

labour legislation

Introduction:- law is an instrument to control, restrain and guide the behaviour and courses of action of individuals and their groups living in a society. law is a dynamic concept. It changes with the growing needs of the society - developments in the field of technology, economy, and other spheres of society influence it.

* law is also a universal phenomenon, having presence in all the societies of the world.

Factors influencing labour legislations;

Early Exploitative Industrial Society

The origin of labour legislation lies in the excess of the early industrialism that followed Industrial Revolution.

* The early phase of industrialisation in the capitalist countries of the world was an era of unbridled individualism, freedom of contract and the laissez-faire, and characterised by excessive hours of work, employment of young children under very unhygienic and unhealthy conditions, payment of low-wages and other excesses.

⇒ The Indian Factories Act 1948.

Historical development of factory legislation.

With the establishment of a cotton mill in 1851 and jute mill in Bengal in 1855, modern factory system was founded in India. Women and children were employed. There were excessive and long hours of work with little recreation.

- * The employers used to have their way. In 1881, Indian Factories Act was passed, which gave protection to the employees, especially to the children.
- * The factory commission was appointed in 1890 by the Government of India.
- * The act was thoroughly revised and redrafted in 1934 on the lines of recommendations made by the Royal Commission on Labour which was appointed in 1929.
- * In the year 1948 the Factories Act, 1934 was revised and its scope extended to include welfare, health, cleanliness, overtime payments and similar measures.
- * The factories Act was to ensure proper, safe and healthy working conditions in the factories so that the workers may feel interest and while in factories.

Object of the Act

The object of the Act is to protect human being subject to unduly long hours of bodily strain or manual labour. It also seeks to provide that employees should work in healthy and sanitary conditions, so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents.

Scope and Applicability of the Act

The Act extends to whole of India, It applies to all factories, including belonging to central or any state government unless otherwise excluded. The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "workers" as defined in the Act.

Definitions :-

Factory :- section 2(m) of the factories Act. "factory" to mean any premises including the precincts thereof

when ten or more workers are working, or were working on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on.

Manufacturing process

The expression "manufacturing process" has been defined in section 2(k) to mean any process.

→ 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.

Worker :- section 2(i) of the factories Act the worker to mean

A person employed, directly or through any agency (including a contractor) with or without knowledge of principal employer, whether for remuneration or not, in any manufacturing process.

Occupier :- Section 2(n) of the Act defines "occupier" of a factory to mean the person who has ultimate control over the affairs of the factory provided that.

(i) In the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier.

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier.

⇒ provisions Regarding to Health of workery

- * Cleanliness (Section 11)
- * Disposal of wastes and effluents (Sec 12)
- * Ventilation and temperature (Sec 13)
- * Dust and fume (Sec 14)
- * Artificial humidification (Sec 15(I))
- * Over crowding. (Sec 16)
- * Lighting (Sec 17)
- * Drinking water (Sec 18)
- * Conservancy Arrangements. (Sec 19)
- * Spittons (Sec 20)

⇒ provisions Regarding to the safety of workery.

- * Fencing of Machinery (Sec 21)
- * Work on or near machinery in motion (Sec 22)
- * Employment of young person on dangerous machine (Sec 23)
- * Striking Gear and devices for cutting off power (Sec 24)
- * Self acting machines. (Sec 25)
- * Casing of new machinery (Sec 26)
- * Prohibition of Employment of women and children near cotton openers. (Sec 27)

- * Hoists and lifts (sec 28 & 29)
- * Revolving machinery (sec 30)
- * pressure plant (section 31)
- * pits, sump and opening in floors. (sec 33)
- * excessive weights (sec 34)
- * protection of eyes (sec 35)
- * Precautions against dangerous fumes (sec 36, & 36A)
- * Explosive or inflammable gas (sec 37)
- * Precaution in case of fire (sec 38)
- * safety of building and machinery (sec 40)
- * maintenance of buildings. (sec 40-A)

⇒ safety officers

In order to prevent accidents the Act provides for the appointment of safety officers in factories employing 1,000 or more workers or where any fixed manufacturing process or operations carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory (sec 40B)

⇒ provisions Relating to Hazardous process:-

Section 2 (cb) of the factories (Amendment) Act 1987 defines the terms "hazardous process" as any process or activity in relation to an industry specified in the first schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products by-products, wastes or effluents thereof would.

⇒ Welfare of workers :-

- * washing and sitting facilities. (sec 44)
- * the facility of first aid Appliances and Ambulance room (sec 45)

storing and drying (sec 43)

canteens (sec 46)

shelters (sec 44)

creches (sec 48)

cafeteria

⇒ Industrial dispute Act 1947

The Industrial dispute Act 1947, was enacted to promote industrial peace by providing appropriate machinery for amicable settlement of disputes arising between employers & employees.

Meaning :-

According to Industrial dispute Act 1947, Industrial dispute is 'any dispute b/w employers & employees & workmen & b/w workman & workmen, which is connected with the employment or non employment or the terms of employment or with the condition of labour, of any person.'

The principal objectives of this Act are as follows.

1. The promotion of measures to secure cordial relation b/w labour & management
2. Investigation and settlement of Industrial disputes (for which machinery is provided)
3. prevention of illegal strikes & lockouts
4. provision of relief in matters of lay-off and retrenchment

Forms of Industrial dispute.

- Gherao (strike) :- is a weapon which introduced in west bengal in 1967. strike is also a method to pressurize employers to fulfill union demands.
- Lock out :- the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons by him.
- Lay off :- It means failure, refusal or inability of an employer on account of shortage of coal, power, raw materials.
- Retrenchment :- It is defined as termination by the employer of the service of a workman for any other reason what so ever otherwise than a punishment inflicted by the way of disciplinary action but does not includes the following.
 - * voluntary retirement
 - * retirement of the workman on reaching the age of superannuation if the contract of employment.
 - * termination of the service of a workman on the ground of continued ill health.

characteristics of Industrial disputes:

- collective dispute.
- connected with various condition
- Difference.

causes for Industrial Dispute,

- * low wages
- * Rising prices
- * lack of link in D.A
- * unsatisfactory working conditions.
- * Demand for leave with pay.
- * Resistance to misconduct of officers.
- * Demand for adequate bonus.
- * Demand for Re-instatement
- * non-recognition of trade union,
- * political cause

Misconduct of Intermediaries.

⇒ consequences of Industrial Dispute.

1. unrest
2. Economic loss
3. Economic depression
4. Hardship of workers
5. Threat to social security and public.

Several authorities are named for purpose of Investigation & settlement of disputes they are.

- * work committees (100 mems)
 - * conciliation officers,
 - * Board of conciliation
 - * court of enquiry
 - * labour courts,
 - * Industrial tribunal courts,
 - * National tribunals adjudication.
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⇒ Employee State Insurance Act (1948) ESI

The ESI Act provides for certain benefits to employees in case of sickness, maternity, injury during employment in and related matters. The Act applies to all factories, other than seasonal factories, that run with power and employ 20 or more persons.

The coverage of the Act has been extended to several classes of establishments, viz., electrical power-using factories employing 10 or more workers and non-power factories employing 20 or more workers, shops, theatres, cinemas, hotels, restaurants, etc.

employing 20 or more persons, in several states. It covers all employees whose remuneration in aggregate does not exceed 6,500 month.

Benefits of ESI Act

The scheme provides the following social security benefits admissible under ESI Act 1948

- * Sickness cash benefits About half the wages up to 90 days sickness.
- * Maternity benefits all insured women are entitled to benefits which are equal to full wages for leave up to 12 weeks, of which not more than six weeks must precede the expected date of confinement.
- * Dependents benefits these are also provided under the workmen's compensation Act, if a person dies from employment injuries.

The main provisions of the Act are

- Regulate the working conditions of labour in factories
- Ensure basic minimum requirements for the safety, health & welfare of workers.
- provide guidelines on the health measures, safety measures & welfare measures and welfare measures to be taken by the management.

- Regulate the working hours of employees to provide for adequate rest.
- Regulate the employment of women and young persons.
- ⇒ Provide guidelines to the management for employee benefits like annual leave provision.

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Workmen's compensation Act 1923

The workmen's compensation Act 1923 provides for payment of compensation to workmen and their dependents in case of injury and accident

* Arising out of and in the course of employment and resulting in disablement or death.

* The act applies to railway servants, and persons employed in any such capacity as is specified in Schedule II of Act.

The schedule II includes persons employed in factories, mines plantations, mechanically propelled vehicles, constructions work and certain other hazardous occupations.

(24)

* The amount of compensation to be paid depends on the nature of the injury and the average monthly wages and age of workmen, the minimum and maximum rates of compensation payable for death.

The main provisions of the Act are.

1. An employer is liable to pay compensation.

if personal injury is caused to a workman by accident arising out and in the course of his employment

(ii) if a workman employed in any employment contracts any disease, specified in the Act as an occupational disease peculiar to that employment.

2. However, the employer is not liable to pay compensation in the following cases

(i) The workman having been at the time of the accident under the influence of drink or drugs

3. The state government may, by notification in the official Gazette, appoint any person to be a commissioner for workmen's compensation for such area as may be specified in the notification.

⇒ Payment of Bonus Act (1965)

Payment of bonus finds justification on the ground that the workers should have a share in the concern for which they have made their contribution. The bonus commission rejected the argument that the payment of bonus is meant to fill up the gap that is in existence b/w the actual and the living wages though in the process of sharing the prosperity the gap is narrowed down or closed.

Definition : -

* Accounting year :-

in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced.

* in any other case, the year commencing on the 1st day of April, or closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are closed and balanced.

* Available surplus :- in relation to an employer, being a company which has not made the arrangements prescribed under the income tax act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act sixty-seven percent of the available surplus in an accounting year.

Direct tax

any tax chargeable under

- the Income-tax Act
- the Super profits tax act 1963 (14 of 1963)
- the companies (profits) tax act, 1964 (7 of 1964)
- the agricultural income-tax law.

The payment of Bonus Act 1965 applies to every establishment in which twenty or more persons are employed on any day during an accounting year.

The definition of the factory is the same as under the Factories Act 1948 under the Act 'establishment' has been defined as the place in which one is permanently fixed for business with necessary equipment and an office or place of business.

- * Eligibility
- * Disqualification of Bonus
- * Payment of minimum Bonus
- * Payment of maximum Bonus
- * proportionate Reduction in Bonus
- * computation of working days
- * set-on and set-off allocable surplus.
- * special provisions for new establishments.
- * Customary Interim Bonus.
- * Deduction from Bonus
- * time limit for the payment of Bonus
- * Application of the act to public sector establishments.
- * Reference of disputes Related to Bonus.
- * maintenance of Register, Records.
- * Penalty
- * Bonus linked with productivity.
- * Expenditure from Bonus payment
- * Employees Exempted from this Act.