



Estd: 1974

VIDYAVARDHAKA LAW COLLEGE

SHESHADRI IYER ROAD, MYSURU-1

Labour Law II Synopsis

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UNIT-I

1. Questions- Who is a bonded labourer? Explain the provisions relating to bonded labour system in India.

I. Bonded Labour System (Abolition) Act, 1976

It was introduced with a view to abolish the economic and physical exploitation of the weaker sections. Basic Human Rights of debtors and their family members are lost in the hands of creditors and their family for generations together. The interest rates payable are high and the agreement / contracts to prove the debtor-creditor's stand are vague / poor. Article 23(1) abolishes 'begar' and other forms of bonded labour.

The Act says that if there is an agreement / contract or an instrument requiring bonded labour after the commencement of this act, it shall stand inoperative and the liability to repay it stands extinguished. The Act came into force on October 25, 1975.

Sections

- Section 2(a): Defines 'advance'
- Section 2(b): Defines 'agreement'
- Section 2(c): Defines 'ascendant' or 'descendent'
- Section 2(d): Defines 'bonded debt'
- Section 2(e): Defines 'bonded labour'
- Section 2(f): Defines 'bonded labourer'
- Section 2(g): Defines 'bonded labour system'
- Extinguishment of liability to repay bonded debt

- Implementing Authorities
- Vigilance Committee
- Offenses and procedure for trial
- Miscellaneous provisions

Related Cases-

Public Union for Civil Liberties v. State of Tamil Nadu and Others (2004) 12 SCC 381, The SC authorizing the NHRC to monitor the implementation of the provisions of the 1976 Act which we re-iterate and direct NHRC to effectively monitor and implement the provisions of the Act.

Public Union for Civil Liberties Vs State of Tamil Nadu and Others,

SC while dealing with this case, passed an interim order dated 13th May, 1994, (reported in (1994) 5 SCC 116) and gave various directions which are as under:

“(1) To identify the bonded labourers and update the existing list of such bonded labourers as well as to identify the villages where this practice is prevalent.

(2) To identify the employers exploiting the bonded labourers and to initiate appropriate criminal proceedings against such employers.

(3) To extinguish/discharge any existing debt and or bonded liability and to ensure them an alternative means of livelihood.

(4) To appoint an independent body such as a local non-political social action group to collect independent information and details of— (a) the prevalence of the exploitative practice of bonded labour and (b) employers or their agents perpetrating the wilful violation of the law by encouraging and abetting the practice of bonded labour.

(5) To provide employment to such bonded labourers as agricultural workers at the prescribed minimum wage rate and/or provide the landless bonded labourers with agricultural land, with a view to ensure an alternative means of livelihood.

(6) To provide adequate shelter, food, education to the children of the bonded labourers and medical facilities to the bonded labourers and their families as part of a rehabilitation package.

(7) To ensure—

(a) Regular inspection by the Labour Commissioner concerned to keep the contractors who have in the past employed bonded labourers under watch,

(b) Setting up of Vigilance Committees in each district,

(c) The District Magistrates concerned to send quarterly reports to the Supreme Court Legal Aid Committee or to any Commissioner appointed by the court for this purpose,

(d) The setting up of rural credit facilities such as grameen banks, cooperatives etc. from which short-term interest free loans can be availed without security, since the root cause of bonded labour seems to be the lack of availability of funds (credit through an institutional network).

(8) To initiate criminal prosecution against the contractors/employers or their agents who engage bonded labour and employ children below the age of 14 without adequate monetary

compensation by paying wages below the minimum wage rate, as prescribed under the Minimum Wages Act.

(9) To initiate criminal prosecution against those employers, contractors or their agents who make part payment of wages by way of Khesri dal which is known to cause permanent disability

Sannasomannara Somashekarappa and Others vs Gorappa Rudraswamy and Others says that 'bonded labour system' as per Section 2(g) should exist and if it was not proved, action under Section 16 cannot be taken.

Questions

1. Who is an interstate workman? Explain the provisions relating to registration of establishments employing Inter State Migrants.

II. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

It is an Act of the Parliament of India enacted to regulate the condition of service of inter-state labourers in Indian labour law. The Act's purpose is to protect workers whose services are requisitioned outside their native states in India. Whenever an employer faces shortage of skills among the locally available workers, the act creates provision to employ better skilled workers available outside the state.

The employment system of interstate migrant labour was an exploitative system prevalent more or less in all over India. It was rampantly institutionalized in Orissa and in some other states. In Orissa the migrant labour (called dadan labour locally) through contractors or agents (called Sardars / Khatedars) are sent for work outside the state in large construction projects. This system lends itself to various abuses. Sardar promising at the time of recruitment that wages would be calculated on piece rate basis would not be settled every month as promised. Once the worker came under clutches of the contractor he took him to a far off place on payment of railways fare only. No working hours were fixed for interstate migrant workers and they had to work on all the days in a week under extremely bad working conditions.

The compact committee which was constituted in February 1977, recommended the enactment of a separate central legislation to regulate the employment of interstate migrant workers as it was felt the provisions of the Contract Labour (Regulation and Abolition) Act 1970,^[1] even after necessary amendments would not adequately take care of the variety of malpractices indulged in by the principal employers/contractors/Sardars/Khatedars etc. and the required facilities to be provided to these workmen in view of the peculiar circumstances in which they are working.

The recommendations of compact committee had been examined in consultation with the state governments and the relevant central ministries, Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was passed by both houses of Parliament and President of India gave his assent on 11-06-1979.

This Act makes provision for availing with the onsite services of interstate workers by the contractors / establishments to overcome only the temporary shortage of required skilled workers in a state. The purpose of this act is not to encourage interstate migration of workers against the interests of local workers as the principal employers would have to incur more cost in deploying interstate workers.

Rights of interstate workers

In addition to the general labour laws applicable to all workers, the interstate workers are entitled with equal or better wages for the similar nature & duration of work applicable for the local workmen or stipulated minimum wages under the Minimum Wages Act, 1948 whichever is more,

- a. displacement allowance (Section 14),
- b. home journey allowance (Section 15) including payment of wages during the period of journey,
- c. Suitable residential accommodation and medical facilities free of charge on mandatory basis.
- d. Termination of employment after the contract period without any liability.
- e. Right to lodge complaint with the authorities within three months of any incident, accident, etc.

Role of contractors

Registration of all contractors who employ or employed five or more Interstate Migrant Workmen on any day of the preceding 12 months.

- a. Furnish the details of workmen periodically in such forms as prescribed by state government.
- b. Maintain the registers indicating the details of interstate workers and make available for scrutiny by the statutory authorities.
- c. Issue of passbook affixed with a passport-sized photograph of the workman indicating the name and the place of the establishment where the worker is employed, the period of employment, rates of wages, etc. to every inter-state migrant workman.
- d. Reporting by the contractor the incidence of fatal accident or serious injury of such workman to the specified authorities of both the States and also the next of kin of the workman.
- e. Liable for the prescribed punishments for violations committed under this Act.

Role of principal employers

- a. Registration of all principal employers who employ or employed directly or indirectly five or more Interstate Migrant Workmen on any day of the preceding 12 months.
- b. Maintain the registers indicating the details of interstate workers and make available for scrutiny by the statutory authorities.
- c. Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner and may be prescribed.

- d. Principal employer shall be liable to bear the wages and other benefits to interstate workers in case of failure by the contractor to effect the same.
- e. Liable for the prescribed punishments for violations committed under this Act.

Role of state governments

- a. Appointment of inspectors to oversee implementation of this act.
- b. Appointment of registration officers to grant and revoke registration of contractors / principal employers / establishments.
- c. Appointment of licensing officers to grant, suspend and revoke licenses to contractors / principal employers / establishments
- d. Making rules for carrying out the purposes of this Act subject to the condition of previous publication
- e. Entertaining appeals from the aggrieved parties and disposal of the same as per this Act

Questions:

1. **Define Sexual Harassment. Explain the redressal mechanism provided under Sexual Harassment of Women at Workplace Act, 2013.**
2. **Explain the initiatives taken by judiciary (Supreme Court) with respect to Sexual Harassment at workplace in post *Vishaka Cases*.**

III. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

It is a legislative act in India that seeks to protect women from sexual harassment at their place of work.

The Act came into force from 9 December 2013.

Preamble

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in *Vishaka v. State of Rajasthan* (1997).

Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business.

Vishaka v. State of Rajasthan established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury. This case ruling had issued Vishaka guidelines under Article 32 of the Constitution of India. The Supreme Court had made it mandatory that these had to be followed by all organizations until a legislative framework on the subject has been drawn-up and enacted. However, the legislative void continued and the Supreme Court in **Apparel Export Promotion Council v. A.K Chopra** ((1999) 1 SCC 759) reiterated the law laid down in the Vishaka Judgment. In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace.

Medha Kotwal Lele & Ors. V. Union of India & Ors. A letter written by Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of sexual harassment stating that the Vishaka Guidelines were not being effectively implemented. Converting the letter into a writ petition, the Supreme Court took cognizance and undertook monitoring of implementation of the Vishaka Guidelines across the country by directing State Governments to file affidavits emphasizing on the steps taken by them to implement the Vishaka Guidelines. In its judgment, the Supreme Court observed that "the implementation of the Vishaka Guidelines has to be not only in form but also in substance and spirit so as to make available safe and secure environment for women at workplace in every aspect and thereby enabling working women to work with dignity, decency and due respect." Not being satisfied with the implementation of the Vishaka Guidelines, it directed States to put in place sufficient mechanisms to ensure effective implementation of the Vishaka Guidelines. Finally, the Supreme Court asserted that in case of a non-compliance or non-adherence of the Vishaka Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.

Salient Features

- 1) The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.^[13]
- 2) The Act also covers concepts of 'quid pro quo harassment' and 'hostile work environment' as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment.
- 3) The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status,

whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

- 4) An employer has been defined as any person who is responsible for management, supervision, and control of the workplace and includes persons who formulate and administer policies of such an organisation under Section 2(g).
- 5) While the "workplace" in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.
- 6) The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
- 7) Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- 8) The Complaints Committees have the powers of civil courts for gathering evidence.
- 9) The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- 10) The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality.
- 11) The Act requires employers to conduct education and sensitization programmes and develop policies against sexual harassment, among other obligations.
- 12) Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to 50,000. Repeated violations may lead to higher penalties and cancellation of licence or deregistration to conduct business.
- 13) Government can order an officer to inspect workplace and records related to sexual harassment in any organization.
- 14) Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

Questions-Explain the salient features of Equal Remuneration Act.

IV. Equal Remuneration Act, 1976

Article 39(d) of Constitution of India: Principle of Equal Pay for equal work. The State in particular, directs its policy towards securing that there is equal pay for equal work for both men and women.

Article 14 and Article 16: Directive Principles of State Policy

- Section 1: Short title, extent and commencement
- Section 2: Definitions
- Section 3: Act to have overriding effect
- Section 4: Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature
- Section 5: No discrimination to be made while recruiting men and women workers
- Section 6: Advisory Committee
- Section 7: Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints
- Section 8: Duty of employers to maintain registers
- Section 9: Inspectors
- Section 10: Penalties
- Section 11: Offences by companies
- Section 12: Cognizance and trial of offences
- Section 13: Power to make rules
- Section 14: Power of Central Government to give directions
- Section 15: Act not to apply in certain special cases
- Section 16: Power to make declaration
- Section 17: Power to remove difficulties
- Section 18: Repeal and saving

Important Provisions

- Act to have overriding effect
- Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature
- No discrimination to be made while recruiting men and women workers
- Officer not below the rank of Labour Officer will be appointed by the appropriate Government for hearing and deciding claims and complaints
- Will have powers of Civil Court
- **Penalties on the employer who violates provisions**
- Omitting or Refusal to produce any register or other documents to an Inspector or to give any information shall be punishable with fine which may extend to five hundred rupees.
- **Offences by companies:** Every person, who at the time of the offense was committed, was in charge of, and was responsible to the company, as well as the company, shall be deemed guilty.
- **Cognizance and trial of the offenses**
 - No court inferior to Metropolitan Magistrate or a First Class Judicial Magistrate shall try offenses related to this Act
 - Take cognizance of an offense when the court receives a complaint made by the Appropriate Government or an officer duly authorized by it in its behalf or the

person aggrieved by the offenses or by any recognized welfare institution or organization.

- **Provisions of Industrial Dispute Act, 1947** will be used for recovery of money due from an employer arising out of the decision of an authority appointed under the section.
- Central Government has the power to direct the State Government in regard to carrying into execution of this Act in the State.
- Act does not apply in certain cases
- When terms and conditions of a women's employment in complying with the requirements of any law giving special treatment to women or
- Special treatment accorded to women in connection with:
 - Birth or expected birth of a child, or
 - Terms & Conditions relating to retirement, marriage or death or to any provisions made in connection with them

Related Cases

- **Randhir Singh vs Union of India: Supreme Court of India held that-** Though the principle of equal pay for equal work is not a fundamental right, it is certainly a constitutional goal and therefore capable of enforcement through constitutional remedies under Article 32 of Constitution
- **State of AP and others vs G Sreenivasa Rao & others-** Equal pay for equal work does not mean that all the members of the same cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service.
- **State of West Bengal and others vs Hari Narayana Bhowal and others,** the Supreme Court held that- Unless a very clear case is made out and court is satisfied that the scale provided to a group of persons on the basis of material produced before it amounts to discrimination without there being any justification, the court should not take upon itself the responsibility of fixation of scales.
- **State of MP vs Pramod Baratiya-** Stress is upon similarity of skill, effort and responsibility when performed under similar conditions
- **Mackinnon Mackenzie & Co vs Adurey D'Costa-** In deciding whether the work is in the same or of similar nature, a broad approach should be taken. In doing so, the duties actually and generally performed by men and women and not those theoretically possible, should be looked.

UNIT-II

Questions-

1. Mention the different kinds of wages. Explain the various theories of wages.
2. Define wages under Minimum Wages Act. Explain the provisions relating to fixing of minimum rate of wages.

V. Minimum Wages Act, 1948

1. Minimum wage which contemplates irreducible level of wage enables a workman to provide three basic necessities of life like food, shelter and clothing.
2. Minimum wage differs from state to state and even from place to place within a state.
3. SECTION 3- FIXING OF MINIMUM RATES OF WAGES- The appropriate Government may fix—
(a) a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");
(b) a minimum rate of wages for piece work (hereinafter referred to as "a minimum piece rate");
(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");
(d) a 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 employees (hereinafter referred to as "overtime rate").
4. Section 4-Minimum rate of wages.
5. Section 5. Procedure for fixing and revising minimum wages.

Bijoy Cotton Mills v State Of Ajmir

The crucial sections were challenged as unconstitutional on the ground that power of the AG is arbitrary in fixing the minimum rates of wages and is also interference in their freedom of trade or business guaranteed under Art 19(1) (g).

SC observed- Minimum wages Act was passed to give effect to minimum wages fixing machinery convention held at Geneva. If labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraint should be imposed upon their freedom of contract and such restriction cannot be said to be unreasonable. It is imposed in the interest of general public

Unicoy v State of Kerala

The act was challenged on the ground that the State govt, power in fixing minimum rates of wages is arbitrary.

SC- held that there was no arbitrariness even when the govt. is fixing minimum wages by notification in the Official gazette as the govt. is obliged to consult advisory board which consists of the representatives of the employers and employees. Since govt. is bound to consult the advisory board there is no arbitrariness. There is no provision for review of the decision of the govt, but that by itself cannot be taken to hold the act as unreasonable

HYDRO (ENGINEER) PRIVATE LTD V THEIR WORKMEN-The fact that employer might find it difficult to carry on business on the basis of minimum wages is an irrelevant consideration. The minimum rates of wages must ensure not only the mere physical subsistence of the worker which would keep him just above starvation but it must provide him to retain and preserve his efficiency as a workmen.

Capacity of the industry as a whole and its employer's financial capacity as a whole is no doubt a relevant factor only at the time of fixing minimum rates of wages by the competent authorities exercising under the act, but once this exercise is done and minimum rates of wages are fixed, thereafter the capacity of the employer to pay minimum wages becomes irrelevant.

Thus the capacity to pay is relevant before fixing and the same is irrelevant immediately after fixing the minimum wages.

KAMINI METALS AND ALLOYS LTD V ITS WORKMEN- SC said minimum wages have to be paid irrespective of the extent of profits, the financial conditions of the establishment or the availability of the workers on lower wages. Thus minimum wages are fixed at an irreducible level and wages cannot be allowed to sink as it would result in the starvation of the workmen. For this reason no worker is supposed to offer his services for a wage lower than the minimum rates of wages fixed by the appropriate govt. under the Act. If he so does he should be considered a forced labour.

6. Section 7- Advisory Board
7. Section 8- Central Advisory Board
8. Section 9- Composition of Committees
9. Section 10- Correction of errors
10. Section 11- wage in Kind
11. Section 12- Payment of Minimum rate of wages
12. Section 13- Fixing hours for normal working day
13. Section 14- Overtime work
14. Section 15- Wages of worker who works for less than normal working day.
15. Section 16- Wages for two or more classes of work.
16. Section 17- Minimum time rate wages for piece work.
17. Section 18- Maintenance of registers and records.
18. Section 19- Inspectors.
19. Section 20-Claims.
20. Section 21- Single application in respect of a number of employees.
21. Section 22- Penalties for certain offences.
22. Section 23- Exemption of employer from liability in certain cases.

Questions- Define Continuous Service under Gratuity Act. When Gratuity becomes payable. Discuss

VI. Payment of Gratuity Act, 1972

- 1) This Act was introduced in 1972 and was amended in 1984 and 1987.
- 2) This Act has no schedules.

- 3) Central Government enacted the Payment of Gratuity (Central) Rules 1972. Andhra Pradesh State Government has enacted the Act as Andhra Pradesh Payment of Gratuity Rules 1972
- 4) Gratuity is defined as something given without obligation or claim.
- 5) Retirement means dismissal or removal (termination) from service other than by way of superannuation
- 6) Article 43 of Constitution of India says that the State should work towards securing to all workers, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities
- 7) **Preamble:** An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oil-fields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.

State Farms Corporation V P.D Mathai- Gratuity is a kind of retirement benefit like the provident fund or pension. Intended to help them after retirement, whether the retirement is the result of superannuation or physical disability. General principal behind Gratuity is that the length of the service of the workmen are to be considered to claim a certain amount as a retiral benefit.

Applies to:

1. Every factory, mine, oil-field, plantation, port and railway company;
 2. Shops or establishment with ten or more persons employed on any day in the preceding 12 months;
 3. Such Shops or establishment with ten or more persons employed on any day in the preceding 12 months as identified by Central Government by notification;
- Applies to the whole of India except to Jammu & Kashmir in so far as to plantations or ports.

'Not less than 5 years of continuous service' is relaxed for cases of death or disablement
Superannuation: The age at which the employee shall vacate the employment; As specified in the employment contract or conditions of service; Generally 58 years or 60 years. Gratuity is payable only after completion of the service period.

Ex - Ch cum Man Director Mahanadi Coalfield Ltd V Rabindranath Choubey - Gratuity Act gives right to an employee to receive gratuity on rendition of 5 years continuous service. Gratuity become payable as soon as the employee retires. This statutory right which accrues to an employee cannot be impaired by reason of a rule which does not have the force of a statute. Therefore, Rule 34.3 of the CDA Rules, which is non-statutory in nature, is contrary to the provisions of the Gratuity Act. As such, gratuity cannot be withheld on the retirement of an employee even if departmental proceedings were initiated against him before his retirement and are pending at the time of retirement

Retirement means dismissal or removal (termination) from service other than by way of superannuation.

Resignation is when employee resigns his job with his pleasure. Forced resignation is equal to dismissal. Resignation comes into effect after employer accepts it after considering the

facts and Standing Order provisions. Once accepted by the employer, resignation cannot be withdrawn by the employee.

Calculating Gratuity:

- a. 15 day average pay = (Total Salary for the month / 26 working days of the month) * 15 days
- b. Total Gratuity payment amount = 15 day average pay * total years in service
- c. Total years in service should be calculated for every completed year of service or part thereof in excess of six-months
- d. For piece-rated employee, average is calculated on total wages received by him for the period of three months immediately, preceding, the termination of employment
- e. For seasonal employees, average is calculated based on 15-day wages for each season
- f. Overtime wages shall not be taken into account
- g. If a disabled worker is moved to a less-wage employment on humanitarian basis, he gets gratuity at two rates for calculated based on each of the employment period

Supreme Court said that while calculating gratuity, the monthly wage should be considered as for 26 days and not 30 days (**Jeevan Lal V Appellate Authority under Payment of Wages Act.**)

An Act to provide for a Scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.

- Section 1: Short title, extent, application and commencement
- Section 2: Definitions
- Section 3: Controlling authority
- Section 4: Payment of gratuity
- Section 4A: Compulsory insurance
- Section 5: Power to exempt
- Section 6: Nomination
- Section 7: Determination of the amount of gratuity
- Section 8: Recovery of gratuity
- Section 9: Penalties
- Section 10: Exemption of employer from liability in certain cases
- Section 11: Cognizance of offences
- Section 12: Protection of action taken in good faith
- Section 13: Protection of gratuity
- Section 14: Act to override other enactments, etc
- Section 15: Power to make rules

Questions:

1. Explain the concept of bonus. Whether the employees have right to claim bonus? Discuss with the help of decided cases.
2. Explain the provisions relating to payment of minimum & maximum bonus.

VII. Payment of Bonus Act, 1965

- 1) Article 43 of Constitution of India under the Directive Principles of State Policy expects 'Living Wages' for all workers
- 2) Bonus helps in two manners:
 - a. Increases employee wages so that they are closer to 'living wages'
 - b. Employee efforts are recognized and this encourages work more - earn more
- 3) The quantum of bonus depends on the quantum of profit
- 4) Payment of Bonus Rules has only 5 rules and 4 forms
- 5) Act applies to every factory (private sector) having 20 or more employees who are employed on any day during an accounting year
- 6) Bonus is ordinarily paid within eight months of the closing of the accounting year. Responsibility to calculate and disperse lies with the employer.
- 7) Bonus is paid in cash only
- 8) Bonus is paid from the balance known as 'available surplus'.

Preamble-An Act to provide for the 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.

- In case of a banking company, it is to be calculated as specified in First Schedule.
- In any other case, it is to be calculated as specified in Second Schedule.
- Section 5: Computation of available surplus
- Section 6: Sums deductible from gross profits
- Section 7: Calculation of direct tax payable by the employer
- Section 8: Employees should have worked in the establishment for not less than thirty working days in that year. Section 2(13): Employee is entitled to get bonus if his salary or wages does not exceed Rs. 2500 per mensem
- Section 9- An employee dismissed on charges of fraud (as defined in Section 17 of Indian Contract Act, 1872) An employee who is convicted by Court for the frauds committed against anybody unconnected with employment, is also a good ground for dismissal from service. riotous or violent behavior while on the premises of the establishment As defined Section 351 of Indian Penal Code, 1860 Theft as defined by Section 351 of Indian Penal Code, 1860 Misappropriation as defined by Section 403 of Indian Penal Code, 1860 Sabotage leading to physical loss or damage to the property of the establishment
- Section 10- Minimum bonus shall be 8.33% of salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher (Rs. 60 for employees who have not completed 16 years of age at the beginning of the financial year) Minimum bonus shall be payable irrespective of allocable surplus. Supreme Court said that the payment of bonus whether there are profits in relevant accounting year or not is in violation of Article 14 and 31(1) of the Constitution while dealing with **Jalan Trading**

Co vs Mazdoor Sabha (AIR 1967 SC 691). The Supreme Court overrules the decision later in AIR 1979 SC 233. SC said, right to minimum bonus is statutory right which vests in the employees. **Anand Oil Industries vs Labour Court (AIR 1979 SC 233)**

- **Section 11-** Maximum bonus is proportionate to the salary or wage earned subject to a maximum of 20% of such salary or wage

Section 15- Allocatable Surplus- 67% for employer being a company which has not made the arrangements prescribed under Section 192 of the Income-Tax Act; 60% for any other company. If the Allocatable Surplus exceeds the amount of the maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of 20% of the total salary or wage of the employees in the accounting year, shall be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in Fourth Schedule. If no available surplus is available for the payment of the minimum wages and no amount or sufficient amount carried forward is available, the minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule. Where in an accounting year any amount has been carried forward and set on or set off under this section, then in the calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Section 16- Special Provisions with respect to certain establishments-

- This section deals with special provisions with respect to certain establishments
- Section 17: Adjustment of customary or interim bonus against bonus payable under the Act
- Section 18: Deduction of certain amounts from bonus payable under the Act
- Section 19: Time-limit for payment of bonus
- Section 20: Application of Act to establishments in public sector in certain cases
- Section 21: Recovery of bonus due from an employer
- Section 22: Reference of disputes under the Act
- Section 23: Presumption about accuracy of balance-sheet and profit and loss account of corporations and companies
- Section 24: Audited accounts of banking companies not to be questioned
- Section 25: Audit of accounts of employers, not being corporations or companies
- Section 26: Maintenance of registers, records, etc.
- Section 27: Inspectors
- Section 28: Penalty
- Section 29: Offences by companies
- Section 30: Cognizance of offences
- Section 31: Protection of action taken under the Act
- Section 31A: Special provision with respect to payment of bonus linked with production or productivity
- Section 32: Act not to apply to certain classes of employees
- Section 33: [Repealed.]
- Section 34: Effect of laws and agreements inconsistent with the Act

- Section 35: Saving
- Section 36: Power of exemption
- Section 37: [Repealed.]
- Section 38: Power to make rules.
- Section 39: Application of certain laws not barred.
- Section 40: Repeal and saving.

UNIT III

Questions: Discuss the salient features of Child Labour (Prohibition and Regulation) Act 1986 in the light of latest amendment.

VIII. Child Labour- Prohibition and Regulation Act, 1986

S 2(ii) "child" means a person who has not completed his fourteenth year of age

S 2(vi) "occupier", in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop ;

S2(x) "workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Section 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

Prohibition of Employment Of Children In Certain occupations And Processes

3. Prohibition of employment of children in certain occupations and processes.

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on :

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

4. Power to amend the Schedule.

The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.

5. Child Labour Technical Advisory Committee.

(1) The Central Government may, by notification in the Official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereafter in this section referred to as the Committee) to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.

(2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.

(3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed.

Regulation Of Conditions Of Work Of Children

6. Application of Part.

The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in Section 3 is carried on.

7. Hours and period of work.

(1) No child 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 child 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, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No child shall be permitted or required to work between 7 p.m. and 8 a.m.

(5) No child shall be required or permitted to work overtime.

(6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

8. Weekly holidays.

Every child employed in an establishment shall be allowed 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.

9. Notice to Inspector.

(1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely :

- (a) the name and situation of the establishment ;
- (b) the name of the person in actual management of the establishment ;
- (c) the address to which communications relating to the establishment should be sent ;
- and
- (d) the nature of the occupation or process carried on in the establishment.

(2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, 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 as are mentioned in sub-section (1).

Explanation: For the purposes of sub-sections (1) and (2), "date of commencement of this Act, in relation to an establishment" means the date of bringing into force of this Act in relation to such establishment.

(3) Nothing in Sections 7, 8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government.

10. Disputes as to age.

If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

11. Maintenance of register.

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, 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:

- (a) the name and date of birth of every child so employed or permitted to work ;
- (b) hours and periods of work of any such child and the intervals of rest to which he is entitled ;
- (c) the nature of work of any such child ; and
- (d) Such other particulars as may be prescribed.

12. Display of notice containing abstract of Sections 3 and 14.

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3 and 14.

13. Health and safety.

(1) The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

14. Penalties.

(1) 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 three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under Section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever:

- (a) fails to give notice as required by Section 9, or
- (b) fails to maintain a register as required by Section 11 or makes any false entry in any such register ; or
- (c) fails to display a notice containing an abstract of Section 3 and this section as required by Section 12 ; or
- (d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder, Shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

Questions: Explain the salient feature of Contract Labour (Regulation & Abolition) Act, 1970 with the help of decided cases.

IX. THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

The main objective of the Act was to stop the exploitation of these labourers and to abolish the practice of contract labour where:

- (a) The work is of perennial nature.
- (b) The work is incidental to and necessary for the work of the factory i.e. the principal activity of the industry e.g. work related to production.
- (c) The work is of the nature that it can employ considerable number of whole time workmen; and
- (d) The work can be done by ordinary or regular workmen.

Whether the Act itself provides the workers of an industry, the right to get absorbed by the industry after contract labour is abolished there?

R.K. Panda v. Steel Authority of India the same issue was in question the Supreme Court held that the Act regulates contract labour but has never proposed to abolish it entirely.

The primary object of the Act can be taken as to save the contract labourers from exploitation. But the right to be absorbed by the employer directly is neither proposed nor mentioned in the Act.

The Supreme Court also said that insertion of certain clauses in the contract with the contract labourers by the industry does not give them a right to escape from the duty of providing the contract labourers rights.

- The labourers who were continuing in the employment for the last 10 years, in spite of change of contractors and have not crossed the age of superannuation and were medically fit, should be absorbed as regular employees in the order of seniority.
- Regular wages will be payable only for the period subsequent to absorption and not prior to that.

The Court interpreted the Act in a correct way i.e. the Act strives for regulation of Contract Labour and not for its abolishment in entirety and accepted that the Act does not expressly provides the right to get absorbed to the labourers. But it did not end the case right there. Here the Supreme Court rightly performed the function of judiciary to impart justice. It realized that courts should achieve that which the legislations are not able to achieve and which keeps up the faith of people in judiciary.

The judges here used the freedom which the common law system confers upon them that is to look into the objective of a matter and device new principles which could suit justice. They devised the principle that a contract labourer who is working for a company in a work of perennial nature has to be absorbed by the industry. This principle was clearly in the interests of those who worked same as the regular employees but were exploited by the unfair practices of the industrialists.

Air India Statutory Corp. v. United Labour Union

where again the same question was in issue the Supreme Court said that the Act works in direction for the betterment of these contract labourers as it talks about the utilities which should be provided by the principal employer to them like drinking water facility, urinals, storage rooms etc. therefore it could be easily inferred that the Act has no intention of making these workers jobless after the abolishment of contract labour.

The Act also does not intend to deny the workmen to continue their work or to devoid them from benefits of permanent employment because earning livelihood is a fundamental right. The Court ordered to absorb these workers on a seniority basis.

Here again in this case the Court understood the conditions under which the contract labourers are made to work and used the freedom provided by the common law system.

Here the judges did not give the decision just on the basis of what is written in statutes but understood the objectives of the act and tried to implement the same i.e. to provide better working conditions to these contract labourers and to protect them from exploitation.

In this case the workers were working as contract labourers for more than 10 years from which it could be easily understood that they were being exploited. Therefore the decision given by the court is highly appreciable as it was in the direction for the betterment of these workers.

Steel Authority of India Ltd. v. National Union Water Front Workers again the same issue was raised.

Here the Court acted solely on the basis of what was written in the Act. The Court said that Section 10 of the Act or any other provision there does not imply for automatic absorption of contract labour. Therefore, the principal employer cannot be required to absorb contract labour working in the concerned establishment. Furthermore the Supreme Court also said that the Act nowhere has said that the contract labourers are or should be treated as the employees of the employer, but they are the employees of the contractor. Therefore the employer has no duty or under no obligation to absorb them.

By this case the SC overruled its own decision given in the case of Air India Statutory Corp. v. United Labour Union. Here it can be seen that the court totally relied upon the provisions of the Act as it nowhere says about the absorption of the contract labourers after its abolishment. From this it can be inferred that the SC developed a very strict approach towards the contract labour.

Again in the case of Municipal Corporation of Greater Bombay v. K.V. Shramik Sangh the SC had the same view point as in the case of Air India Statutory Corp. v. United Labour Union and gave the same reasoning as well.

Now in the case of Rourkela Shramik Sangh v. Steel Authority of India Ltd the SC held that the contract labourers who were less than 58yrs old and medically fit should be absorbed by the principal employer.

Here the SC reverted back to the decision which it gave initially. Its decision showed that it has again approached towards the contract labour problem from a very practical point of view and not on just the basis of what has been written in the statute. The SC also took into consideration that it would be unjust to leave the labourers unemployed after the abolishment of contract labour.

From these cases an analysis can be easily inferred that the Courts have not developed a steady attitude towards the above issue. The reason for this is the Act itself , because it lacks provisions regarding the same. It does not mention anything about the issue in concern.

The Courts therefore faced a problem and in some of the judgements gave their decision solely based on the basis of the provisions given in the Act while others gave decisions based on the object of the Act i.e. to protect these labourers from exploitation. Now if the object had to be achieved the Act should have been more expressive because on issues like this there has to be certain guidelines provided by the legislation otherwise these labourers may keep on being exploited.

S2 (b) a **workman** 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

S2(c) "**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 of 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;

S 2(d) "**controlled industry**" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest

S 2(e) "**establishment**" means--

- (i) any office or department of the Government or a local authority, or
- (ii) any place where any industry, trade, business, manufacture

Section 3. Central Advisory Board.

Section 4. State Advisory Board.

Section 5. Power to constitute committees

REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR

Section 6. Appointment of registering officers.

Section 7. Registration of certain establishments.

Section 8. Revocation of registration in certain cases.

Section 9. Effect of non-registration.

Section 10. Prohibition of employment of contract labour

LICENSING OF CONTRACTORS

Section 11. Appointment of licensing officers.

Section 12. Licensing of contractors.

Section 13. Grant of licences.

Section 14. Revocation, suspension and amendment of licences.

Section 15. Appeal.

WELFARE AND HEALTH OF CONTRACT LABOUR

Section 16. Canteens.

Section 17. Rest-rooms.

Section 18. Other facilities.

Section 19. First-aid facilities.

Section 20. Liability of principal employer in certain cases.

Section 21. Responsibility for payment of wages.

PENALTIES AND PROCEDURE SECTIONS

Section 22. Obstructions.

Section 23. Contravention of provisions regarding employment of contract labour.

Section 24. Other offences.

Section 25. Offences by companies.
Section 26. Cognizance of offences.
Section 27. Limitation of prosecutions.

UNIT IV

Questions-1) Explain the salient features of Employee Provident Fund Miscellaneous Provision Act, 1952.

2) Discuss about various schemes under EPF Act, 1952.

X. THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

- 2A. Establishment to include all departments and branches.
- 3. Power to apply Act to an establishment which has a common provident fund with another establishment.
- 4. Power to add to Schedule I.
- 5. Employees' Provident Fund Schemes.
- 5A. Central Board.
- 5AA. Executive Committee.
- 5B. State Board.
- 5C. Board of Trustees to be body corporate.
- 5D. Appointment of officers.
- 5DD. Acts and proceedings of the Central Board or its Executive Committee or the State Board not to be invalidated on certain grounds.
- 5E. Delegation.
- 6. Contributions and matters which may be provided for in Schemes. 6A. Employees' Pension Scheme.
- 6C. Employees' Deposit-linked Insurance Scheme.
- 6D. Laying of schemes before Parliament.
- 7. Modification of Scheme.
- 7A. Determination of moneys due from employers.
- 7B. Review of orders passed under section 7A.
- 7C. Determination of escaped amount.

7D. Tribunal.

7-I. Appeals to Tribunal.

7J. Procedure of Tribunals.

7K. Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers.

7L. Orders of Tribunal.

7-O. Deposit of amount due, on filing appeal.

7P. Transfer of certain applications to Tribunals.

7Q. Interest payable by the employer.

8. Mode of recovery of moneys due from employers.

8A. Recovery of moneys by employers and contractors.

8B. Issue of certificate to the Recovery Officer.

8C. Recovery Officer to whom certificate is to be forwarded.

8D. Validity of certificate and amendment thereof.

8E. Stay of proceedings under certificate and amendment or withdrawal thereof.

8F. Other modes of recovery. 8G. Application of certain provisions of Income-tax Act.

9. Fund to be recognised under Act 11 of 1922.

10. Protection against attachment.

11. Priority of payment of contributions over other debts.

12. Employer not to reduce wages, etc.

13. Inspectors.

14. Penalties.

14A. Offences by companies.

14AA. Enhanced punishment in certain cases after previous conviction.

14AB. Certain offences to be cognizable.

14AC. Cognizance and trial of offences.

14B. Power to recover damages.

14C. Power of court to make orders.

15. Special provisions relating to existing provident funds.
16. Act not to apply to certain establishments.
- 16A. Authorizing certain employers to maintain provident fund accounts.
17. Power to exempt.
- 17A. Transfer of accounts.
- 17AA. Act to have effect notwithstanding anything contained in Act 31 of 1956.
- 17B. Liability in case of transfer of establishment.
18. Protection of action taken in good faith.
- 18A. Authorities and inspector to be public servant.
19. Delegation of powers.
20. Power of Central Government to give directions.
21. Power to make rules.
22. Power to remove difficulties.

Questions: 1) Explain salient features of maternity benefit act, 1961.

2) Explain the provisions relating to Right to claim Maternity Benefit?

3) Explain the objectives of Maternity Benefit Act.

XI. Maternity Benefit Act,1961 (As amended in 2019)

Application of Act. It is applicable to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months: Employment of, or work by, women prohibited during certain period.-

(1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in subsection The period referred to in sub-section (3) shall be— (a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.

Right to payment of maternity benefit. Section 5 No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than 1*[eighty days] in the twelve months immediately preceding the date of her expected delivery.

Penalty for contravention of Act by employer If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees

Restrictions placed by the Act on the employment of women: The restrictions placed by the Act on the employment of women are as follows:

- i. The employer is prohibited from knowingly employing a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage;
- ii. A woman also, on her part, is required to abstain from working in any establishment during the said period;
- iii. A pregnant woman can also request her employer not to give her any work which is of an arduous nature or which involves long hours of standing, etc. during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery or any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence, under the Act. On such a request being made by her, the employer shall not give her such work during such period. {Section 4}

To whom maternity benefit is payable in case of death of a woman?: If a woman entitled to maternity benefit dies before receiving such benefit, the employer shall pay such benefit to the person nominated by the woman and in case there is no such nominee, to her legal representative. {Section 7}

Restrictions placed by the Act on the termination of employment of a woman: When a woman absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence. {Section 12}

Time for payment of maternity benefit: The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance to the woman on production of proof that the woman is pregnant and the amount due for the subsequent period shall be paid to the woman within 48 hours of production of proof that the woman has been delivered of a child. {Section 6}

Period for which a woman is entitled to maternity benefit and the rate of the benefit: (i) The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks of which not more than 6 weeks shall precede the date of her expected delivery. If a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. If a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable to the maternity benefit for the entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child. (ii) But no woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery. For the purpose of calculating the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law to be holidays with wages during the period of 12 months immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. For the purpose of this provision, 'the average daily wage' means the average of the woman's wages payable to her for the days on which she has worked during the period of 3 calendar months immediately preceding the date from which she absents herself on account of maternity, or the minimum rate of wage fixed or revised or under the Minimum Wages Act, 1948 or 10 rupees, whichever is the highest. {Section 5}

Is a woman entitled to maternity benefit, also entitled to any medical bonus?: A woman entitled to maternity benefit under the Act shall also be entitled to receive from her employer a medical bonus of 250 rupees, if no pre-natal confinement and postnatal care is provided for by the employer free of charge. The medical bonus shall be paid along with the second installment of the maternity benefit. {Section 8 & Rule 5}

Can a woman claim the maternity benefit from her employer if she works elsewhere during the period for which she has been permitted to absent herself under the provisions of the Act?: If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of the Act for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period. {Section 18}

Is it permissible under the Act to exempt any establishment from the provisions of the Act?: The appropriate Government can exempt any establishment from the operation of all or any of

the provisions of the Act or of any rule made under the Act if the benefits provided by the establishment are not less favourable than those provided in the Act. {Section 26}

Is a woman entitled to any leave with wages for illness in addition to the period of absence allowed to her under the provisions of the Act?: A woman suffering from illness arising out of pregnancy delivery, premature birth of child or miscarriage shall be entitled, in addition to the period of absence allowed to her under the provisions of the Act, to leave with wages at the rate of maternity benefit for a maximum period of one month. {Section 10}

Is a woman entitled to any leave with wages for miscarriage?: In case of miscarriage, a woman shall be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage. {Section 9}

Is it necessary for a woman claiming leave with wages for miscarriage to satisfy the condition that she had worked for a period of not less than 80 days in the 12 months immediately preceding the date of miscarriage?: Such condition has to be satisfied for claiming Maternity Benefit under Section 5 of the Act. There is no condition of any sort to be satisfied for claiming leave wages for miscarriage under Section 9 of the Act.

What are the other obligations of the employer under the Act?: Under the Act the employer is required: (a) to exhibit the abstract of the provisions of the Act and the rules made thereunder in a conspicuous place in every part of the establishment in which women are employed {Section 19 & Rule 5}; (b) to maintain a muster roll in the prescribed form {Rule 3}; (c) to submit annual returns in the four prescribed forms. {Rule 16}

What is the punishment for the contravention of the provisions of the Act?: (1) If any employer fails to pay any amount of maternity benefit to a woman entitled under the Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees. The Court may, however, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment. (2) If any employer contravenes the provisions of the Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under the Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both. Where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the Court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled hereto. {Section 21}

Examples:

1. Municipal Corporation of Delhi v. Female Workers

2. Anshu Rani v. State of U.P
3. Dr. Mandeep Kaur v. Union of India
4. B.S Rajeshwari v The Directorate of Municipal Administration (2021)
5. Shah v. Presiding Officer, Labour Court, Coimbatore and Ors

UNIT -V

Questions-

1. **Who is an Unorganized Worker? Explain the Central & State Government initiatives in providing Social Security.**
2. **Explain the Constitutional mandate and the influence of ILO in the formation of the unorganized worker social security act, 2008.**
3. **Explain the various Central government schemes provided under the Unorganized Worker Social Security Act, 2008 to overcome the problems faced by the unorganized workers.**
4. **Explain the drawbacks and pitfalls of Unorganized Worker Social Security Act, 2008**

XII.Unorganized Sector Workers' Social Security Act, 2008

It is an Indian Act related to Industrial Law to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto.

- 1) Central Government empowered to make appropriate welfare schemes related to:
 - life and disability cover;
 - health and maternity benefits
 - old age protection; and
 - any other benefit as may be determined by the Central Government
- 2) Constitution of National Social Security Board for Unorganized Workers

Members:

- i. Union Minister for Labour and Employment - Chairperson, ex officio
- ii. the Director General (Labour Welfare) - Member-Secretary, ex officio; and
- iii. thirty-four members to be nominated by the Central Government, out of whom -
 - iv. seven representing unorganized sector workers;
 - v. seven representing employers of unorganized sector;
 - vi. seven representing eminent persons from civil society;
 - vii. two representing members from Lok Sabha and one from Rajya Sabha;
 - viii. five representing Central Government Ministries and Departments concerned; and
 - ix. five representing State Governments

- 3) Term of the National Board shall be three years.
National Board shall meet at least thrice a year, at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed
- 4) **Constitution of State Board-** State Government may set up such Workers' facilitation centers as may be considered necessary from time to time to perform the following functions, namely:-
- a. disseminate information on available social security schemes for the unorganised workers;
 - b. facilitate the filling, processing and forwarding of application forms for registration of unorganised workers;
 - c. assist unorganised worker to obtain registration from the District Administration;
 - d. Facilitate the enrollment of the registered unorganised workers in social security schemes.

Questions

1. **Discuss the scope and object of SEZ Act 2005**
2. **Explain the duties, powers and functions of Board of Approval under SEZ Act, 2005.**
3. **When the board can suspend and transfer the letter of approval.**
4. **Explain the powers and functions of development commissioner under SEZ Act, 2005**
5. **Explain the procedure for setting up of unit in SEZ.**
6. **Explain the Constitution, powers and functions of Approval committee under SEZ Act, 2005.**

XIII. Special Economic Zones Act, 2005

Special Economic Zones (SEZs) are geographically delineated 'enclaves' in which regulations and practices related to business and trade differ from the rest of the country and therefore all the units therein enjoy special privileges.

The SEZ Act, 2005, provides the legal framework for establishment of SEZs and also for units operating in such zones.

Special Economic Zones Act, 2005, was passed by Parliament in May, 2005 and received Presidential assent on the 23rd of June, 2005. The act envisages that the SEZs would attract a large flow of foreign and domestic investment in infrastructure and productive capacity leading to generation of additional economic activity and creation of employment opportunities.

A SEZ is a designated duty free enclave to be treated as foreign territory for the purpose of trade operations and duties and tariffs.

Constitution of Administrative Authorities and Bodies for Regulating the Sezs and Sez Units

The SEZ Act provides for the constitution of the following authorities and bodies to regulate the SEZs and SEZ Units:

1. Board of Approval (“Board”)
2. Development Commissioner
3. Approval Committee
4. SEZ Authority

An SEZ could be jointly or severally developed by the Central or State Government or a private party, (a) for manufacturing goods, (b) for rendering services, or (c) as a free trade and warehousing zone

Procedure to set up an SEZ

Application

An SEZ can be set up by the Central or State Government, the public or the private sector including a foreign company or jointly in the form of a consortium. A person who wishes to set up an SEZ (“Developer”) should submit a proposal in the form of an application before the Board or directly to the State Government after identifying the area. The State Government then forwards the application to the Board along with its recommendations within 45 days, or the Board may grant approval subject to the applicant obtaining the concurrence of the State Government. A State Government intending to set up an SEZ may directly forward the application to the Board after identification of the area. Further, the Central Government can directly notify the SEZ, without any application being made to the Board or reference to the State Government.

The application submitted to the Board by the Developer should contain the following details: name, address and status of the Developer (whether individual/private company/State Government/NRIs, etc.), and should be accompanied by a project report covering the following particulars: Location of the proposed SEZ with details of existing infrastructure and infrastructure proposed to be established

- Its area and distance from the nearest seaport / airport / rail / road etc
- Financial details, including proposed investment, mode of financing and viability of the project
- Details of foreign equity and repatriation of dividends, etc., if any
- Whether the SEZ will allow only certain specific industries or will be a multi-product SEZ

Proposals for setting up SEZ would be governed by the following criteria:

- Generation of additional economic activity
- Promotion of export of goods and services

- Promotion of investments from domestic and foreign sources
- Creation of employment opportunities
- Development of infrastructural facilities
- Maintenance of sovereignty and integrity of India and security of the States.

The Board may approve, reject or modify the proposal for the establishment of the SEZ. The Board also has the power to cancel the approval, provided the applicant is given an opportunity to be heard before cancellation. After the Board of Approval has scrutinized the application, it forwards the application to the Central Government, which reviews it and grants a Letter of Approval (“Letter”) if the application is found satisfactory. The Letter has a validity of 3 years within which time the applicant has to effectuate the proposal and start operations. However, the Board may grant a further extension for up to 2 years on a case-by-case basis. The applicant /Developer has to then submit the documentation of the land so acquired for the purpose of setting up the SEZ to the Central Government, for the Central Government to declare it as an SEZ.

After the approval has been granted, the Developer is required to submit all details to commence the authorized operations, and to apply for the exemptions, drawbacks and concessions. The SEZ will be demarcated into the processing and non-processing areas. The Developer can allot land in the processing area to individual Units. The Developer is not permitted to sell the non-processing area in an SEZ; however the Developer may allot such land for business and social purposes. Further, the Developer is required to execute a bond cum-legal undertaking, with regard to the proper utilization of the goods. The Developer/Co-Developer should hold a minimum of 26% equity in the entity (i.e. special purpose vehicle or separate entity) that is proposing to create business, residential or recreational facilities in the SEZ.

Further, the Developer has to sign an undertaking that it will be governed by the following local laws:

- Area planning
- Sewerage disposal
- Pollution control
- Industrial and labour laws

The SEZ Authority constituted under the SEZ Act is duty-bound to undertake measures for the development, operation and management of the SEZ for which it is constituted, including the development of infrastructure, and promotion of exports from the SEZ, and to review the functioning and performance, etc. of the SEZ.

Procedure to set up an SEZ Unit

Application

To set up an SEZ Unit, copies of project proposal are required to be submitted to the Development Commissioner who will forward the proposal to the Approval Committee. The Approval Committee shall consist of Development Commissioners, Officers from State and

Central Government and also a representative of the Developer as a Special Invitee. A consolidated application form is required to be submitted for the following approvals:

- Allotment of Land / Industrial Sheds in SEZ
- Registration-cum-Membership certificate
- Annual permission for sub-contracting
- Allotment of Import Exporter Code Number
- Power connection
- Water connection etc.

Dispute Resolution

The SEZ Act provides that designated Courts shall try any suit of civil nature arising in the SEZ and from notified offences committed in an SEZ. Appeals against the Orders of designated Courts shall be filed before the High Court within 60 days from the date of communication of decision. Till such time as the designated Courts are set up, any dispute of civil nature arising between two or more entrepreneurs or two or more Developers or between an entrepreneur of a Unit and a Developer in the SEZ, shall be referred to Arbitration under the provisions of Arbitration and Conciliation Act, 1996.

Questions

- 1. Explain the procedure of registration and authorities under the Karnataka Shops and Commercial establishment Act, 1961.**
- 2. Explain the salient features of Karnataka Shops and Commercial establishment Act, 1961.**

XIV.Karnataka Shops and Commercial Establishment Act, 1961

The Shop and Establishment Act is regulated by the Department of Labor and regulates premises wherein any trade, business or profession is carried out. The act not only regulates the working of commercial establishments, but also societies, charitable trusts, printing establishments, educational institutions run for gain and premises in which banking, insurance, stock or share brokerage is carried on. This act regulates areas such as working hours, rest interval for employees, opening and closing hours, closed days, national and religious holidays, overtime work, rules for employment of children, annual leave, maternity leave, sickness and casual leave, etc.

The Shop and Establishment Act regulates a number of aspects relating to the operation of a shop or commercial establishment. Some of the key areas regulated by the shop and establishment act include:

- Hours of work
- Interval for rest and meals
- Prohibition of employment of children
- Employment of young person or women
- Opening and closing hours
- Close days
- Weekly holidays
- Wages for holidays
- Time and conditions of payment of wages
- Deductions from wages
- Leave policy
- Dismissal
- Cleanliness
- Lighting and ventilation
- Precautions against fire
- Accidents
- Record keeping

Procedures under this Act:

Every shop/establishment is compulsorily required to register itself under this Act within 30 days of commencement of work. Registration Certificate:

- The business owner should send to the Inspector (Inspectors under the Act) of the area concerned, an application form and fees detailing:
 - Name of the establishment, the employer and the manager, if any
 - Postal address of the establishment
 - Such other particulars as may be prescribed.

The Inspector, on verifying the statement, shall register the establishment in the register of establishments and issue a registration certificate. This certificate has to be prominently displayed at the establishment and needs to be renewed before it expires.

If there is any change in the initial statement, the same has to be communicated within 15 days to the Inspector and he will make changes in the register of establishments and issue a fresh registration certificate.

Closure of Business: In case of closure, the same has to be communicated to the authorities within 15 days from the closing of the establishment.