scope and coverage of labour legislation happen to be very wide and overlapping. The earliest legislation, the Factories Act, dates back to 1881 which mainly related to the conditions of employment of children. It was amended in 1891, 1911, and 1934 by adding with more comprehensive clauses, and finally more radical changes were introduced in the Act passed in 1948. The number of enactments relating to labour multiplied over time and this trend continued after independence. Classified on the basis of their focus on particular aspect of workers' interest, the various laws may be discussed as (a) laws relating to factories and specific industries for health, safety and welfare of workers, (b) laws relating to wages and bonus, (c) relating to social security, and (d) laws relating to trade unions and industrial relations. Let us have an overview of different categories of such laws before we discuss the provisions of a few important laws in detail.

Laws relating to factories and specific industries : All manufacturing establishments in India are required to provide for health, safety and welfare of workers under the Factories Act, 1948. This Act also covers aspects like working hours, leave with pay, and employment of young persons. Then, there are laws which relate to specific industries to take care of their peculiar needs. The Mines Act, 1952, for example; requires the mine owners to provide for drinking water, conservancy and first aid for employees as also crèches in mines employing women. Additional facilities such as an ambulance room under the charge of a qualified medical practitioner for every mine employing 500 or more persons, a shelter for taking food and rest by employees where a mine employs 150 persons or more, or a canteen, where there are 250 or more employees are also to be provided. Similarly, under the Plantations Labour Act, 1961, provision of drinking water, conservancy, medical facilities, canteen, crèche, recreational facilities, umbrellas, blankets and raincoats have been made statutory requirements. Certain welfare amenities outside the workplace have also been made obligatory in the case of plantation workers, such as housing, educational and medical facilities. The working and service conditions of dock workers are regulated by the Indian Dock Labourers Act, 1934 and Dock Workers (regulation of Employment) Act, 1984.

The employees of transport undertakings have their working and service conditions regulated by specific laws like Indian Railways Act, 1930; Indian Merchant Shipping Act, 1973; Motor Vehicles Act, 1939; and Motor Transport Workers Act, 1961 which ensures provision of canteens, rest rooms, uniform hours of work, leave rules and other service conditions. For wage earners employed in shops, commercial establishments (including insurance and banking companies), restaurants, theatres, cinemas, etc. there are state laws which provide for rules relating to opening and closing hours, working hours, rest intervals, spread over, overtime rates and weekly holidays. The Contract Labour and (Regulation and Abolition) Act, 1970 governs the employment of workers by contractors for casual or seasonal work. The provisions of the Act are aimed at abolishing the system of contract labour in perennial operations and regulating it in other cases. The service conditions of working journalists and employees of newspaper establishment are regulated as per the Working Journalists and Other Newspaper Employees (Conditions of Service) Miscellaneous Provisions Act, 1955.

Laws relating to wages and bonus: An important legislation bearing on payment of wages is the Payment of Wages Act, 1936, which applies to employees in factories, industrial or other establishments and railways. It covers all those workers who draw less than one thousand and six hundred rupees a month. The main purpose of this Act is to ensure regular and timely payment of wages, to prevent unauthorized deductions being made from wages, and arbitrary fines being imposed on the employees. Another legislation, the Minimum Wages Act, 1948 enables the Central and State Government to fix minimum rates of wages payable to workers employed in selected 'sweated industries' like woolen, carpet making or shawl weaving establishment, rice mill, flour mill, dal mill, oil mill, as well as employees under any local authority. Under the Payment of Bonus Act, 1965, employers have been made liable to pay bonus to persons employed in factories and every other establishment in which 20 or more persons are employed and drawing upto Rs. 3,500 per month. Then, to avoid discrimination on the ground of sex, the Equal Remuneration Act, 1976 provides for payment of equal remuneration to male and female workers for the same work or work of a similar nature. It also seeks to prevent any discrimination in matters of employment, promotion, training and transfer,

Laws relating to social security : Laws relating to social security of workmen contain provisions relating to cases of employment injury, maternity benefit, sickness, as well as eventualities of old age and unemployment. The Workmen's Compensation Act, 1923 include provisions for payment of compensation by employers to workmen and their dependents for personal injury caused by accidents arising out of, and in course of, employment and for death or disablement as a result of occupational diseases. Maternity benefits for women employees have been provided in the Central Maternity Benefit Act, 1961, and State laws, which apply to factories, mines and plantations. Provisions have been made in these laws for payment of cash maternity benefit, before and after confinement, grant of leave and other benefits like payment of medical bonus, free medical aid, etc. The Employees' State Insurance Act, 1948, which governs the Employees State Insurance Scheme (ESI Scheme), applies to all employees of non-seasonal factories whose aggregate remuneration does not exceed Rs. 6,500 per month. The ESI Scheme provides for a number of benefits like free medical treatment for sickness and employment injury, free maternity care for women employees, cash disablement benefit if the disability from Injury is for more than seven days, life pension in the case of permanent disablement, pension for the family or dependents in the case of fatal injury.

The Employees Provident Fund and Miscellaneous Provisions Act, 1952, is another legislation relating to social security. It provides protection to workers against the risks of old age, retirement, discharge, retrenchment or death, and applies to factories and establishments falling under and notified industry employing 20 or more employees. There is another enactment called Payment of Gratuity Act, 1972 which provides for the payment of gratuity, a retirement benefit to the employees for long years of faithful service. Yet another type of benefit provided for workers is the payment of compensation in the event of lay off retrenchment, closure and transfer of undertakings. The relevant provisions are made in the Industrial Disputes Act, 1947.

Laws Relating to trade unions and industrial relations : A trade union, in law, means any combination formed for the purpose of regulating the relations between workmen and employers, or between workmen and workmen, or between employers and employers. But as a part of the industrial environment, trade unions are generally referred to as organisations of workers formed to promote and protect their interests by collective action. The Indian Trade Unions Act, 1926, is a landmark in the history of

trade union movement in India. It is by virtue of its provisions that trade unions have a legal status and their officers and members enjoy immunity against civil and criminal liability for concerted action. The Act lays down the rights and liabilities of registered trade union and regulates their functions. Another important enactment covering all important issues bearing on industrial relations is the Industrial Disputes Act, 1947. It is aimed at prevention and settlement of industrial disputes expeditiously, and provides for works committees to be constituted in every industrial establishment with equal number of representatives of workmen and employers, to promote measures for securing and preserving amity and good relations between the employer and workmen. Provision is also made for Central and State governments to appoint conciliation officers and, if necessary, a Board of Conciliation to mediate and promote the settlement of an industrial dispute. The Act also provides a three tier adjudication machinery for settlement of disputes. It consists of Labour Courts, Industrial Tribunals and National Tribunals. There is another old enactment, viz., Industrial Employment (Standing Orders) Act, 1946, which aims at defining the conditions of employment of industrial workers so as to avoid disputes arising from uncertainty or vagueness in the terms of employment, discharge, etc. It applies to every industrial establishment wherein one hundred or more workers are employed.

8.3 FACTORIES ACT, 1948

The Act, which came into force with effect from 1st April, 1949, contains elaborate provisions regarding health, safety and welfare of workers in factories where manufacturing process is carried on. The objective is to provide for satisfactory working conditions as well as for health, safety and welfare of factory workers. Towards the same end, the Act includes restrictive provisions regarding the working hours for adults, women and young persons, and has provided for annual leave with wages for workers in factories.

As per Section 2(m) of the Act, a factory means any premises where 10 or more workers are engaged and in any part of which a manufacturing process is carried on with the aid of power, or a premises where 20 or more persons are engaged and a manufacturing process is carried on without the aid of power. A manufacturing process is also defined as any process for 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. It may also include pumping oil, water or sewage, or generation and transmission of power, constructing, repairing, refitting, or braking up of ships or vessels, preservation or storage of articles in cold storage, etc.

Provisions relating to health of employees: Under Sections 11-20, the Act has laid down necessary steps to be taken for

- cleanliness in the factory;
- disposal of wastes and effluents;
- providing adequate ventilation and such temperature in work rooms as will secure reasonable comfort to workers and prevent injury to health;
- prevention of inhalation and accumulation of dust or fume or other impurity in work room which may be injurious or offensive to the workers ;
- prescribing standards and regulating the humidity in the air where it is artificially increased in the factory;
- prevention of overcrowding in any workroom;
- maintaining sufficient and suitable lighting;

- arranging and maintaining at suitable points sufficient supply of wholesome drinking water;
- providing latrines and urinals of prescribed types separately for male and female workers; and
- arranging sufficient number of spittoons to be placed at convenient places which are to be maintained in a clean and hygienic condition.

Safety provisions: The safety provisions are mostly in the nature of precautions and due safeguards in connection with the machinery used in the factory. Fencing of certain types of machinery is a very important requirement as also the dangerous parts of machinery. Precautions are required to be taken as regards work on or near machinery in motion. Where necessary, suitable striding gear or other mechanical appliance, and suitable devices for cutting off power must be provided along with arrangement for locking the device to prevent accidental starting of transmission or other machinery. Employment of young persons on dangerous machines is prohibited unless they have been fully instructed and sufficiently trained. Likewise, employment of women and children is prohibited near cotton openers.

The Act requires every hoist way and lift way to be sufficiently protected by an enclosure fitted with gates, maximum safe working load must be marked on the lift or hoist, and devices must be there to support the cage if there is breakage of ropes or chains. Precautions and safeguards are also required to be provided in the case of lifting machines, chains, ropes and lifting tackles, revolving machinery and pressure plant, against dangerous fumes, regarding the use of portable light, against explosive or inflammable dust, gas, etc. In case a manufacturing process involves risks of injury to the eyes from particles or fragments thrown off or exposure to excessive light, the state government may by rules require that effective screens or suitable goggles be provided for the protection of persons employed on, or in the vicinity of, the process.

Certain other requirements of the Act in relation to safety are : (a) In every factory, all floors, steps, stairs, passages, gangways and means of access must be of sound construction, properly maintained and kept free from obstructions and substances likely to cause persons to slip, and where necessary, must be provided with handrails; (b) If there are pits, sumps or tank in the ground or opening in floors which is a source of danger, the same must be securely covered or fenced; (c) No person should be employed in factory to lift, carry or move any load so heavy as to be likely to cause him injury; and (d) Safeguards against risks of fire are laid down in detail which include provision of means of escape, nature of fire-fighting apparatus to be maintained, etc.

Provisions relating to labour welfare : Under Section 42-49 of the Act, certain facilities are required to be provided in all factories irrespective of the number of workers employed, such as (a) separate and adequately screened washing facilities for male and female workers; (b) facilities for storing and drying wet clothing; (c) facilities for sitting for workers obliged to work in a standing position in order that they may take advantage of any opportunities for rest, and for workers who may be able to do their work efficiently in a sitting position; and (d) First-aid appliances kept in first-aid box or cupboard which should be readily accessible during working hours. In addition the following facilities are required to be provided in specified factories :

- (i) one or more canteens where more than 250 workers are ordinarily employed;
- (ii) shelters, rest rooms and lunch rooms where more than 150 workers are employed; and

- (iii) crèches under the charge of trained women for the use of children under six years in factories where more than 30 women workers are employed.

The Act also requires factories where more than 500 workers are employed to employ one or more welfare officers to take care of welfare facilities with duties prescribed by the State Government.

Working hours for adults : Provisions in the Factories Act regulating the hours of work of adults consists of a number of rules. A summary of the rules is given below.

- The maximum number of hours of work that an adult worker may be required to do is 48 hours in any week, but not exceeding 9 hours in any day with a provision for at least half an hour rest after five hours of work.
- Every worker must have a weekly holiday.
- Where a worker is deprived of any of the weekly holidays, he is to be allowed compensatory holiday within the months in which the holidays were due to him, or within two months immediately following that month.
- When a worker is on shift duty which extends beyond midnight, the weekly holiday will be for a period of twenty four consecutive hours beginning when his shift ends. Also overlapping shifts are prohibited.
- Workers are to be paid for overtime work (in excess of nine hours in a day or 48 hours in a week) at twice the ordinary rate of wages,
- Women workers shall not be employed except between the hours of 6 a.m. and 7 p.m.
- An advance notice must be displayed and correctly maintained showing clearly for every day the periods during which adult workers may be required to work.
- The manager of every factory is required to maintain a register of adult workers with the name, nature of work, and other particulars about each adult worker, complete in itself and up to date.

Employment of children There is absolute prohibition of employment in a factory of any child who has not completed his fourteenth year age and it is the duty of the employer to ascertain the age of children and not depend on their application. For a child who has completed his fourteenth year or is an adolescent, if employed, must be granted a certificate of fitness, and he must carry a token while at work giving reference to such certificate granted. He shall not be employed or permitted to work during the night, i.e., between 10 p.m. and 6 a.m., and for more than four and a half hours in any day. The period of work must be limited to two shifts only and these shall not overlap.

Annual leave with wages : According to Section 79 (1), where a worker has worked for a minimum period of 240 days or more in a factory during any calendar year, he is entitled to leave with wages on the following basis:

- (a) for adults – one day for every 20 days of work
- (b) for children – one day for every 15 days of work

If a worker does not commence his services from 1st January, he is entitled to these leaves at the above mentioned rates provided he has worked for $\frac{2}{3}$ rd of the total number of days in the remaining part of the calendar year. If any worker does not avail the earned leave entitled to him during the calendar year, it can be carried forward to the next calendar year subject to the maximum of 30 days for an adult worker and 40 days for a child worker.

Administrative set-up : The State Government is responsible for the administration of the Act and the implementation of various provisions thereof in its state through the inspectorate headed by a Chief Inspector. The Chief Inspector is assisted by Additional Chief Inspectors, Joint Chief Inspectors, Inspectors and other officers as may be appointed by the State Government. The State Government has the powers to (a) apply all or any of the provisions of the Act even to a factory employing less than 10 workers if working with power and less than 20 workers if working without power; (b) exempt in case of public emergency any factory or a class of factories from all or any of the provisions of the Act except Section 67 (prohibiting employment of children) for not more than 3 months at a time; and (c) make rules for enforcement of the Act, registration and licensing of factories, and collection of licence fee.

Check Your Progress A

- 1 Name three enactments which are intended to promote and protect the interests of workers in specific industries.
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- 2 Which aspects of labour welfare are taken care of by social security enactments?
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- 3 Mention the three facilities required to be provided for the welfare of factory workers under the Factories Act.
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- 4 Fill in the blanks
 - a) _____ of certain types of machinery is an important requirement as also the dangerous parts of machinery.
 - b) The maximum number of working hours that an adult worker is required to do is _____ hours a week but not exceeding _____ in any day.
 - c) A child worker is entitled to leave with wages for one day for every ----- days of work.
 - d) The laws relating to social security of workers contain provisions relating to cases of employment injury, sickness as well as eventualities of old age and _____
 - e) The payment of compensation in the event of lay off, retrenchment, closure and transfer of undertakings is provided in the _____ Act.

Fair wage and its timely payment are the most important concerns of workmen in any part of the world. The laws regulating these aspects are discussed hereunder.

8.4.1 Minimum Wages Act, 1948

According to the National Commission on Labour, the Minimum Wages Act, 1948, may be regarded as a landmark in the history of labour legislation in India. The Supreme Court had underlined its purpose and significance very precisely. To quote, "What the Minimum Wages Act purports to achieve is to prevent exploitation of labour, and for that purpose, authorises the appropriate Government to take steps to prescribe the minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public, and so, in prescribing the minimum rates, the capacity of the employer need not be considered." (Unichoyi v. State of Kerala – A.I.R. 1962 SC 12)

The concept of minimum wage has not been defined in the Act. To be worthwhile, however, minimum wage must not only provide for bare subsistence of life but also for preservation of the efficiency of the workers. It should provide also for sustenance of the worker's family, education for children, their medical care and some amenities. The Committee on Fair Wages (1949) recommended on similar lines.

Under the Act, fixing and revising of minimum rate of wages is the responsibility of the Central and State Government as is appropriate, for employees employed in any scheduled industry like woolen carpet making or shawl weaving, rice mill, flour mill, oil mill, mines, stone breaking or stone crushing, any plantation, and in local authority, in agriculture, etc. in which labour is unorganised. The minimum rate of wages may be fixed as a minimum time rate, or a minimum piece rate, a 'guaranteed time rate', and as overtime rate. While fixing or revising minimum rates of wages, different rates may be fixed for different scheduled employment, for adults, adolescents, children and apprentices, and for different localities. It can be fixed or revised to consist of (a) a basic rate and a cost of living allowance varying with the cost of living index number; or (b) a basic rate, with or without cost of living allowance, and cash value of concessions for supplies of essential commodities at concessional rates; or (c) an all inclusive rate allowing for the basic rate, cost of living allowance and value of concessions. Although the minimum wages are usually payable in cash, the Act provides for payment wholly or partly in kind.

Advisory Board and Central Advisory Board : Under the Act, an Advisory Board is required to be appointed by the appropriate government for the purpose of co-ordinating the work of committees and sub-committees appointed and advising the Government generally in the matter of fixing and revising the minimum rate of wages. Each of the committees, sub-committees and the Advisory Board consist of persons nominated by the government representing the employers and employees in equal proportion, and independent persons not exceeding one-third of the total number of members with one of the independent persons as chairman. There is also to be a Central Advisory Board appointed by the Central Government for the purpose of advising the Central and State Government in the matters under the Act, and for coordinating the work of the Advisory Boards.

Payment without deduction : Where **minimum** rate of wages has been notified for any scheduled employment, **payment** is required to be made without any deductions except as may be authorised. Moreover, payment of wages less than the **minimum** wages on the ground of low performance or output is illegal. However, if the workman does not **turnout** work in conformity with any reasonable norm fixed by the employer, the employer can take disciplinary action and dismiss the workman, but cannot pay anything less than the minimum wages.

Fixing hours for a normal day's works : With regard to any scheduled employment in respect of which minimum rates of wages have been fixed, the appropriate Government may (a) fix the number of hours of work of a normal working day inclusive of specified intervals; (b) provide for a day of rest in every period of seven days; and (c) provide for payment for work on a day of rest at overtime rate, in relation to all employees, except certain categories like those engaged in urgent or emergency work, etc. Where an employee works on any day in excess of the number of hours constituting a normal working day, the employer has to pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under the Act or under any other law, whichever is higher. However, an employee who works on any day less than the number of hours constituting a normal working day, has to be paid wages in respect of the work done on that day as if he had worked for a full normal working day unless his failure to work was caused by his unwillingness to work, and in such other cases as prescribed.

Inspectors and penalties : Inspectors may be appointed by the appropriate Government and local limits may be specified within which they may function to ensure that no offence is committed by an employer covered by the Act. Any employer who pays to any employees less than the **minimum** rates of wages fixed or less than the amount due to him, or contravenes any rule or order relating to working hours for a normal working day, is punishable with imprisonment or with fine or both.

8.4.2 Payment of Wages Act, 1936

The Payment of Wages Act relates to payment of wages to employees in any factory, in railways directly or indirectly through sub-contractors, and in industrial and other establishments whose monthly remuneration does not exceed one thousand and six hundred rupees. The basic purpose underlying this legislation is to ensure regular and timely payment of wages to the employed persons, and to prevent unauthorized deductions being made being made from wages and arbitrary fines being imposed on them.

Time for payment of wages : Under Section 5 of the Act, where less than 1,000 persons are employed, wages are required to be paid before the expiry of the 7th day after the last day of wage period, which is fixed by the employer and cannot exceed one month. Where the number of workers exceed 1,000, wages are to be paid before the expiry of the 10th day after the last day of the wage period. In case of persons employed on a dock, wharf or jetty or in mine, the balance of wages payable on completion of the **final tonnage** account of the ship or wagons loaded or unloaded, is to be paid before the expiry of the 7th day of such completion. Where the employment of any person is terminated by the employer or due to the closure of the establishment, wages must be paid before the second working day from the day on which his employment is terminated. However, all payments are required to be made on a working day and must be paid in coin or currency notes or in both. Payment can also be made by cheque or by crediting the wages in his bank account if there is a written authorisation by the employee.

Deductions **which** can be **made** from wages : Under Section 7 of the Act certain items have been listed which can be deducted from wages. These include deductions for fines for absence from duty, **damage** to or loss of goods entrusted to an employee for custody, loss of money directly attributable to his neglect or default, house-accommodation provided by the employer, recovery of advances or loans, **etc.** with written authorisation **of the** employees. Deductions can also be made for any contribution or subscription to any trade union, payment of insurance premium, **payments** to cooperatives, etc. The total amount of deductions from the wages of any **employed** person in any wage period should not exceed 75% of wages payable in cases where such deductions are wholly or partly made for payments to cooperatives and 50% of the wages payable in any other case.

Fines : Fines can be imposed in respect of only such acts and omissions on the part of any employee which the employer may have specified by notice, with the previous approval of the State government, and the notice had been exhibited in the prescribed manner on the premises or at the prescribed place or places. However, no fine can be imposed on any employee unless he has been given an opportunity of showing cause against the fine, nor otherwise than in accordance with the prescribed procedure for imposition of fine. In addition to the above provisions, the Act has a few restrictive clauses. The total amount of fine that may be imposed in any one wage period is not to exceed three per cent of the wages payable to an employee in respect of that wage period. No fine can be imposed on any employee who is below fifteen years of age, nor can the fine imposed on any employee be recovered by instalments or after the expiry of sixty days from the day on which it was imposed.

Appointment of **inspectors** : To ensure that the provisions of the Act are duly complied with by the employers, the State Government may appoint inspectors by notification in the Official Gazette, and define the local limits within which they are to function with respect to industrial and other establishments. However, An inspector of Factories appointed under the Factories Act is to be an Inspector for purposes of the Payment of Wages Act in respect of all factories within the local limits assigned to him.

8.4.3 Payment of Bonus Act, 1965

In a general sense, bonus means something given in addition to what is ordinarily received by or is strictly due to the recipient. In a specific sense, it refers to an **ex-gratia** payment to workers as an incentive to stimulate productive efficiency or as the worker's share in the surplus generated by common endeavour and enterprise of both labour and capital. The Payment of Bonus Act 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 related matters. Payment of bonus is a statutory obligation of the employer in all establishments covered by the Act in accordance with the prescribed formula. The provisions of the Act is not in cognizant with the operation of customary bonus schemes such as productivity bonus, attendance bonus, incentive bonus, and the like.

The Act extends to the whole of India and applies to every factory and other establishment in which twenty or more people are employed on any day during an **accounting** year, including establishments in the public sector which are engaged in activities in competition with any establishment in the private sector.

Eligibility for bonus : Every employee is entitled to be paid bonus in an accounting year in accordance with the provisions of the Act, provided he has worked in the establishment for not less than thirty working days in that year and is employed on a salary or wage not exceeding Rs. 3,500 per month. However, for calculating the amount of bonus payable, salary or wages over and above Rs. 2,500 per month shall not be taken into account.

Payment of minimum and maximum bonus : Subject to the provisions of the Act, every employer is bound to pay every eligible employee in respect of every accounting year, a minimum bonus of 8.33% of the salary or wage earned by the employee or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus during an accounting year. Where an employee has not completed fifteen years of age at the beginning of the accounting year, "one hundred rupees" is to be substituted by "sixty rupees". However, where an employee has not worked for all the working days in an accounting year, the minimum bonus of Rs. 100 or Rs. 60, as the case may be, if such bonus is higher than 8.33% of his salary or wage for the days he had worked in that accounting year, shall be proportionately reduced. As for the maximum bonus, the Act has provided that if in any accounting year the allocable surplus exceeds the amount payable as the minimum bonus, the employer has to pay bonus to every employee in proportion to salary or wage earned by the employee subject to a maximum of 20% of such salary or wages.

Set on and set off of allocable surplus : when in any accounting year, the allocable surplus exceeds the amount of the maximum bonus payable to the employees, the excess shall, subject to a limit of 20% of the total salary or wage of the employees, be carried forward for being set on in the succeeding accounting year and so on upto the fourth accounting year to be utilized for payment of bonus. However, where for any accounting year there is no allocable surplus or it falls short of the minimum bonus and there is no amount or sufficient amount carried forward and set on to be utilised for the payment of minimum bonus, then such minimum amount or the deficiency is to be carried forward to be set off in the succeeding year and so on upto the fourth accounting year. The principle of set on and set off implies that in calculating bonus for the succeeding year, the amount of set on or set off carried forward from the earliest accounting year has to be first taken into account.

Special provision with respect to payment of bonus linked with production or productivity : In any establishment covered by the Act, if the employees enter into any agreement or settlement with their employer for payment of an annual bonus linked with production or productivity, they are entitled to receive bonus due to them under such agreement or settlement. However, any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus provided under the Act will be null and void insofar as it purports to deprive them of such right. Further, it is stipulated that such employees shall not be entitled to be paid bonus linked with production or productivity in excess of 20% of the salary or wages earned by them during the relevant accounting year.

Classes of employees not covered by Act : Classes of employees to which the Payment of Bonus Act does not apply include employees of LIC of India, seamen, dock workers, those employed in any industry under the authority of the Central or any State government or a local authority, employees of not-for-profit organisations like Indian Red Cross, universities, educational institutions etc., and employees of State Finance Corporations, NABARD, Unit Trust of India, IDBI, SIDBI, etc.

It may be noted that the Act has made special provisions under Section 16 for the newly set up establishments whereby they enjoy certain concessions during the first seven accounting years. Similarly, if the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments is of the opinion that it will not be in public interest to apply all or any of the provisions of the Act thereto, it may, by notification in the official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think that to impose, such establishment or class of establishment from all or any of the provisions of this Act.

8.4.4 Equal Remuneration Act, 1976

The Equal Remuneration Act aims at providing for payment of equal remuneration to male and female workers for the same work or work of a similar nature, so that there is no discrimination on the ground of sex. It also seeks to prevent any discrimination on the ground of sex, against women in the matter of employment including recruitment, promotion, training and transfer.

Equal remuneration for equal work : Equal remuneration for equal work must be paid by the employer to any workers, male or female, employed in any establishment or employment, in cash or kind, for performing the work or work of a similar nature. But for that purpose, no employer is to reduce the rate of remuneration for any worker

No discrimination to be made **while** recruiting men and women workers : While making recruitment for the same work, or work of a similar nature, or promotion, training, or transfer subsequent to recruitment no employer is to make any discrimination against women, except where there is prohibition or restriction to employment of women by or under any law in force at the time. One or more advisory committees may be constituted by the Central Government to get advice regarding the extent to which women may be employed in specified establishments or employments. The advisory committees are to consist of not less than ten persons each (of which one-half shall be women) to be nominated by the appropriate Government. After considering the advice given by the advisory committee, the appropriate Government may also give an opportunity to the persons (in establishment or employment) to make representations, and then issue directions in respect of employment of women workers.

Appointment of authorities for dealing with complaints : The appropriate Government may appoint officers, not below the rank of a labour officer, to hear and decide (a) complaints with regard to contravention of any provisions of the Act, and (b) claims arising out of non-payment of wages at equal rates men and women workers for the same work or work of a similar nature. To investigate whether the provisions of the Act, or the rules made under it, are being complied with by employers, the appropriate Government may appoint inspectors by notification which may define the local limits of the investigation.

Check Your Progress B

- 1
- State the rule for payment of wages to an employee who has worked less than the number of hours fixed for a normal working day ?
-

- 2

Is imposition of fine altogether prohibited under the Payment of Wages Act ?
State the relevant provision in the Act.
- 3

What is the provision relating to payment of minimum bonus under the Payment of Bonus Act ?
- 4

What is the duty of the principal employer in respect of payment of equal wages for equal work ?

8.5 SOCIAL SECURITY LEGISLATION

Social security legislation may be regarded as an important step towards the goal of a welfare state. It provides for active participation of the state in protecting labourers from the future uncertainties and risks involving unemployment, old age, sickness and disablenient, as also other contingencies. The provisions of four enactments bearing on social security of workers in India, viz., Workmen's Compensation Act, 1923, Employees State Insurance Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, 1952, and Payment of Gratuity Act, 1972 are summarised hereunder.

8.5.1 Workmen’s Compensation Act, 1923

This Act provides for payment of compensation by the employer to his workmen for personal injuries sustained by accidents arising out of and in course of employment as also for certain occupational diseases. It also seeks to help the dependents of workmen rendered destitute by the accidents and the hardships arising therefrom.

Employers liability in cases of occupational diseases : Occupational diseases which may be caused by various types of employment are listed in Schedule III of the Act which is divided into three parts A, B and C. Contracting of any such disease by a workman is deemed to be an injury by accident arising out of and in the course of employment. To support any claim for compensation in case of occupational disease given in Part A of the Schedule, no period of employment has been specified; in respect of those listed in Part B, the workman must be in employment for a continuous period of at least six months; and in respect of those specified in Part C the workman must be in service of one or more employers for a continuous period as may be specified by the Central Government. The Act duly provides for the liability of employers to pay compensation for the injury resulting from all such cases of occupational diseases.

Employers liability in case of personal injury by accident : As regards personal injury, the employer becomes liable if the injury is caused to a workman by accident arising out of and in course of his employment. Personal injury may be physical or bodily injury as well as nervous shock or breakdown or mental strain. The expression 'accident arising out of and in course of employment' implies that (a) there has to be a causal connection between the employment and the accidental injury and it must be a proximate cause; and (b) at the time accident the workman must have been employed in the performance of his duties although he may not be actually turning out the work (he may be, for example, resting for having food, or proceeding from the place of employment to his place of residence).

Amount of compensation : Amount of compensation payable in the event of workman meeting with an accident depends upon the extent of damage resulting from injury as follows.

- 1 Where death results from injury, the amount of compensation payable to the eldest serving dependent is 50% of the monthly wage of the deceased workman multiplied by the relevant factor corresponding to his age as specified in Schedule IV of the Act, or Rs. 50,000 whichever is more.
- 2 Where permanent total disablement results from the injury, 60% of the monthly wage of the injured workman multiplied by the relevant factor as per Schedule IV or Rs. 60,000 whichever is more. If the monthly wage of a workman exceeds Rs. 2,000, it will be deemed to be Rs. 2,000 for the purpose of calculation under (1) and (2) above.
- 3 Where permanent partial disablement results from the injury, the amount of compensation payable is to be calculated as (i) if the injury is specified in Part II of Schedule I, the amount is to be such percentage of amount payable in the case of permanent total disablement as the percentage loss of earning capacity specified in Part II of Schedule I, and (ii) in case the injury is not specified in Schedule I, such percentage of amount payable in the case of permanent total disablement as is proportionate to the loss of earning capacity as may be assessed by the qualified medical practitioner.
- 4 Where temporary disablement – total or partial – results from the injury, the amount of compensation is to be a half monthly payment equivalent to 25% of monthly wages of the workman not exceeding the amount by which half the amount of monthly wages before the accident exceeds half the amount which he earns after the accident.

When employer is not liable : The employer shall not be liable to pay compensation in the following cases :

- 1 If the injury did not result in any total or partial disablement for a period not exceeding 3 years; and
- 2 In respect of injury not resulting in death; if
 - (a) the workman was at the time of accident under the influence of drinks or drugs,
 - (c) the workman willfully disobeyed an order expressly given or a rule expressly framed for the purpose of security safety of workmen, and
 - (d) the workman willfully disregarded or removed the safety devices or safety guards provided to him.

Notice and claim : No claim for compensation is to be entertained by the Commissioner for Workmen's Compensation unless notice of accident is given 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.

8.5.2 Employees' State Insurance Act, 1948

This Act applies to all factory employees and persons employed in establishments as notified by the state governments, provided their remuneration does not exceed Rs.6,500 per month. It covers all persons employed in factories or in connection with the work for a factory or establishment including manual, supervisory and salaried employees who are entitled to the benefits along with their dependants.

Establishment of the Employees' State Insurance Corporation: The Central Government has established the Employees' State Insurance Corporation as a body corporate for administration of the scheme of employees' state insurance in accordance with the provisions of the Act. The corporation includes, among others, representatives of employers and employees (ten each), members representing states, and members of Parliament, and the Director General of the Corporation (ex-officio) appointed by the Central Government. A Medical Benefit Council has also been constituted by the Central Government with the Director General of Health Services (ex Officio) as Chairman. There is a standing committee of the Corporation constituted from among its members as provided in the Act.

Employees' State Insurance Fund: Subject to the provisions of the Act, all employees in factories, or establishments to which the Act applies are insured on the basis of contributions payable in respect of every employee comprising both the employer's contribution and that of the employee to State Insurance Fund which is held and administered by the Corporation. The contribution shall be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are 4.75% and 1.75% of workers' wages by employers and employees respectively.

Benefits: The insured persons and their dependents are entitled to the following benefits on prescribed rates.

- (a) periodical payments to the insured person in case of his sickness (sickness benefit);
- (b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child (maternity benefit);
- (c) periodical payments for temporary or permanent disablement caused by employment injury (disablement benefit);
- (d) periodical payments to the dependants of an insured person who dies as a result of an employment injury (dependants' benefit); and
- (e) medical treatment and attendance on insured person (medical benefits)

As provided under the Act, the Corporation has extended the above benefits to the family of insured persons subject to such conditions as laid down in the regulations. Regarding medical benefit, it is further provided in the Act that an insured person or (where such benefit is extended to his family) a member of his family shall be entitled to receive medical benefit either in the form of out-patient treatment and attendance in a hospital or dispensary or clinic or treatment as inpatient in a hospital or other institution.

Adjudication of Disputes and Claims: The Act has provided for the constitution of one or more Employees' Insurance Courts by the State Governments for adjudication

of disputes and claims in relation to matters arising out of the provisions of the Act. There can be no appeal in respect of an order of the court except when it involves a substantive question of law and the period of limitation for an appeal is sixty days. However, the Employees Insurance Court may submit any question of law for the decision of the High Court.

The Act has also laid down penalties for false statements, failure to pay contributions, and contravention or non-compliance of the requirements of the act.

8.5.3 Employees Provident Funds and Miscellaneous Provisions Act, 1952

Provision has been made under this Act for the institution of provident fund for the benefit of workers in specified industries and classes of establishment. The Act is applicable to employees drawing pay not exceeding Rs. 5,000 per month including basic pay, dearness allowance, retraining allowance, if any, or another similar allowance and cash value of food concession. It covers every establishment which is a factory engaged in any industry specified in Schedule I of the Act and in which twenty or more persons are employed, and any other establishment employing twenty or more persons or class of such establishment which the Central Government, by notification in the official gazette, may specify. The Act is not applicable to certain establishments which are specified in Section 16 of this Act. These are: (a) cooperative societies employing less than 50 persons and working without power, (b) establishments belonging to, or under the control of, the Central Government or a State Government whose employees are entitled to the benefit of CPF or old age pension with any government scheme and (c) any other establishment newly setup until the expiry of 3 years. However, the Central Government may extend the application of this Act to any establishment employing less than 20 persons.

There are three schemes which have been framed by the Central Government under the Act, viz., (1) Employees Provident Fund Schemes, 1952; (2) the Employee Pension Scheme, 1995; and (3) the Employees Deposit-linked Insurance Scheme, 1976.

Employees Provident Funds Scheme : In accordance with the provisions of the Act, the Central Government has framed the Employees Provident Fund Scheme and established provident funds for employees to be administered by the Board of Trustees (the Central Board) constituted by the Government. An executive Committee is also constituted to assist the Central Board in the performance of its functions. The Central Provident Fund Commissioner is the chief executive officer of the Central Board, State Boards (Board of Trustees at the state level) have also been constituted by the Central Government with specified powers and duties to be performed.

The employer's contribution to the provident fund of any establishment is required to be 10 per cent of the basic wages, dearness allowance and retaining allowance (if any) payable to each of the employees whether employed by him directly or by or through a contractor. The employee's contribution is to be equal to the employer's contribution or more if the employee so desires. The amount of contributions to the provident fund is required to be invested in accordance with the investment pattern approved by the Government of India and the members get interest on the money standing to their credit in their provident fund accounts.

Advances and withdrawals upto certain limits are allowed to the members for various purposes as laid down in the Act, like payment of insurance premium, hospitalization and medical treatment, marriage of son/daughter or brother/sister, purchasing or

construction of dwelling house or flat, etc. However, final withdrawal, i.e., refund of the accumulated amount with interest thereon, is allowed in the event of death, permanent disability, superannuation, voluntary retirement, etc.

Employees' Pension Scheme, 1995 : This Scheme has been framed by the Central Government to provide for (a) superannuation pension, or retirement pension or permanent total disablement pension to the employees of any establishment to which the Act applies, and (b) widow or widower's pension, children pension and orphan pension to the beneficiaries of such employees. The Pension Fund to be established under the scheme will have employer's contribution not exceeding 8.33 per cent of basic wages and allowances of the concerned employees diverted from the provident fund.

The Pension Scheme which came into effect from 16.11.95, in place of the Family Pension Scheme, 1971, is compulsory for all persons who were members of the Family Pension Scheme as well as for those who became members of the Provident Fund from 16.11.95. Minimum 10 of years contributory service is required for entitlement to pension (one month in case of total disablement and death). Normal superannuation pension is payable to the employee on attaining the age of 58 years. A discounted rate of pension is payable on attaining the age of 50 years. In case of voluntary retirement, 20 years service shall be necessary.

The amount of monthly pension may vary from member to member depending upon his pensionable salary (the average of last 12 months pay) and pensionable service. The rate of minimum widow pension is Rs. 450 p.m. and the maximum may be upto the amount of a normal member's pension. In addition, there is provision for children pension at 25% of widow pension for each child subject to a minimum of Rs. 115 p.m. per child payable for not more than two children at a time till they attain the age of 25 years. Orphan pension is payable at 75% of the widow pension subject to a minimum of Rs. 170 p.m. per orphan. Dependent parents are also now eligible for pension as also disabled children who are eligible for life-long pension.

Employees' Deposit-Linked Insurance Scheme, 1976 : To provide life insurance benefits to the employees of establishments to which the Act applies, the Central Government framed the Employees' Deposit-Linked Insurance Scheme and established a Deposit-Linked Insurance Fund which is vested in and administered by the Central Board. The Scheme is applicable to all factories/establishments to which the Employees Provident Fund and Miscellaneous Provisions Act applies. It came into effect from 1st August 1976. All employees who are members of the Provident Funds are covered under the Scheme. It may be noted that the factories or establishments which have an insurance scheme conferring more benefits than those provided under the deposit-linked scheme, may be granted exemption if majority of employees are in favour of such exemption.

The employees are not required to contribute to the Insurance Fund. But the employers are required to contribute to the Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including cash value of food concession and retaining allowance, if any. Besides, the employers are to pay charges to the Fund at the rate of 0.01% of the pay of employee members for meeting the administrative charges, subject to a minimum of Rs. 2 per month. It may be noted that the factories or establishments which have an insurance scheme conferring more benefits than those provided under the deposit-linked scheme, may be granted exemption if majority of employees are in favour of such exemption.

In the event of a member's death an amount equal to the average balance in the provident fund account of the deceased during the preceding 12 months or period or membership, whichever is less, is payable to the persons eligible to receive the amount or the Provident Fund accumulations. In case the average balance exceeds Rs. 25,000, the amount to be paid is Rs. 25,000 plus 25% of the amount of such excess subject to a ceiling of Rs. 35,000.

8.5.4 The Payment of Gratuity Act, 1972

This Act became necessary in order to have a Central legislation to ensure a uniform pattern of payment of gratuity to employees throughout the country, and to avoid differences in the treatment of employees of establishments having branches in more than one state and the employees were liable to be transferred from one state to another. The Act applies to every factory, mine, oilfield, plantation and railway company, every shop or establishment covered by any law in any state in which ten or more persons are employed, and such other establishments in which ten or more persons are employed as the Central Government may specify by notification.

Payment of gratuity : Gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for at least five years. It is payable on his superannuation, or retirement or resignation, or his death or disablement due to accident or disease, in which case completion of service of five years is not necessary. For every completed year of service or part thereof in excess of six months, the employer is to pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. In the case of a piece-rated employee, the 15 days' wages is to be calculated by dividing the quotient by 15. The amount of gratuity payable to an employee is not to exceed three lakhs and fifty thousand rupees.

Compulsory insurance : Every employer is required to obtain an insurance for his liability for payment towards gratuity under the Act, from the Life Insurance Corporation or any other prescribed insurer. But the Government may exempt employers who have established approved Gratuity Funds earlier, or done so under the provisions of the Act with 500 or more employees. Registration with controlling authority is necessary for such employers.

Nomination : Each employee who has completed one year of service has to make nomination in favour of one or more members of his family for payment of gratuity. If he has no family at the time of making nomination, nomination may be made in favour of any person or person, but such nomination will be invalid if he acquires a family subsequently.

Inspectors and penalties : The appropriate Government may appoint as many inspectors as it deems fit for purposes of the Act, so as ensure that the provisions of the Act are complied with. The Act has also provided for penalties where any false statement or false representation is made for the purpose of avoiding any payment to be made under the Act and where any employer contravenes or make default in complying with any of the provisions of the Act or any rule or order made hereunder. Such offenders are punishable with imprisonment or fine, or with both.

Check Your Progress C

- 1

Does the Employees' Provident Funds and Miscellaneous Provisions Act apply to all establishments?
- 2

State the minimum amount of widow pension and the children pension provided under the Pension Scheme, 1995.
- 3

State which of the following statements are True or False.
(a) Workmen's Compensation Act provides for payment of compensation by the employers to workmen for personal injuries sustained by any accident.
(b) The State Insurance Act applies to all factory employees provided their remuneration does not exceed Rs. 5,000 per month.
(c) There are three schemes framed by the Central Government under Employees Provident Funds and Miscellaneous Provisions Act, 1952,
(d) The Family Pension Scheme 1971, is compulsory for all persons who became members of the Provident fund before 16.11.95.
(e) Every employer is required to obtain an insurance for his liability for payment towards gratuity under the Payment of Gratuity Act, 1972.

8.6 INDUSTRIAL RELATIONS

Industrial relations refer to the relations between workers and management representing the employer in industrial establishments. Over time, employer-employee relations have undergone considerable changes with problems and issues more complex than in earlier times. Ownership of industry being divorced from management and the workers getting organised, disputes and conflicts between labour and management have assumed multiple dimensions. Let us examine the legislative measures adopted in India to bring about harmony and cooperative relationship between employers and employees and resolving the industrial conflicts and disputes, viz., the Trade Unions Act, 1926; the Industrial Disputes Act, 1947; and the Industrial Employment (Standing orders) Act, 1946.

8.6.1 Trade Unions Act, 1926

Trade union generally refers to workers association formed to promote and protect their interest. But the Trade Unions Act is wider in its scope and covers the trade unions of employers as well. It defines 'trade union' as any combination formed (a) primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or (b) for imposing restrictive conditions on the conduct of any trade union or business. It also includes any federation of two or more trade unions.

Mode of registration : The Act has laid down that any seven or more members of a trade union, by subscribing to the rules of the trade union, may apply for its registration to the Registrar of Trade Unions. Every application for registration shall be made along the prescribed fee and a copy of the rules of the trade union and a statement containing (i) the names, occupations and address of members making the application, (ii) the name of the trade union and the address of its head office, (iii) the titles, names, ages, addresses, occupations of its office bearers. It is also necessary that the rules of the trade union must contain the objects, purpose for which the general funds of the trade union shall be applicable, subscription payable by its members, the manner in which the members of the executive and other office bearers shall be appointed and removed, etc. It may be noted that, under the Act, not less than half of the total number of the office bearers of the registered trade union must be persons actually engaged or employed in the industry with which the trade union is connected.

Immunity and protection of trade unions : The Act has provided protection to the registered trade unions against criminal proceedings or victimization of office bearers or members for furthering the objects of the union. Immunity is provided against criminal proceedings as well as civil suits.

8.6.2 Industrial Disputes Act, 1947

The objectives of this Act are :

- (a) Promotion of measures for securing and preserving amity and good relations between employers and employees;
- (b) Investigation and settlement of industrial disputes;
- (c) Prevention of illegal strikes and lockouts;
- (d) Providing relief to workmen in the event of lay-off and retrenchment; and
- (e) Promotion of collective bargaining.

The Act applies to all industries including those carried by the Central and State Governments.

Authorities under the Act: The Act provides for the following authorities for investigation and settlement of industrial disputes.

Works Committee
Conciliation Officers
Boards of Conciliation
Court of Inquiry
Labour Courts
Industrial Tribunals
National Tribunals

Works Committees are to be constituted by the employers in all industrial establishments in which one hundred or more workmen are employed, with equal number of representatives of employers and employees respectively. The main function of such committees is to promote measures for securing and preserving amity and good relations between the employer and workmen.

The Act seeks to resolve industrial disputes in the first instance through conciliation. For this purpose, the appropriate Government may appoint Conciliation Officers who are to mediate in and promote settlement of any dispute. If a Conciliation Officer is unable to settle a dispute amicably, it is to be referred to the Board of **Conciliation** appointed by the Government consisting of a chairman and two or four other members

equally representing the two parties. The Act also provides for the appointment of Court of **Inquiry** consisting of one or more independent persons in order to ascertain the facts relating to any dispute. But, their findings are not binding on any party.

The Act also provides for a three-tier adjudication **machinery** for settlement of disputes in the event of failure of the conciliation proceedings. It consists of Labour Courts, **Industrial** Tribunals and National Tribunals. Disputes relating to matters listed under second and third schedules may be referred to a Labour Court for adjudication. Such matters can also be referred to an Industrial Tribunal. Industrial disputes involving any question of national importance or which relates to industrial establishments located in more than one state may be referred to a National Tribunal. Reference of a dispute to National Tribunal for adjudication is compulsory in the case of public utility concerns unless the notice of strike is frivolous or vexatious. In other cases it is entirely at the discretion of the government concerned. The Government has also the power to modify or reject the award of a Tribunal on public grounds.

Reference to arbitration : Where any industrial dispute exists or is apprehended, the employer and the workmen may agree to refer the dispute to arbitration. They can do so only by written agreement. When the agreement provides for a reference of the dispute to an even number of arbitrators, it has to provide for the appointment of another person as umpire. If the arbitrators are equally divided in their opinion the award of the umpire is to prevail.

Strikes and lockouts : The Act has recognised the employees' right to strike which can be exercised after complying with certain conditions regarding service of notice, etc. and only on the failure of conciliation proceedings. However, a strike by workmen or lockout by an employer is prohibited and becomes illegal under Section 23 of the Act if it is commenced or declared

- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- (b) During the pendency of proceeding before a Labour Court or Tribunal and two months after the conclusion of such proceedings;
- (c) during the pendency of arbitration proceedings and two months after conclusion thereof; and
- (d) during any period in which settlement or award is in operation.

It may be noted that a lockout declared in consequence of an illegal strike or a strike declared in consequence of an illegal lockout is not deemed to be illegal.

The Act includes provisions specifying punishment including imprisonment or fine or both, for illegal strikes by workman, illegal lockouts by employers, instigating or inciting others to take part in strike or lockout which is illegal, giving financial help in support of illegal strike or lockout, breach of settlement or award, disclosing confidential information, closure without notice and other offences.

Lay off and retrenchment: If any workman who has completed at least one year's continuous service is laid off, he must be paid compensation by the employer equal to **fifty** per cent of the total of basic wages and dearness allowance that would have been payable to him if he had not been laid off. Such workman cannot be retrenched by the employer unless the workman has been given one month's notice or paid wages in lieu thereof and is paid compensation equal to fifteen day's average pay for every completed year of service in excess of six months. The employer is also required to serve notice on the appropriate government about the retrenchment.

Closing **down an** undertaking : Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for at least one year is entitled to notice and compensation as in the case of **retrenchment**. However, if the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation payable to the workman may not exceed his average pay for three months. There are separate clauses in the Act as regards compensation payable in the case of undertakings engaged in mining operation and in the case of undertakings for the construction of buildings, bridges, roads, canals, dams, etc.

It may be noted that as per the provisions under Chapter V-B of the Act, the employers concerned are required to obtain prior permission of the appropriate government, on an application made in that behalf, where any workman is to be laid off or **retrenched** or an undertaking is to be closed down.

8.6.3 The Industrial Employment (Standing Orders) Act, 1946

This legislation was aimed at defining the conditions of employment of industrial workers so as to avoid disputes arising from **uncertainty** or vagueness in the terms of employment including conditions of recruitment, discharge, disciplinary action, etc.,. The Act applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day during the preceding twelve months.

Certification of Draft Standing **Orders:** Within six months from the date on which the Act becomes applicable to any industrial establishment, the employer is required to submit to the Certifying Officer (generally the Labour Commissioner or Regional Labour Commissioner) five copies of the draft standing orders proposed by him for adoption in his establishment including provisions for every matter set out in the Schedule to the Act. The Certifying Officer is to certify the **draft** after **giving** the employer and the trade union, or any other representatives of workmen, an opportunity of being heard if any modification or addition to the draft standing orders is to be made. The standing orders after certification become part of the terms and conditions of services between the employer and employees and have the force of law.

It may be noted that the Standing Orders (as per Schedule) include classification of workmen (whether permanent, temporary, badlies), manner of intimation to workmen about periods and hours of work, holidays, paydays and wage rates, shift working, attendance and late coming, etc. The text of the standing orders as finally certified must be prominently posted by the employer in English and in the language understood by majority of workmen on special boards maintained for the purpose at or near the entrance to the establishment and in all concerned departments.

Check Your Progress D

- I State the nature of immunity and protection provided to a registered trade union.
-

- 2 What is the amount of compensation to which a workman is entitled in case of closure of an industrial undertaking?
.....
.....
.....
- 3 State the legal provisions regarding submission of draft standing order by the employer to the Certifying Officer.
.....
.....
.....
- 4 What are the conditions laid down for the employer to fulfill before any workman can be retrenched ?
.....
.....
.....

8.7 WORKERS' PARTICIPATION IN MANAGEMENT

Workers' participation in management is an important part of industrial relations as it offers an enormous potential for raising productivity and promoting industrial peace. It creates a sense of involvement on the part of workers in an enterprise as it implies joint consultation involving management and workers representatives in the decision-making process. This concept has been regarded as a tool for improving the overall performance of an enterprise and gained so much importance that, in 1975, the constitution was amended and article **42A** was inserted in Directive Principles of State Policy to encourage and secure the participation of workers in management.

Objectives : The main objectives of workers' participation in management are :

- 1 Achieve higher productivity;
- 2 Greater efficiency and job satisfaction;
- 3 Improved Industrial relations;
- 4 Better discipline;
- 5 Improved operation of safety measures and welfare activities;
- 6 Developing a sense of belongingness; and
- 7 Establishment of harmonious industrial relations.

Operation of a satisfactory scheme of participative management at all levels breaks down the barriers between labour and management, reduces mutual suspicion and distrust, and imbues a spirit of co-operation. The workers are likely to develop a higher sense of responsibility, are able to offer new ideas and suggestions to management so as to make decision-making more realistic, and their willingness to implement the decisions.

Nature of participation : Broadly speaking the nature of workers' participation in management may be :

- (a) Information or associative participation, which enables workers to offer opinions based on information received;
- (b) Consultative participation, that is, workers sharing their views with management on matters of common interest;
- (c) Administrative participation which implies workers accepting greater share and assuming greater responsibility in the discharge of management functions; and
- (d) Active participation in the decision making process in relation to policies plans and activities.

Schemes of Workers' Participation

A few schemes of workers' participation in management have been introduced in India from time to time, viz., works committees, joint management councils, workers' representative on board of directors, and a two-tier model consisting of shop council at the shop level and joint council at the enterprise level.

Works Committees : The importance of works committee in an industrial undertaking for the settlement of any dispute which may arise in course of the day to day operations was emphasized by the Royal Commission on Labour in 1931 and was recognized in the Industrial Truce Resolution in 1947. The recommendation was given statutory recognition in the Industrial Disputes Act, 1947, under which works committees were required to be set up in every industrial establishment employing 100 or more persons, with equal representation of the employers and employees and their functions duly spelt out. But, in actual practice, the basic idea has been that matters which fall under collective bargaining should be dealt with by trade unions, while those related to implementation should be the concern of works committees. However, as the National Commission on Labour observed, "The general feeling is that works committees have not proved to be effective". This is attributed to the advisory nature of their recommendations, inter-union rivalry, union opposition, reluctance of the employers to utilize the committees, and the lack of interest of on the part of workers themselves.

Joint Management Councils : The draft model agreement between labour and management prepared in a Seminar on Labour Management Co-operation held in New Delhi in 1958 was the basis of setting up joint management councils. The functions of the councils have been divided into four categories : general functions; functions connected with the workers' right to be consulted; functions connected with the right to receive information and offer suggestions; and functions connected with the right to exercise administrative powers such as those in relation to welfare schemes, safety measures, etc. Although joint management councils were set up in a large number of undertakings, both in the private and public sectors, their working of have not been satisfactory. This is attributed to hostility of the employers and workers, lack of proper understanding of the purposes and benefits, and existence of several joint bodies and committees, etc.

Workers' Representatives on Board of Directors: It was on the recommendation of the Administrative Reforms Commission that the Government accepted the policy of appointing workers' representatives on the boards of directors of public sector undertakings. Initially it was decided that workers' representation should be there on the boards of industrial undertakings and not of financial or commercial undertakings. Later, the nationalized commercial banks were also covered.

Scheme of **Shop Councils and Joint Councils** : In July 1975, the Government of India adopted a scheme known as 'workers' participation in industry at the shop floor and plant levels. It is a two-tier participation model with a shop council at the shop floor or departmental level, and a joint council at the plant or enterprise level. With equal participation of employers and employees, there may be as many shop councils for a plant as the employer may decide. The size of council memberships is not to exceed twelve and is to be decided in consultation with the recognized trade union. Decisions are to be made by consensus, not by votes. The council is also to assist management in achieving production targets by eliminating wastage, optimum utilization of machine capacity and manpower, devising way of reducing absenteeism, and so on. A **joint** council is to be set up for the plant or the whole enterprise. Its constitution and working is more or less similar to that of shop councils. But it may deal with such matters as optimum production, fixation of production norms and efficiency, work planning, development of facilities for training and improvement of skills, preparing schedules of working hours, resolving problems which could not be solved at the shop floor or departmental level, etc. The joint councils are required to meet at least once every quarter.

The scheme is applicable on a voluntary basis to all undertakings employing 500 or more persons, though in some states it is applicable in the case of concerns employing 200 or more workmen as in Punjab, 250 or more as in Orissa and 300 or more as in Karnataka. In a few states, like Gujarat, the scheme has been made compulsory. The scheme has been applied in undertakings in the private sector, public sector as well as cooperative sector and covered millions of workers in several industries including steel, cement, fertilizer aluminum, copper, mica, paper sugar, textiles and engineering industries. By 1977, the scheme was extended to cover commercial and service organizations in the public sector employing at least 100 persons.

8.8 LET US SUM UP

The scope and coverage of labour legislation happen to be very wide and overlapping. Classified on the basis of their focus on particular aspects of workers' interest, the laws may be distinguished as : (a) Laws relating to factories and workshops and specific industries, which provide for health, safety and welfare of workers as well as other aspects like working hours, leave with wages and employment of children. The Factories Act, 1948, Mines Act 1952, Plantations Labour Act, 1961, the Indian Dock Labourers Act, 1934, and Dock Workers (Regulation of Employment) Act, 1984, come under this category. Besides, there are other laws governing the working and service conditions of the employees of transport undertakings, shops and commercial establishments, contract labour, working journalists; (b) Laws relating to wages and bonus include Payment of Wages Act, 1936, to ensure regular and timely payment of wages; Minimum Wages Act, 1948 applicable to workers employed in selected sweated industries; Payment of Bonus Act, 1965; and Equal Remuneration Act, 1976; (c) Enactments bearing on social security contain provisions with respect to cases of employment injury, maternity benefit, sickness as well as eventualities of old age and unemployment. Laws related to this category are Workmen's Compensation Act, 1923; Maternity Benefit Act, 1961; Employees State Insurance Act, 1948; Employees Provident Fund and Miscellaneous Provisions Act, 1952; and the Payment of Gratuity Act, 1972; and (d) Laws relating to trade unions and industrial relations include the Indian Trade Unions Act, 1926, and Industrial Disputes Act, 1947; and Industrial Employment Standing Orders) Act, 1946.

The Factories Act includes provisions relating to health of employees, safety provisions, and welfare of workers, working hours for adults (men and women), employment of young persons.

Legislation relating to wages and bonus: Under the Minimum Wages Act, the responsibilities of fixing and revising the minimum rates of wages for employees in any scheduled employment lies with the Central and State governments. The Payment of Wages Act ensures workers welfare through measures ensuring payment of wages regularly and prevention of undue deductions from wages and arbitrary times being imposed. The Payment of Bonus Act provides for payment of minimum bonus of 8.33% and maximum bonus upto 20% of the total remuneration subject to the availability of allocable surplus. The Equal Remuneration Act is aimed at ensuring payment of equal remuneration to male and female workers for the same work or work of a similar nature. It also seeks to prevent any discrimination on the ground of sex with regards to recruitment, promotion, transfer, etc.

The social security legislation : The Workmen's Compensation Act provides for payment of compensation by the employer to his workmen for personal injuries caused by accidents arising out of and in course of employment as also for certain occupational diseases. The Employees State Insurance Act has laid down that the insured persons (employees) and their families shall be entitled to benefits like payment for sickness, maternity, and disablement caused by employment injury as well as on death, and medical treatment either in the form of out-patient treatment in a hospital or dispensary or treatment as inpatient in a hospital. The Employees Provident Fund and Miscellaneous Provisions Act has provisions under which three schemes have been framed by the Central Government, viz., (a) Employees' Provident Fund Scheme; (b) Employees Pension Scheme; and (c) Employees' Deposit-Linked Insurance Scheme. All the schemes require contribution to be made by both the employees and the employers. All employees who are members of the provident funds are covered by the pension scheme and the insurance scheme. The Payment of Gratuity Act provides for the payment for gratuity, an important retirement benefit to the employees for long and faithful service.

Legislation relating to industrial relations : This includes enactments intended to bring about harmony and co-operative relationship between employers and employees and aims at resolving industrial conflicts and disputes. The Trade Unions Act provides for registration of all trade unions and their protection against criminal proceedings and immunity against civil suits or victimization of their office bearers. The Industrial Disputes Act includes provisions for constitution of works committees, conciliation officers, board of conciliation for settlement of industrial disputes, and a three-tier adjudication machinery (labour courts, Industrial Tribunals and National Tribunals) for settlement of industrial disputes. Employers and workmen may also refer the dispute to arbitration if there is written agreement between them. The Act duly recognizes the employee's right to strike, but any strike by workmen and so also the lockout by an employer is prohibited during the pendency of conciliation, adjudication or arbitration proceedings and during the period when a settlement or award is in operation. Provision is also there for payment of compensation to workmen in the event of lay off or retrenchment or closure of an undertaking. The Industrial Employment (Standing Order) Act is aimed at defining the conditions of employment of industrial workers so as to avoid disputes arising from uncertainty or vagueness in the terms of employment.

Workers' participation in management : The main objective of workers' involvement in the decision-making process is to improve the overall performance of

an enterprise though better discipline, improved industrial relations, securing greater efficiency and job satisfaction. It also help in developing a sense of belongingness and ensuring harmonies industrial relations. The schemes which have been instituted for the purpose include : works committees, joint management councils, workers' representation on the board of directors, and workers' participation in industry at the shop floor and plant levels providing for shop councils and joint councils. Somehow the working of the schemes has not been satisfactory.

8.9 KEYWORDS

Employment Injury : A personal injury to employee caused by accident or an occupational disease arising out of and in course of employment.

Ex-gratia Payment : Payment not legally binding but for which some moral obligation is felt.

Industrial Relations : Relations between employers and employees in industry and the relations of state with employers, workers and their organisations and trade unions.

Lay off: Failure, refusal or inability of an employer to give employment to a workman whose name appears on the muster rolls of his industrial establishment, and who has not been retrenched.

Social Security : Protection from uncertainties and risks involving unemployment, old age, sickness, disablement, etc. during service.

8.10 ANSWERS TO CHECKYOURPROGRESS

- A** 4 (a) Fencing (b) 48, 9 (c) 15
(d) unemployment (e) Industrial Disputes
- C** 3 (a) False (b) True (c) True (d) False (e) True

8.11 TERMINAL QUESTIONS

- 1 "The scope and coverage of labour legislation are very wide and overlapping". Elucidate the statement with a brief overview of labour legislation in India.
- 2 State and explain briefly the safety provisions in the Factories Act for factory employees.
- 3 What are the provisions of the Factories Act regarding working hours for adult workers ?
- 4 What is the main purpose underlying the Minimum Wages Act, 1948 ? What is the role of the Advisory Boards in that context ?
- 5 Discuss the main provisions of the payment of Bonus Act 1965, in the light of its objectives.
- 6 State the provisions of Payment of Wages Act, 1936 regarding (a) time for paying of wages, and (b) deductions allowed from wages.
- 7 Explain the provisions of the Workmen's Compensation Act, 1923 regarding employer's liability and the amount of compensation payable for injury caused to an employee in course of employment.

- 8 Enumerate the nature of benefits which workers can claim under the Employees State Insurance Act, 1948 and the Employees Deposit linked Insurance Scheme, 1976.
- 9 Write explanatory notes on :
 - (a) Employees Provident Funds Scheme
 - (b) Employees Pension Scheme, 1995
 - (c) Payment of Gratuity
- 10 State the objects of the Industrial disputes Act, 1947, and the adjudication machinery set up for settlement of industrial disputes in India.
- 11 What are the provisions of Industrial Disputes Act, 1947, regarding (a) strikes and lock outs, (b) lay off and retrenchment.
- 12 What is meant by workers' participation in management ? Discuss the schemes of workers participation so far introduced in India.

Note : These questions will help you to understand the unit better. Try to write answers for them, but do not submit your answers to the university for assessment. These are for your practice only.

SOME USEFUL BOOKS

Dasgupta, A and Sengupta N. K., Government and Business, Vikas Publishing House, New Delhi

Francis Cherunilam, Business Environment, Himalaya a Publishing House, Mumbai.

Ghosh, P. K. and Kapoor, G. K., Business Policy and Environment, Sultan Chand & Sons, New Delhi

Gulshan, S. S. and Kapoor, G. K. , Economic, Labour and Industrial Laws, Sultan Chand & Sons, New Delhi

Kapoor, N. D. and Tripathi, P. C., Industrial Laws and Practice, Sultan Chand & Sons, New Delhi.

Sharma, J. P., Simplified Approach to Labour Laws, Bliarat Law House Pvt. Ltd., New Delhi.