

Labour Laws

TY BBA

General Questions 5 Marks

Q 1. What are the principles of labour legislation?

(A) pg9-13

Q2. Describe the evils of Industrialization.

Refer pg5-6

Q3. What was the scenario of labour problems during pre independence period in our country?

Unit 1: Labour Law : Industrial Dispute Act 1947

Answer the following. (1 Marks)

1. When did the Industrial Disputes Act come into operation?

On 1st April, 1947

2. Who are directly affected by Industrial Laws?

Industrialists and their workmen are directly affected by industrial laws.

3. What is the general objective of industrial relations legislations?

Industrial peace and economic justice are the general objectives of industrial relations legislations.

4. What is the root cause of industrial disputes?

Dissatisfaction with the existing economic conditions is the root cause of industrial disputes.

5. List some forms of expressions for demanding fair returns by the labourers.

Fair return for labour is expressed as follows: (a) Increase in wages, (b) Resistance to decrease in wages and (c) Grant of allowances and benefits.

2 Marks**1. Why does individual labour fail to get fair return to his labour?**

Individual labour has weaker bargaining power; the management with better economic position dictates its term.

2. Why is it better for a labour to fight collectively?

Individual labour has weaker bargaining power whereas collectively, they can exert greater pressure upon the capital to provide them fair return to their labour.

3. List authorities provided for settlement of industrial disputes under the Industrial Dispute Act 1947.

A number of authorities such as, Works Committee, Conciliation, Officers, Board of Conciliation, Courts of Inquiry, Labour Courts, Tribunal and National Tribunal are provided for settlement of industrial disputes.

4. How does the Industrial Law play an important role in the national economy of a country?

The economic growth of a country depends upon the industrial development. Therefore, the progress of a country being dependent upon the development of industry, the Industrial Laws play an important role in the national economy of a country

Unit 1: Labour Laws: Industrial Dispute Act 1947

5 Marks

1. State the principal objects of the Industrial Disputes Act 1947 as analyzed by the Supreme Court .

The principal of the Industrial Disputes Act 1947 as analysed by the Supreme Court are as follows:

1. The promotion of measures for securing amity and good relations between the employer and workmen;
2. An investigation and settlement of industrial disputes between employers and employees, employers and workmen or workmen and workmen with a right to representation by a registered Trade Union or Federation of Trade Unions or Association of employers or a federation of association of employers;
3. The prevention of illegal strikes and lock-outs;
4. Relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking;
5. Collective bargaining

2. Enumerate the main features of the Industrial Disputes Act, 1947?

Features are summarized as under:

1. Any industrial dispute may be referred to an industrial tribunal by an agreement of parties to the dispute or by the State Government if it deems it expedient so to do.
2. An award shall be binding on both the parties to the disputes for the specified period not exceeding one year. It shall be normally enforced by the Government
3. Strike and lock-outs are prohibited:
 - During the pendency of conciliation and adjudication proceedings;

- During the pendency of settlements reached in the course of conciliation proceedings;
 - During the pendency of award of Industrial Tribunal declared binding by the appropriate Government
4. In public interest or emergency the appropriate Government has power to declare the transport (other than railways), coal, cotton textile, foodstuffs and iron and steel industries to be a public utility services for the purpose of this Act, for a maximum period of six months.
 5. In case of layoff or retrenchment of workmen the employer is required to pay compensation to them
 6. Provision has also been made for payment of compensation to workmen in case of transfer or closure of an undertaking.
 7. A number of authorities such as, Works Committee, Conciliation, Officers, Board of Conciliation, Courts of Inquiry, Labour Courts, Tribunal and National Tribunal are provided for settlement of industrial disputes. The nature of powers, functions and duties of these authorities differ from each other but each one of them plays an important role in ensuring industrial peace.

3. Write a brief essay on scope and object of Industrial Dispute Act 1947.

The object of the industrial relations legislation in general is industrial peace and economic justices. The prosperity of any industry very much depends upon its growing production. The production is possible when the industry functions smoothly without any interruptions. There are some factors that influence production, namely absence of disputes i.e., harmonious relationship between the labour and the management. Therefore every industrial relations legislation aims at providing conditions congenial to the industrial peace.

Economic justice is another objective. It is with a view to provide economic justice by ensuring fair return to the labour that the State as the custodian of public interest intervenes by 'state Regulation'. Thus, the object is to ensure fair wages and prevent disputes so that the production might not be adversely affected.

The Industrial Disputes Act, 1947 extends to the whole of India. It came into operation on the first day of April, 1947.

Unit 1: Labour Laws: The Industrial Employment (Standing Orders)Act 1946

1. What was the condition of employment before passing of the Industrial Employment (Standing Orders) Act 1946?

The absence of Standing Orders in establishment very often led to friction between the management and workers in industrial undertakings in our country. Before passing of this act the conditions of employment were governed by contracts either express or implied between the employers and their employees in different undertakings.

2. When was the Industrial Employment (Standing Orders) Act 1946 enacted?

The Industrial Employment Act was enacted in 1946.

3. What does the preamble of Industrial Employment Act specify?

The preamble of the Act makes it amply clear that the Standing Orders shall deal with the “conditions of employment of workers in industrial establishment”

4. What is the object of Industrial Employment (Standing Orders) Act 1946?

The object of this Act is to regulate the conditions of recruitment , discharge, disciplinary action .holidays etc. of the workers employed in Industrial undertakings.

5. .Write an important feature of Industrial Employment (Standing Orders) Act 1946.

6. What is the scope of the Industrial Employment (Standing Orders) Act 1946?

The Act applies to every industrial establishment:-

- (1) Situated within the Indian Union,except the State of Jammu and Kashmir;
- (2) Employing 100 Or more workmen on any day of the preceding 12 months

2 Marks

1. Which establishments are not governed Industrial Employment (Standing Orders) Act 1947?

The Act does not apply to the following establishments:

- i. Any Industry to which the provisions of Chapter VII of the Bombay Industrial relations Act, 1946 apply;
- ii. Any industrial establishment to which the provisions of the M.P. Industrial Employment (S.O) Act, 1961 apply

2. To which workmen the Industrial Employment (Standing Orders) Act 1946 does not apply?

The act does not apply to such workmen employed in any industrial establishment as are covered by the following rules and regulations:

1. The Fundamental and Supplementary Rules;
2. The Civil Service (Classification, Control and Appeal) Rules;
3. The Civil Services (Temporary Service) Rules;
4. The Revised Leave Rules;
5. The Civil Services Regulations;
6. The Civilians Defense (Classification, Control and Appeal) Services
7. The Indian railway Establishment Code;

3. What are the provisions of Section 14, of the Industrial Employment Act 1947?

Section 14 of the Act authorizes the appropriate Government to exempt conditionally or unconditionally any industrial establishment or class of industrial establishment from all or any of the provisions of this Act.

Unit 1: Labour Laws: The Industrial Employment (Standing Orders)Act 1946

Answer the following (limit 250 words). (5 marks)

1. Write the special features of The Industrial Employment (Standing Orders) Act, 1946

The following are some of the main features of the Industrial Employment (Standing Orders) Act, 1946:-

- (1) The employer of every industrial establishment to which the Act applies is required to frame draft Standing Orders and to submit them to the Certifying Officer, who is generally the Labour Commissioner, for certification;
- (2) The definition of workmen under this Act includes a "Supervisory Technical Personnel" under certain conditions;

- (3) The certifying officer is empowered to modify or add to the draft Standing Orders so as to render them certifiable under the Act;
- (4) A group of employers of similar industrial establishments may submit joint Standing Orders for certification;
- (5) The Government may by rules set out model Standing Orders for the purposes of this Act. The Draft Standing Order framed by an employer should as far as practicable be in conformity with the Model Standing Orders;
- (6) This Act normally applies to every industrial establishment wherein one hundred or more workmen are employed;
- (7) The certifying officers and appellate authorities shall have all the powers of a Civil Court in respect of certain matters provided in section 19 of the Act;
- (8) The employer can be penalised for failure to submit draft Standing Order for certification or for contravention of any provision of the Standing Order finally certified;
- (9) The appropriate Government may by a Gazette notification exempt any establishment or class of industrial establishments from any of the provisions of the Act;
- (10) The appropriate Government may after previous publication by notification in the Official Gazette, make rules to carry out the purposes of this Act.

2. Explain the concept of Certifying officers and appellate authority as per the Industrial Employment Act 1947.

Unit 1: Trade Union Act 1926**1. Which was the first association of mill workers in India?**

‘Bombay Millhands Association’

2. Which International Organisation influenced the growth of trade union movement in India?**3. Why 'Bombay Millhands Association' was formed?****4. When was The Indian Trade Union Act 1926 amended?**

The Indian Trade Union Act 1926 was amended in the year 1947

5. How much fine can be imposed on employer if found guilty of unfair practices?

In case of an employer found guilty of unfair practice a fine upto Rs. 1000/- imposed by the registrar on an application by the trade union.

Briefly answer the following. (2 marks)**1. What were the views of Royal Commission on Labour about ineffectiveness of trade unionism in India?****2. Which acts were declared to be unfair practices under the Indian Trade Union (Amendment Act),1947**

- i. Participation, support or instigation of an irregular strike;
- ii. Submission of returns containing false statement;
- iii. Discharge or discrimination against any officer of a recognized Trade Union;
- iv. Interference with the formation or administration of a Trade Union

3. On which matters the executive of a recognized trade union has right of negotiation?

Matters connected with the employment, non-employment, terms of employment and conditions of work of all or any of its members

5 Marks Questions.

Unit 1: Trade Union Act 1926

1. Write the history of trade unionism in India.

The germs of trade unionism in India can be traced back to the year 1890, when for the first time an association of mill workers was formed in the name and style of 'Bombay Millhands Association'. This association was formed for the redressal of grievances of the Bombay mill workers. It is difficult to treat this association as Trade Union in the strict sense in which this expression is used now-a-days. Very little account is available about its mode of working. After the first world war was over the cost of living considerably increased. The political agitation against foreign rule was also gaining momentum throughout the country. The increase in cost of living and country-wide political upsurge found its way in economic discontent amongst masses, particularly in industries. The industrial unrest and economic discontent led to a number of strikes by workers, guided and controlled by their Action Committees consisting of representatives of workers themselves. On many occasions these strikes were successful in getting the demands of the workers fulfilled. The Trade Union movement in India got impetus by the success of strikes in India and the world-wide uprising of labour consciousness. The establishment of International Labour Organisation has also influenced the growth to the trade union movement in our country.

The progress of the trade union movement in India in pre-independence days has not been very satisfactory, but the post-independence has been a tremendous Trade Union activity in every sphere of industry. Now there is hardly any category of workers which has no Union of its own. The Royal Commission on Labour in India has observed:

"Trade Unionism to be fully effective, demands two things: a democratic spirit and education. The democratic ideal has still to be developed in the Indian workers and the lack of education is the most serious obstacle of all. The latter difficulty does not arise merely or even mainly from illiteracy. Few Trade Unions can afford to conduct benevolent work, and the majority find it hard to convince the worker that a subscription is worthwhile except when a dispute is imminent or in progress."

2. Briefly describe the Development of Trade Union Law in India.

3. What provisions were made under The Indian Trade Union (Amendment) Act, 1947.

The following provisions were made in the Amending Act

- (1) Recognition of Trade Unions by employers. Any dispute regarding recognition was to be decided by the Labour Court set up under the Act.
- (2) Recognition was to be granted if the Union applying for such recognition was representative of all workers in the concerned establishment or industry.
- (3) If a registered Trade Union has applied for recognition to the employer, but failed to get recognition within three months, it could apply to Free Labour Court set up for the formal recognition by the employer. The required particulars were to be furnished along with any such application. If the Labour Court, after necessary investigation is satisfied that the Union fulfils all the conditions necessary for recognition by the employer, it shall pass an order directing such recognition.
- (4) The executive of a recognised Trade Union has the right of negotiation with the employer in respect of any matter connected with the employment, non-employment, terms of employment, and conditions of work of all or any of its members.
- (5) Certain acts amounting to unfair labour practices on the part of the Trade Unions and certain others on the part of the employers were declared in the Act. The Act further refrains both the Trade Union and the employer to desist from unfair practices. The recognition of any Trade Union found guilty of unfair practice can be withdrawn on an application by the employer to the Registrar. In case of an employer. found guilty of unfair practice a fine upto Rs. 1000/- may be imposed by the Registrar on an application by the Trade Union.
- (6) Some of the acts which were declared to be unfair practices are as follows :-
 - i) Participation, support or instigation of an irregular strike;
 - ii) Submission of returns containing false statement;
 - iii) Discharge or discrimination against any officer of a recognised The Trade Unions;
 - iv) Interference with the formation or administration of a Trade Union

Unit 2: Labour Law: The Employees Compensation Act 1923

Answer the following. (1 Marks)

1. When was the Employee's Compensation Act passed?

The employee's compensation act was passed in 1923.

2. When was the employee's compensation act enforced?

The employee's compensation act was enforced from 1st July, 1924.

3. On which model the tribunals were set up under the Employee's Compensation Act?

Tribunals were set up on American Model to decide disputes.

8. Who recommended the extension the Employee's Compensation Act for the benefits of a larger class of employees?

The Royal Commission of Labour in India.

Briefly answer the following. (2 marks)

1. What is the objective of the Employee's Compensation Act 1923 ?

Ans. The objective of the Act was to make provision for the payment of compensation by certain class of employers to their employees for injury by accident.

2. How the issue of compensation to workers was raised?

In 1884 the Factory and Mining Inspectors drew the attention of the government towards the inhuman problems faced by employees involved in serious or fatal accidents and said that the matter required immediate legislative protection of employees .and payment of compensation to them .However its importance was realized by the Government of India only at the end of 1920 when public opinion was invited on connected issues.

3. Who comprised the committee constituted for gathering public opinion on Employee Compensation?

A committee consisting of member of the Legislative Assembly, employers, workers or representative of workers, medical and insurance expert

4. How does the Employees' Compensation Act 1923 protect employees?

It's provides for compensation to employees incapacitated by an injury from accident arising out of and in the course of employment. It is a guarantee against hazards of employment to which an employee is exposed because of his employment.

5. What provisions have been made under the Employees' Compensation Act 1923 to protect the interest of the dependants in case of fatal accidents?

In order to protect the interest of dependants in case of fatal accidents the following provisions are made-

- (i) All cases of fatal accident are to be brought to the notice of the Commissioner;
- (ii) If the employer admits his liability the amount of compensation payable is to be deposited with the Commissioner;
- (iii) If the employer admits his liability and at the same time there are grounds for believing compensation to be payable, the dependants get the information necessary to enable them to judge if they should make a claim or not.

6. What is nature of liability of employer under the The Employees Compensation Act 1923 ?

An employer under this act is liable to pay compensation at a rate fixed in the Act itself to any employee incapacitated by an accident arising out of and in the course of his employment. The main principle governing the compensation is not dependent on the suffering caused to the employee or expenses incurred by him in his treatment but on the difference between his wage earning capacity before and after the accident.

Unit 2: Labour Law: The Employees Compensation Act 1923

5 Marks

1. Discuss the main features of the Employees' Compensation Act 1923.

The Employees' Compensation Act 1923 is modeled on the British pattern. Under the Act payment of compensation has been made obligatory on all employers whose employees are entitled to claim benefit under the Act.

- (1) The employee or his dependants may claim compensation if the injury has been caused by accident arising out of and in the course of employment and in case of injury not resulting in death if such accident cannot be attributed to the employee having been at the time of accident under the influence of drink or drugs or if it is not caused due to willful disobedience of rule or orders or disregard of safety devices.
- (2) The various classes of employees have been specified, in the definition of "Employee" in section 2 (1) (dd) and in Schedule 11. Persons employed in administrative or clerical capacity and earning more than Rs. 1,600/- per month (except railway servants) were excluded from the benefit of the Act. But now the conditions of average monthly wage limit of Rs. 1,600/- has been abolished.
- (3) The amount of compensation payable depends in case of death on the average monthly wages of the deceased employee and in the case of an injured employee both on the average monthly wages and the nature of disablement.
- (4) The term "wages" for the purposes of this Act includes over-time pay, and the value of any concessions or benefit in the form of food, clothing, free quarters, etc. Whenever the compensation payable to any employee has to be worked out, first of all his monthly wages are determined and then the amount of compensation is decided by reference to section 4 and Schedule IV, where in the method for determining the amount of compensation for death, and permanent disablement is given.
- (5) In order to protect the interest of dependants in case of fatal accidents the following provisions are made-
 - (i) All cases of fatal accident are to be brought to the notice of the Commissioner;
 - (ii) If the employer admits his liability the amount of compensation payable is to be deposited with the Commissioner;

- (iii) If the employer admits his liability and at the same time there are grounds for believing compensation to be payable, the dependants get the information necessary to enable them to judge if they should make a claim or not.
- (6) A sub-contractor may indemnify his contractor if he has had to pay compensation either to a principal or to an employee.
- (7) The Commissioner may deduct a sum of Rs. 50/- from the amount of compensation and pay the same to the person who has incurred funeral expenses of the deceased employee.
- (8) The Act is administered by the Commissioner for Employees' Compensation appointed by the State Government.

2. Write the Principles governing the Compensation?

The Purpose of the Employees' Compensation Act is not to provide for solatium to the employee or his dependants but to make good the actual losses suffered by him. Compensation is in the nature of insurance of the employees against certain risk of accident. The rule, that in order to make the employer liable to pay compensation, death or injury must be the consequence of an accident arising out of and in the course of his employment, is dependent upon the following four conditions:

- i. A casual connection between injury and accident, and the accident and the work done in the course of employment is essential.
- ii. The onus lies upon the claimant to establish that the injury or its aggravation was the outcome of the work and resulting strain.
- iii. It is not necessary that the employees must be actually working at the time of his death or that the death must occur while he is working or has just ceased to work.
- iv. If the evidence adduced shows greater probability which satisfies a reasonable man that the work contributed to the causing of personal injury, it would be sufficient ground for the employee to succeed in his claim.

Unit 2: Labour Law: The Employees The Employee's Provident Fund and Miscellaneous Provisions Act,1952

Answer the following. (1 Marks)

- 1. When and how the word 'Family' was omitted from Family Pension Fund?**

By an amendment in the year 1997 the word family has been omitted.

- 2. Who is empowered to apply the provisions of the Employees' Provident Funds And Miscellaneous Provisions Act 1952 to any establishment?**

The Central Provident Fund Commissioner.

- 3. What does the expression 'Twenty Persons' refer to under The Employees' Provident Funds and Miscellaneous Provisions Act 1952?**

Twenty persons refers to the twenty employees.

- 4. Who is authorized officer under The Employees' Provident Funds And Miscellaneous Provisions Act 1952?**

Central Provident Fund Commissioner, Additional Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner.

2 Marks

- 1. What is the objective of the Employees' Provident Fund Act 1952?**

The objective of the Employees' Provident Fund Act, is to provide for the institution of provident funds, pension fund and deposit linked insurance funds for employees in factories and other establishments.

- 2. State the principal duty laid upon an employer the Employees' Provident Fund Act 1952 ?**

The principal duty laid upon the employer is to put the Provident Fund Scheme into operation and to make contribution of both the employees and employer's share to the fund then and there and deduct the employee's share from their wages.

- 3. What conditions must be fulfilled by the establishment for applying the Employees' Provident Funds and Miscellaneous Provisions Act 1952?**

The establishment must be engaged in an industry specified in schedule I. At least 20 persons must have been employed in it.

4. What meant by the word ‘Employment’ under Employees’ Provident Funds and Miscellaneous Provisions Act 1952 ?

The word ‘employment’ means employment in the regular course of business of an establishment. Employment does not include employment of a few persons for a short period or some temporary persons.

5. What comprises basic wages under Employees’ Provident Funds and Miscellaneous Provisions Act?

It includes emoluments earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him .

6. What is not included in basic wages under Employees’ Provident Funds and Miscellaneous Provisions Act 1952?

- Cash value of any food concession
- Dearness allowance, House rent allowance,
- Bonus
- Commision or any other similar allowance

5 Marks

1. Discuss the introduction and establishment of Employees’ Provident Fund Scheme.

EMPLOYEES' PROVIDENT FUND SCHEME (1952)

Introduction: Sec. 5 empowers the Central Government to frame, by notification in the Official Gazette, a Scheme to be called the Employees' Provident Fund Scheme, for the establishment of provident funds under the Act for employees or any class of employees. It may also specify the establishment or class of establishments to which the said Scheme shall apply.

Establishment of Fund: As soon as may be after the framing of the Employees' Provident Fund Scheme, there shall be established Employees' Provident Fund in accordance with the provisions of the Act and the Employees' Provident Fund Scheme

[Sec. 5 (1)1. The Fund shall vest in, and be administered by, the Central Board constituted under Sec. 5-A [Sec. 5 (1-A)].

Any of the provisions of the Employees* Provident Fund Scheme shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme [Sec. 5 (2)1. The Scheme may provide for all or any of the matters specified in Schedule II [Sec. 5 (1-BJJ.

The Employees' Provident Fund Scheme applies to all factories and other establishments to which the Act applies or is applied under Sec. 1 (3), 1 (4) and Sec. 3. The applicability of the Scheme is subject to the provisions in the Act in Sec. 16 (exempting from its purview certain establishments) and in Sec. 17 (giving power to the appropriate Government to exempt certain establishments).

2. Write a brief note on monetary contributions to Employees' Provident Fund under the Employees' Provident Fund Scheme.

Contributions (Sec. 6): The object of the Act, is to provide for the institution of the provident funds for employees in factories and other establishments. The principal duty is laid upon the employer to put the Employees' Provident Fund and Family Pension Schemes into operation and to make contributions of both their and employees' share to the Funds and to deduct from the wages of the employees their share.

Statutory rate of contribution: The statutory rate of contribution both for members of the Provident Fund and the employer originally was 6-1/4 per cent of basic wages, dearness allowance (including the cash value of any food concession allowed to the employees) and retaining allowance (if any). By an amendment of the Act the statutory rate was raised to 8-1/3 per cent on January 1, 1963 .

The rate of contribution to Provident Fund in all industries and establishments has been increased from 8.33 per cent to 10 per cent with effect from 1st March 1997, for both employers and employees. In scheduled industries, the rate of contribution became 12 percent .

The provisions of Sec. 6 are as follows:

The employer's contribution to the Employees' Provident Fund shall be 10 per cent of the basic wages, dearness allowance and retaining allowance (if any), for the time being

payable to each of the employees. The employees' contribution shall be equal to the contribution payable by the employer. If any employee so desires, he can contribute more but the employer will pay only 10% or 12% whichever ever is applicable to the establishment.

3. Discuss in detail the object and scope of the Employees' Provident Funds and Miscellaneous Provisions Act 1952.

Object and Scope of the Act.-The long title of this Act is the Employees' Provident Funds, Family Pension Fund and Deposit Linked Insurance Fund Act, 1952. By an amendment of the year 1997 the words Family Pension Fund have been substituted by the words Pension Fund. Thus the word 'Family' has now been omitted. But the Act is known by short title The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The object of the Employees' Provident Funds Act, is to provide for the institution of provident funds, pension fund and deposit linked insurance funds for employees in factories, and other establishments. The principal duty is laid upon the employer to put the Provident Fund Scheme into operation and to make contribution of both the employees' and employer's share to the fund then and there and deduct the employees' share from their wages.' The Act extends to the whole of India except the State of Jammu and Kashmir. The Act and Scheme were enforced in the scheduled industries in November, 1952. There had been a persistent demand for extension of the E.P.F. Act to all categories of industrial workers and the Planning Commission and Tripartite Consultative Committees recommended for such extension. The Act was accordingly extended to many additional industries so as to cover millions of employees working in more than 4,000 factories by the end of March, 1957.

Employees' Provident Funds (Amendment) Act, 1956 empowered the Government to extend the Act to non-factory establishments. In view of the .Amendment Act, 1976, this Act is now called Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

According to Section 1(3)(a) this Act applies to every establishment which is a factory engaged in any industry specified in Schedule 1, and in which twenty or more persons are employed.

According to Section 1(3)(b) it shall also apply to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in. this behalf. Accordingly, the Act-

was extended on 30th April, 1957, to workers in plantations of tea, coffee, rubber, cardamom and pepper employing 50, or more workers.

Unit 2: Labour Laws Minimum Wages Act 1948

1. When did The Minimum Wages Act come into force?

The Minimum Wages Act came in to force in the year 1948

2. Who fixes minimum wage?

The Central Government

3. Where does the Minimum Wages Act 1948 apply?

The Minimum Wages Act 1948 applies to the whole of India.

2 marks

1. What is a prime objective of the Minimum Wages Act 1948?

The object of this act is to prevent exploitation of workers. The Minimum Wages Act was passed for the welfare of labourers. This Act has been enacted' to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments.'

2. What does The Minimum Wages Act 1948 contemplate?

The Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a workman.

3. Against whom the object of The Minimum Wages Act 1948 is directed?

The object of the act is directed against exploitation of the ignorant, less organized and less privileged members of the society by the capitalists.

Answer the following (limit 250 words). (5 marks)

1. Discuss the salient features of the Minimum Wages Act 1948.

(1) This Act provides for the fixation of: (a) minimum time rate of wages; (b) a minimum piece rate; (c) a guaranteed time rate; and (d) an overtime rate, for different

occupations, localities or classes of work and for adults, adolescents, children and apprentices.

- (2) The minimum-rate of wages under the Act may consist of: (a) a basic rate of wages and a cost of living allowance; or (b) basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of essential commodities supplied at concessional rates; or (c) an all-inclusive rate.
- (3) The Act requires that wages shall be paid in cash, although it empowers the appropriate Government to authorise the payment of minimum wages, either wholly or partly in kind in particular cases.
- (4) It lays down that the cost of, living allowance and the cash value of concessions in respect of supplies of essential commodities at concessional rates shall be computed by the competent authority at certain interval. In case of undertakings controlled by the Union Territories and the Central Government, the Director, Labour Bureau is the competent authority.
- (5) The Act empowers the appropriate Government to fix the number of hours of work per day, to provide for a weekly holiday and the payment of `overtime wages in regard to any Scheduled employment in respect of which minimum rates of wages have been fixed under the Act.
- (6) The establishments covered by this Act ate required to maintain registers and records in the prescribed manner.
- (7) The Act also provides for appointment of Inspectors and authorities to hear and decide claims arising out of payment of wages at less than the minimum rates of wages or remuneration' for days of rest or of work done on such days or of overtime wages.
- (8) The provision is also made in the Act for dealing with complaints made for violation of the provisions of the Act and for imposing penalties for offences committed under the Act.

2. Discuss in detail the objective of the Minimum Wages Act s1948.

Object of the Act: The Minimum Wages Act was passed for the welfare of labourers. This Act has been enacted' to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments.' The statement of

object of Bill` points out: "*The justification for statutory fixation of minimum wages is obvious. Such provisions which exist in more advanced countries are even necessary in India, where workers' organisations are yet poorly developed and the workers's bargaining-power is consequently poor*".

The Act provides for fixation by the Central Government of minimum wages for employments detailed in the Schedule of the Act and carried on by/or under the authority of the Central Government, by a railway administrative or in relation to a mine, oilfield or major port, or any corporation established by a Central Act, and by the State Government for other employments covered by the Schedule of the Act.

The items in the Schedule are those where sweated labour is most prevalent or where there is a big chance of exploitation of labour. The object of the Act is directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalists. The object of this Act is to prevent exploitation of the workers and for this purpose, it aims at fixation of minimum wages which employer must pay.'

In a developing country like ours which faces the problem of unemployment-on a very large scale it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act, therefore, is to prevent employment of sweated labour in the general interest and, so, in prescribing the minimum wages rates, the capacity of the employer need not be considered as the State assumes that every employer must pay the minimum wages for the employee's labour.

The Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as workman. It should, therefore, provide for some measures of educational, medical requirements and amenities.

Unit 3: Labour Laws: Payment of Wages Act 1936

Answer the following. (1 Marks)

1. Which Commission recommended the Payment of Wages Act 1936?

The Royal Commission on Labour in India made some valuable recommendations.

2. Which bill was first introduced in the Legislative Assembly to protect the wages earned by worker?

Weekly Payment Bill

3. When was the Payment of Wages Act 1936 passed and when did it come into force?

The Payment of Wages Act 1936 was passed in 1936 and came in force with effect from 21st March, 1937

4. What is the objective of the Payment of Wages Act 1936?

Ans. "to regulate the payment of wages to certain classes of employed persons"

2 Marks

1. What problems were faced by the workers before the introduction of Payment of Wages Act 1936?

Delay in payment of wages, non-payment of wages, deductions made from wages on account of fines imposed by the employer etc.

2. What is the objective of the Payment of Wages Act 1936?

"to regulate the payment of wages to certain classes of employed persons"

3. What was the observation of The Bombay High Court in case of Arvind Mills Ltd. V/S K. R. Gadgil under the Payment of Wages Act?

The court observed that- "The general purpose of the Act is to provide that employed persons shall be paid their wages in a particular form and at regular intervals without any unauthorized deductions"

4. To whom does the Payment of Wages Act apply in the first instance?

- (i) Persons employed in any factory;
- (ii) Person employed (otherwise than in factory) upon any railway by a railway administration, or either directly or, through a sub-conductor, by a person

5. What is the scope of the Factories Act?

The factories act extended to the whole of India, except the state of Jammu and Kashmir.

5 Marks

1. How did the Payment of Wages Act come in to force? Write its history.

The need to protect the wages earned by the worker had been felt from the early years of the twentieth century, but it was--as-early as 1925 that a Private Bill called the "Weekly Payment Bill" was for the first time introduced in the Legislative Assembly. At that time different periods of payment of wages were prevalent. The Bill was, however, withdrawn on an assurance of the Government that the matter was under consideration of the Government. An attempt was made to remedy some of the evils like: delay in payment of wages, non payment of wages ,deductions made from wages on account of fines imposed by the employer etc. Imposition of fines by employers on workers and deduction even double the amount of wages for absence period by way of fine was very much customary in those days.

The Royal Commission on Labour in India made some valuable recommendations on which the present Act is mostly based. The Commission opined that legislation regarding deductions from wages and fines was essential. The following recommendations were made.

- a. Children should be exempt from fine.
- b. The minimum amount which should be deducted by way of fine should not exceed in any month half an anna in the rupee of the worker's earnings.
- c. The amount of fine realized should be used for some purpose beneficial to the employees as a class and should be approved by some recognized authority.
- d. A notice specifying the acts and omissions should be in respect of which fines may be imposed should be posted and any other fine should be deemed to be illegal.
- e. Any deductions made for the goods having been damaged should not exceed the wholesale price of the goods damaged.
- f. Deductions may be made on account of provision for housing accommodation and of tools and raw materials.
- g. Imposition of any fine and deduction made which is not permitted by law should be made penal.

A Bill of Payment of Wages Act, based on the recommendations of the Royal Commission on Labour was introduced in the Legislative Assembly in 1933 but could not take the shape of the Act because of the dissolution of the Assembly. The Payment of Wages Act was passed in 1936 and came into force on 21st March, 1937.

2. Discuss the objective and application of the Payment of Wages Act.

Object: The preamble of the **Payment of Wages Act** states that the object of the Act is "to regulate the payment of wages to certain classes of employed persons." The regulation contemplated by the Act is twofold: first the date of payment, of wages and secondly the deductions from wages whether as fine or otherwise. *"The general purpose of the Act is to provide that employed persons shall be paid their wages in a particular form and at regular intervals without any unauthorised deductions"*.

Any deduction from the wages or, salaries of the workmen governed by the Payment of Wages Act, unless authorised by the Act shall be deemed to be illegal. Any deduction from the wages of the workmen, under a settlement between representative Union and employer can, however, permit a deduction as it is the outcome of an understanding between the parties even though such deduction may not be authorised or legally permissible under the Act.

Application. The Payment of Wages Act, 1936 extends to the whole of India. It came into operation on 28th March, 1937. According to sub-section (4) this Act applies in the first instance to the payment of wages to:

- Persons employed in any factory;
- Persons employed (otherwise than in factory) upon any railway by a railway administration, or either directly or, through a subcontractor, by a person fulfilling a contract with a railway administration;
- Persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of Section 2 of this Act.

Sub-section (5) empowers the appropriate Government to extend the application of the whole or part of the Act to payment of wages to any class of persons employed in the establishment or class of establishments specified by the appropriate Government under sub-clause (h) of clause (ii) of Section 2. subject to two conditions:

- i. Issue of three months' prior notice of its intention to do so; and
- ii. A notification of the extension in the official Gazette

Provided that in relation to any such establishment owned by the Central Government, no such notification shall be issued except with the concurrence of that Government.

(6) This Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed six thousand five hundred rupees per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the Central Government may, after every five years, by notification in the Official Gazette, specify.

Unit 3: Labour Laws: Factories Act 1948

1 Mark

1. Who raised the question for the provision of legislation to regulate working conditions in factories?

Ans. Major Moore- the Inspector-in Chief of the Bombay Cotton Department in his report in 19-72-73 first raised the question of provision of legislation to regulate the working conditions in factories.

2. When did the first Factories Act enact?

The first Factories Act was enacted in 1881

3. Which was the second Factories act?

The factories Act 1934

4. Why was it necessary to revise and amend the Factories Act 1934?

It revealed a number of defects and weakness which created obstacles in effective administration of the act, and it was felt that the Act should be extended to the large number of smaller establishments.

5. Who passed the Factories Act 1948 and with whose assent it came into force?

The Factories Act, 1948 consolidating and amending the law relating to labour in factories, was passed by the Constituent Assembly on August 28, 1948. The act received the assent of Governor-General of India on 23rd September, 1948 and came into force on April 1, 1949.

2 Marks**1. What is meant by welfare as per the Factories Act 1948?**

“Labour welfare work is work for improving the health, safety and general well-being and the industrial efficiency of the workers beyond the minimum standard laid down by labour legislation”

2. What is meant by safety as per the Factories Act 1948?

It refers to the act of protecting the physical well being of an employee. It means protecting employees from injuries caused by work related accidents.

3. Write any two purposes of welfare.

- (i) Enables workers to have a richer and more satisfying life
- (ii) Raises the standard of living of the workers
- (iii) Promotes a sense of belongingness among worker
- (iv) Prevents social evils like drinking, gambling, prostitution, etc.

5 Marks**1. Highlight the changes introduced by the Factories Act 1948.**

- (1) The definition of the term ‘factory’ was widened to cover all industrial establishments employing 10 or more workers where power was used and 20 or more workers in other cases.
- (2) The distinction between seasonal and non seasonal factories was abolished.
- (3) The State Government was authorized to extend the provisions of this Act to any establishment irrespective of the number of the number of workers employed there in and irrespective of the fact the manufacturing work is carried on by ht power or otherwise. The only exception is an establishment where the work is done solely by the members of a family..
- (4) The basic provisions of the old Act relating to health ,safety and welfare were extended to all work places irrespective of the number of workers employed, except where processes are carried on by the occupier with the sole aid of his family.

- (5) Provisions made for the licensing and registration of factories and prior scrutiny by the Factories Inspectorate of the plans and specifications of factory buildings.
- (6) Chapter III of the Act was split into three parts, dealing with health, safety and welfare of workers. The Act specifies very clearly the minimum requirements under all the three heads.
- (7) The minimum age for admission of children to employment has been raised from 12 to 14 years and the minimum permissible hours of work of children were reduced from five hours to four and half hours.
- (8) Employment of children and women between 7 pm and 6am is prohibited. For overtime work the workers are entitled to twice their normal rate of wages.
- (9) The State Governments are empowered to make rules requiring the association of workers in the management of arrangements for the welfare of the workers.
- (10) The State Government is obliged to see that all the factories are registered and take a licence for working, which should be periodically renewed. Prior approval of the State Government has been made necessary for every new installation of a factory or for the extension[^] of an existing factory. Besides mines, the new Act also excludes railway running sheds from the definition of factories

2. Why was it necessary to introduce The Factories Amendment Act, 1954? Highlight some important features of the amendment. Also what is meant by the terms –Adult, Adolescent, Calendar year, Child, Hazardous process, young persons, Day and Week.

The Factories (Amendment) Act, 1954.

Ratification by India of International Labour Convention relating to prohibition of employment of young persons during night in factories necessitated the amendment of the Factories Act, 1948, accordingly. A new Chapter dealing with "Annual Leave with Wages" was substituted for Chapter VIII of the Act. A prohibition against employment of women and young persons during night has been enacted by this Act. No women or young person can be employed for cleaning, lubricating or adjusting any prime mover or transmission machinery while it is in motion, if such work is likely to expose them to risk of injury.

Scope of the Act.

The Factories Act, 1948, extends to the whole of India, except the State of Jammu and Kashmir. It is a social enactment to achieve social reform and must be construed liberally to achieve its legislative **purpose** without doing violence to language.

Section 2. Interpretation.—Section 2 of the Factories Act, 1948, defines the following terms and expressions as used in the Act. It says, unless there is anything repugnant in the subject or context—

- (a) **“Adult”** means a person who has completed eighteenth year of age.
“Adolescent” means a person who has completed his fifteenth year of age but not completed his eighteenth year.
- (b) **“Calendar year”** means the period of twelve months beginning with the first day of January in any year,
- (c) **“Child”** means a person who has not completed his fifteenth year of age.
- (d) **“Young Person”** means a person who is either a child or an adolescent.
- (e) **“Day”** means a period of twenty four hours beginning at mid night.
- (f) **“Week”** means a period of seven days beginning at midnight on Saturday night or such other night as approved in writing for a particular area by the Chief Inspector of Factories.

3. Discuss any seven legal provisions regarding safety specified under the Factories Act.1948.

Fencing of machinery (21): In every factory the dangerous parts of any machines shall be securely fenced.

Work on or near machinery in motion (22): For examining and lubricating machines while in motion, specially trained workers wearing tight clothes be sent. Such a worker should not be allowed to handle belts of machines in motion without proper precautions. Women and young children should be prohibited from handling such dangerous machines.

Employment of young persons (23): No young person be allowed to work on dangerous machines unless he is fully instructed about possible dangers and precautions to be

followed. Sufficient training be provided in advance and he should be allowed to operate such machines under the guidance of an experienced supervisor.

Striking gear and devices for cutting off power (24): In every factory suitable striking gear has to be used to move driving belts. Steps should be taken to ensure prevention of the belt from creeping back on to the fast pulleys. Driving belts, when not in use, shall not be allowed to rest or ride on a shaft in motion. Suitable devices for cutting off power in an emergency shall be maintained in every room. When a device which can inadvertently shift from 'off' to 'on' position is provided in a factory to cut off power, arrangements shall be made to lock it in a safe position with a view to prevent the accidental starting of the transmission machinery or any other machines to which the device is fitted.

Self acting machines (25): No traversing part of a self-acting machine in any factory and no material carried thereon shall be allowed to run on its outward or inward traverse within a distance of 18 inches from any fixed structure which is not a part of the machine, if a person is liable to pass through the space over which it operates.

Casing of new machinery (26): All machinery, driven by power and installed after 1-4-1949 encased or otherwise effectively guarded to eliminate danger to those working in the factory.

Employment of women, children near cotton openers (27): No woman or child be employed in any part of a factory to press cotton when a cotton opener is working, But if the feed-end of a cotton opener is in a room which is separated from the delivery-end by partition extending to the roof or to such height as the factory inspector may express in writing, women and children may be employed in that part of the room where the feed-end is kept.

Hoists and lifts (28): In every factory hoists and lifts shall be of a good mechanical construction, sound material and adequate strength and shall be properly protected by enclosures fitted with gates. Once in every six months, it shall be thoroughly examined by a competent person. The maximum safe working load shall be clearly indicated on every hoist or lift. A heavier load shall not be allowed to be carried on that hoist or lift.

Lifting machines chains and ropes (29): The lifting machines, tackles, chains and ropes used in every factory should be of good construction, sound material and strong enough to carry the necessary loads.

Revolving machinery (30): In every room where grinding jobs are performed, a notice showing the maximum working speed of the machine shall be fixed near it. Safe working peripheral speed of every revolving vessel, pulley, basket, flywheel, and disc has to be observed and steps should be taken to see that the safe working speed is not exceeded.

Pressure plant (31): If in any factory operations are carried out at a pressure above the atmospheric pressure, proper measures shall be taken to see that the safe working pressure is not exceeded.

Floors, stairs and means of access (32): All doors, steps, stairs, passages and gangways shall be of sound construction and maintained in a state of good repair; they shall be free from obstructions likely to cause persons to slip and hand rails shall be provided wherever required. As far as possible, safe means of access to the place of work shall be provided and maintained.

Pits, sumps, openings in floors (33): Every pit, tank, sumps, fixed vessel, opening in the ground or in a floor which is a source of danger, shall be either properly covered or securely fenced.

Excessive weights (34): No person shall be employed in any factory to lift, carry or move any load which is so heavy as to cause him a possible injury.

Protection of eyes (35): Effective screens or suitable goggles be given to workers while scrutinising a manufacturing process involving risk of injury to eyes.

Dangerous fumes and gases (36): No person shall be allowed to enter any chamber, tank, vat, pit or other confined space in which any gas, fume, vapour or dust is likely to be present to a dangerous extent. A person can enter such a place only when it is provided with a manhole of adequate size or other effective means of egress. A person may be allowed to enter such a space only when suitable steps have been taken to remove dangerous fumes. In case of any emergency, suitable breathing apparatus, reviving apparatus, belts and ropes be kept ready. A sufficient number of persons in the factory shall be trained in the use of all such apparatus and in the method of restoring respiration.

4. What are the welfare facilities given to the worker under the Factories Act.

Washing facilities: Section 42(1) provides that in every factory

- (a) Adequate and suitable facilities for washing shall be provided and maintained for the use of workers;

- (b) Separate and adequately screened facilities shall be provided for the use of male and female workers;
- (c) Such facilities shall be conveniently accessible and shall be kept clean.

Facilities for washing: Section 43 empowers the State Government to make rules, in respect of any factory or class or description of factories, requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

Facilities for sitting: According to Section 44(4) in every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

First-aid appliances: According to Section 45(1) in every factory shall be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.

Canteens: The State Government may, according to Section 46(1), make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

Thus sub-section (1) confers general rule-making power upon the State Government and sub-section (2) of Section 46 authorised the State Government to make rules providing for:

- (a) the date by which canteen shall be provided;
- (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) the foodstuffs to be served therein and the charges which may be made thereof;
- (d) the constitution of a managing committee for the canteen and representation of the workers the management of the canteen;

- (e) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;
- (f) delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the powers to make rules under clause (c).

Shelters, rest rooms and lunch rooms: Section 47(1) lays down that in every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers.

Creches: Section 48(1) lays down that in every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

Welfare Officer: Section 49(1) provides that in every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed. According to Section 49(2) the State Government may prescribe the duties, qualifications and conditions of services of officers employed under sub-section (1)

Unit 3: Labour Laws: Bonus Act 1965

1. When was the first bonus granted?

In our country bonus was for the first time granted to the employees in textile industry in July, 1917 which is known as "war bonus" because an increase in wages was allowed owing to war conditions.

2. Where does the Payment of Bonus Act apply?

This Act extends to the whole of India. Sub-section (3) of Section 1 provides that save as otherwise provided in this Act, it shall apply to (a) every factory; and (b) every other establishment in which twenty or more persons are employed on any day during an accounting year.

3. How the Payment of Bonus Act, 1965 was made?

The present Act is the outcome of the recommendations made by a Tripartite Commission, which was set up by the Government of India in 1961. The Commission was asked to consider the question of payment of bonus based on profits to employees employed in establishments. The recommendation of the Commission was received by the Government on January 24, 1964. On September 2, 1964 the Government implemented the recommendations, subject to certain modifications. With a view to accept these recommendations, the Payment of Bonus Ordinance, 1965 was promulgated on 26th May, 1965. The Ordinance later on was adopted by the Parliament and enacted as Payment of Bonus Act, 1965. Under the Act the payment of bonus has become a statutory obligation imposed upon the employers covered by the Act.

4. What is the object of Payment of Bonus Act, 1965?

The object of the Act as contained in the preamble is to provide for payment of bonus to persons employed in certain establishments and for matters connected therewith.

5. When did the payment of Bonus act enact?

In the year 1965

Briefly answer the following. (2 marks)

1. What is meant by bonus? How bonus is different from Wages?

Ans. Bonus is a cash payment made to employees in addition to wages. It is not an *ex-gratia* payment. Bonus differs from wages in that it does not rest on contract, but still payments for bonus are made because legally due, but which parties do not contemplate indefinitely.

2. Which charges are deducted prior to declaring bonus?

- (i) Return on paid up capital generally at the rate of six per cent;
- (ii) Return on working capital varying from two to four per cent;
- (iii) Depreciation worked out on a notional basis;
- (iv) Rehabilitation;
- (v) Income tax.

3. Which two conditions are to be satisfied for the demand of bonus according to the Supreme Court?

The Supreme Court laid down two conditions which had to be satisfied before a demand for bonus could be justified:

- (i) The wages fell short of the living standard; and
- (ii) The industry makes huge profits part of which is due to the contribution made by workmen in increasing production.

4. Why is it said that the scheme of Payment of Bonus Act is four dimensional?

Broadly speaking the scheme of the Act is four dimensional :

- 1. to impose statutory liability upon an employer of every establishment covered by the Act to pay bonus to employees in establishment;
- 2. to define the principle of payment of bonus according to the prescribed formula;
- 3. to provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of "set-off and set-on"; and
- 4. to provide machinery for enforcement of the liability for payment of bonus.

5. Under which circumstances an employee will be disqualified for bonus under of Payment of Bonus Act ?

Disqualification for bonus.—

Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for—

- i. fraud; or
- ii. riotous or violent behavior while ' on the premises of the establishment; or
- iii. theft, misappropriation or sabotage of any property of the establishment.

Answer the following (limit 250 words). (5 marks)

1. Discuss payment of minimum bonus by an employer.

Every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage

earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have, effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted.

The statutory bonus of eight and one third per cent shall be payable whether there are profits in the accounting year or not. After coming into force of this Act, bonus has become an implied term of employment not dependant upon the profits.¹ Employees are entitled to festival bonus only if there is an implied agreement or it is paid as customary bonus.²

The minimum bonus under the Act is a right vested in an employee under a statute. The right to minimum bonus is a statutory right which vests in the employee and no further adjudication of the right to the payment of minimum bonus is called for. It constitutes an existing statutory right. The denial of this right by the employer does not render it an industrial dispute calling for adjudication by way of reference under Section 10 of the Industrial Disputes Act read with Section 22 of the Payment of Bonus Act. A claim for the payment of minimum bonus cannot constitute an industrial dispute within the meaning of Section 22 of the Payment of Bonus Act.

Section 10 of the Payment of Bonus Act fixes the amount of bonus payable by an employer to every employee from the allocable surplus in respect of the accounting year. The Act is confined to the 'profit-based bonus' and not to other categories of bonus which employees may be entitled to claim from an employer. The Payment of Bonus Act, thus creates a statutory right in the employees and imposed a statutory liability upon the employers covered by the Act to pay a minimum bonus.

Unit 4: Labour Laws- Maternity Benefit Act

Answer the following. (1 Marks)

1. When did the Maternity Benefit Act come into force?

Ans. The Maternity Benefit Act was enacted in 1961

2. What is the objective of the Maternity Benefit Act?

To achieve the object of doing social justice to women workers.

3. What is the duration of leave an expectant woman is entitled to?

Section 5(3) provides that a woman shall be entitled to maternity benefit for a minimum period of twelve weeks, that is six weeks upto and including the day of her delivery and six weeks immediately following that day :

2 Marks

1. For how much period employer shall be liable to pay average daily wages for maternity benefit?

The period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day

2. What do you mean by average salary for the purpose of paying the maternity benefit?

The average daily wages means the average of the woman's wages payable to her for the days on which she was worked during the period of three calendar months immediately preceding the date from which she absent herself on account of maternity, or one rupee a day, whichever is higher.

3. When is a woman not entitled to get maternity benefit?

Section 5(2) provides that 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 one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery.

4. For how much period employer shall be liable to pay average daily wages for maternity benefit?

The period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day

5. What do you mean by average salary for the purpose of paying the maternity benefit?

The average daily wages means the average of the woman's wages payable to her for the days on which she was worked during the period of three calendar months immediately preceding the date from which she absent herself on account of maternity, or one rupee a day, whichever is higher.

6. When is a woman not entitled to get maternity benefit?

Section 5(2) provides that 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 one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery.

5 Marks

1. Write a short note on right to payment of maternity benefit.

Section 5 provides that the maternity benefit to which every woman shall be entitled and her employer shall be liable for, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day.

For the purposes of paying the maternity benefit to a woman- worker as stated above, the average daily wages means the average of the woman's wages payable to her for the days on which she has worked- during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, whichever is higher.

Section 5(2) provides that 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 one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery. The qualifying period of one

hundred and sixty days as aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration.

For the purposes of calculating the days on which a woman has actually worked in the establishment, the days for which she has been laid off during the period of twelve months immediately preceding the date of her expected delivery, shall be taken into account.

Section 5(3) provides that a woman shall be entitled to maternity benefit for a minimum period of twelve weeks that is six weeks up to and including the day of her delivery and six weeks immediately following that day.

Provided that where a woman dies during this period, the maternity benefits shall be payable only for the days up to and including the day of her death. Where a woman having been delivered of child, dies during her delivery, or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child dies during the said period, then, for the days up to and including the day of the death of the child.

A woman worker who expects a child is entitled to maternity benefit for a maximum period of twelve weeks which is split up into two periods viz., pre-natal and post-natal.

2. Discuss the cases ‘B. shah V. Labour Court, Coimbatore’ and ‘Ram bahandur Thakur (P.) Ltd. V. Chief Inspector of Plantations’ of the maternity benefit act.

In B. Shah v. Labour Court, Coimbatore, the question was whether Sunday is to be counted in calculating the amount of maternity benefit. It was held that in the context of sub-sections (1) and (3) of Section 5, the term week has to be taken to signify a cycle of seven days including Sundays. The Legislature intended that computation of maternity benefit is to be made for the entire period of the woman workers' actual absence, i.e., for all the days, including Sundays, which may be wage less holidays falling within that period and not only for intermittent periods of six days thereby excluding Sundays falling within that period. Again the word "period" occurring in Section 5(1) seems to emphasize the continuous running of time and recurrence of the cycle of seven days. This computation ensures that the woman worker gets for the said period not only the amount equaling 100 per cent of the wages which she was previously earning in terms of Section 3(n) of the Act but--also--the benefit of the wages for all the Sundays and rest days falling

within the aforesaid two periods which would ultimately be conducive to the interest of both the woman worker and her employer.

In Ram Bahadur Thakur (P) Ltd. v. Chief Inspector of Plantations, the point for determination by the Court was whether in calculating 160 days period which will entitle a woman employee to get maternity benefit, the work on half days can be included or not. It was held that according to Explanation to Section 5(2) of the Maternity Benefit Act, the period during which a woman worker was laid off should also be taken into consideration for ascertaining the eligibility. During the-lay-off period a woman worker cannot be expected to have actually worked in the establishment. So, actual work for 160 days cannot be insisted as a condition precedent for claiming the maternity benefit.

Unit 4: Labour Laws: The Child Labour(Prohibition And Regulation) Act, 1986

1. Why is it important to protect and safeguard children ?

Almost one third of the world population comprises children. Therefore, they deserve to be cared and protected to keep up and improve posterity. They are an important component of the social structure and the potential future carriers of culture. Social justice, therefore, demands justice to children.

2. Which international Declaration protects and safeguards children's rights?

The need for providing protection and safeguards to children have first been stated in the Geneva Declaration of the Rights of the Child, 1924 and was recognised in the Universal Declaration of Human Rights, 1948 and in the Statutes of specialised agencies of U.N.O.

3. What does Art. 25 and 26 of the Universal Declaration of Human Rights, 1948 specify about children rights?

Art. 25 of the Universal Declaration of Human Rights, 1948 provides that "*motherhood and childhood are entitled to special care and assistance*". All children, whether born in or out of wedlock, shall enjoy the same social protection". Rights to free and compulsory elementary education to children is assured by Article 26.

4. Which article of the Universal Declaration of Human Rights, 1948 assured rights to free and compulsory elementary education to children?

Article 26

5. In which year the need for providing protection and safeguard to children was stated for the first time.?

In 1924

6. To which part of the country does the Child Labour (Prohibitions and Regulation) Act, 1986 Apply?

The Child Labour (Prohibitions and Regulation) Act, 1986 extends to the whole of India

7. What is meant by 'Traffic in human beings'?

Traffic in human beings means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes

8. What are the duties of the State under the part IV of the Constitution of India?

Part IV of the Constitution casts a duty upon the State to direct its policy towards securing *inter-alia* that the tender age of the children are not abused and that they are not forced by economic necessity to accept avocations unsuited to their age or strength. The States shall also ensure appropriate opportunities to the children for proper development of their personality. The State is further directed to provide for free and compulsory education for all children until the age of 14 years.

9. Write the provisions mentioned in section 8 of The Child Labour(Prohibitions and Regulation) Act, 1986 about maintenance of register.

The act calls for maintaining the following details in the register to be available for inspection by an Inspector at all times during working hours:

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

5 marks

1. Write the ten principles declared in *Declaration of the Rights of the child in 1959* the General Assembly of the United Nations.

The Declaration **of the Rights of Child, 1959**

A concrete step has been taken through the *Declaration of the Rights of the child in 1959* which aims that the child may have a happy childhood and enjoy for his own good and for the good of the society, the rights set forth in the Declaration. The Preamble of the Declaration expresses concern of the International Community for child welfare. The child by reason of his physical and mental immaturity, needs special safeguards and care. It also calls upon parents, upon men and women as individuals, and upon voluntary organisations, local authorities and national Governments to recognise children .rights and strive for their observance by legislative and other measures. These rights which the General Assembly of the United Nations calls upon to be recognised and implemented by the National Governments are contained in the following Ten Principles of the Declaration,

- (1) The child shall enjoy and shall be entitled to the rights set forth in these principles without any distinction or discrimination.
- (2) It also ensures special protection and facilities for proper and integrated development of human personality.
- (3) The child shall be entitled from his birth to a name and nationality.
- (4) Special care and protection shall be provided *to* the child and his mother so that the child can grow and develop in health. For this purpose he shall have right to adequate nutrition, housing, recreation and medical services.
- (5) A child handicapped in any manner deserves special treatment, education and care suiting to his condition.
- (6) For proper development of his personality a child shall be ensured of love, atmosphere of affection and material security.
- (7) The child shall also be entitled to free and compulsory education to promote his general culture and enable him to develop his abilities on a basis of equal opportunity.
- (8) The child shall in all circumstances be among the first to receive protection and relief.
- (9) He shall be protected against all forms of neglect, cruelty and exploitation. He shall not be subjected to traffic in any form and shall not be admitted to employment before an appropriate age. He shall not be engaged in any employment which would prejudice his health or education or interfere with his physical, mental or moral development.
- (10) The child shall also be protected from practices which may foster racial, religious and any other form of discrimination.

2. Write the salient features of International Convention on the Rights of Child, 1989.

International Convention on the Rights of Child, 1989

A great headway had been made in the year 1989, which marked the 30th Anniversary of the 1959 Declaration of the Rights of the Child and the 10th Anniversary of the international year of the child, when on 20th November the General Assembly adopted an international convention on the rights of child, which was termed by the General Assembly President Joseph N. Garba as a binding piece of international legislation. The

convention needs to be ratified by 20 countries before it comes into force. Prior to being placed before the assembly the draft of the Convention was approved by the Economic and Social Council and the commission on Human Rights during their sessions in 1989. The Preamble to the convention states that a child "needs special safeguards and care including appropriate legal protection before as well as after birth". Some of the main points of the convention are—

1. The convention defines a '*child*' as "every human being below the age of 18 years.
2. Every child has the inherent *right to life*, to a name, to acquire a nationality and, "as far as possible, the right to know and be cared for by his or her parents".
3. Children shall have the right to freedom of expression, thought, conscience and religion, association and peaceful assembly, education, rest and leisure, social security,, the highest attainable standard of health" and a standard of living "adequate for his or her physical, mental, spiritual, moral and social development".
4. Children shall not be separated from their parents against their will. States parties will respect the responsibilities, rights and duties of parents, deal with family reunification "in a positive humane and expeditious manner", and combat the illicit transfer and non-return of children abroad.
5. Children shall be protected from economic exploitation and from hazardous work, drug use and trafficking, sexual exploitation and sexual abuse, and "all other forms of exploitation prejudicial to any aspects of the child welfare".
6. A minority or indigenous child shall not be denied the right to his or her own culture, religion or language.
7. A mentally or physically disabled child should enjoy a full and decent life.
8. A child who is capable of forming his or her own views should have the right to express those views freely in all matters affecting the child, including any judicial and administrative proceedings.
9. No child shall be subjected to torture or other cruel, inhuman or
10. degrading treatment or punishment. Capital Punishment or life imprisonment shall not be enforced for offences committed by persons under 18 years. /

11. States Parties will establish "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law".
12. State Parties shall take "all feasible measures" so that children under 15 "do not take direct part in hostilities" and "shall refrain from recruiting" them into their armed forces.
13. The best interest of the child shall be "the paramount consideration" for adoption.

There are a total of 35 Articles in this convention and the above represent only some salient features of them. A committee on the Rights of the child, made up of 10 experts, is to be established to monitor compliance with convention provisions. It is heartening to note that the convention has been ratified by more than two third of the total members of the U.N.O. within a period of about half of the decade. The ratification requires a country to bring all its laws into line with the convention.

3. Write a brief note on object and scope of the Child Labor (Prohibition and Regulation) Act 1986.

Object and scope: There are a number of enactments which prohibit the employment of children below 14 years and 15 years of age in specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions. Therefore the Child Labour (Prohibitions and Regulation) Act, 1986 has been enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. This Act seeks to achieve the following objects:

- (i) To ban the employment of children, i.e, those who have not completed their fourteenth year, in specified occupations and processes;
- (ii) To lay down a procedure to decide modifications to the Schedule of banned occupations or processes;
- (iii) To regulate the conditions of work of children in employments where they are not prohibited from working;
- (iv) To lay down enhanced penalties for employment of children in violation of provisions of this Act, and other Acts which forbid the employment of children;

(v) To obtain uniformity in the definition of "child" in the related laws.

In view of sub-section (2) of Section 1 this Act extends to the whole of India. Section 1(3) provides that the provisions of this Act other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.

4. Write a short note on Rights of Child and the Indian Constitution.

The Indian Constitution was drafted almost at the same time when the "Universal Declaration of Human Rights" was adopted and the framers of the Indian constitution were influenced by the concept of human rights.

Part IV of the Constitution casts a duty upon the State to direct its policy towards securing *inter-alia* that the tender age of the children are not abused and that they are not forced by economic necessity to accept avocations unsuited to their age or strength. The States shall also ensure appropriate opportunities to the children for proper development of their personality. The State is further directed to provide for free and compulsory education for all children until the age of 14 years.

The framers of the Indian Constitution thought it prudent to ensure at least the minimum rights to children which they considered essential for proper development of human personality and therefore children have been guaranteed certain fundamental rights. Article 23 of the Constitution prohibits traffic in human being and *beggar* and other similar forms of forced labour. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes. Article 24 of the Constitution prohibits employment of children below the age of 14 years in a factory or mine or other management in any other hazardous employment.

There are a fairly large number of labour laws in our country and the Child Labour (Prohibition and Regulation) Act, 1986 is one of such important legislations.

5. How does the Child Labour (Prohibitions and Regulation) Act, 1986 regulate the hours, period of work and weekly holidays of child labour?

The Child Labour (Prohibitions and Regulation) Act, 1986 regulate the hours, period of work and weekly holidays of child labour through section 7 and 8 of the Act as follows:

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.
2. The period of work on each day shall be so fixed that no period shall exceed 3 hours and that no child shall work for more than 3 hours before he has an interval or rest at least for an hour.
3. The period of work of a child shall be so arranged that inclusive of his interval and rest, under sub section 2, it shall not be spread over more than 6 hours, including the time spent in waiting for work any day.
4. No child shall be required or permitted to work between 7 pm and 8 am.
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.

Section 8: Weekly Holiday: 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.

6. Write the provisions mentioned in section 13 in The Child Labour (Prohibitions and Regulation) Act, 1986.

According to section 13 of the Act provisions shall be made about the following for the health and safety of children employed or permitted to work in any establishment or class of establishment:

- a. Cleanliness in the place of work and its freedom from nuisance;
- b. Disposal of wastes and effluents;
- c. Ventilation and temperature;
- d. Dust and fume;
- e. Artificial Humidification;
- f. Lighting;
- g. Drinking water;
- h. Latrine and urinals;

- i. Spitoons;
- j. Fencing of machinery in;
- k. Work at or near machinery in motion;
- l. Employment of children on dangerous machines;
- m. Instructions, training and supervision in relation to employment of children on dangerous machines;
- n. Device for cutting off powers;
- o. Self-acting machines;
- p. Easing of new machinery;
- q. Floors ,stairs and means of access;
- r. Pits, sumps, openings in floors etc;
- s. Excessive weights;
- t. Proection of feyes;
- u. Explosive or inflammable dust, gas ets;
- v. Precautions in case of fire;
- w. Maintenance of buildings; and Safety of buildings and machinery.

Unit 4: Labour Laws: the Contract Labour (Regulation and Abolition) Act

1. When was the Contract Labour (Regulation and Abolition) Act enacted and from which date it came into force?

The Act was enacted in 1970 and has come into force with effect from 1st February, 1971. It extends to the whole of India.

2. Which establishments are not governed by the provisions of the Contract Labour (Regulation and Abolition) Act, 1970?

The Act does not apply to establishments in which work only of an intermittent or casual nature is performed

3. Which constitutional body resolves the question related with the casualness of the work performed in an establishment?

The appropriate Government.

4. How the Contract Labour (Regulation and Abolition) Act, 1970 came into being?

The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time. In the second-five year plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of system and improvement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and general consensus of opinion was that the system should be abolished wherever possible or practicable and that in cases where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities. Hence the introduction of The Contract Labour (Regulation and Abolition) Act 1970 came into existence.

5. What is the object of The Contract Labour (Regulation and Abolition) Act, 1970?

This Act aims at abolition of contract labour in respect of such categories as may be notified by appropriate Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible.

It provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise Central and State Governments in administering the legislation and registration of establishments and contractors.

Under the Scheme of the Act, the provision and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases rest-rooms and canteens, have been made obligatory. Provisions have also been made to guard against delays in the matter of wage payments.

Briefly answer the following. (2 marks)

1. What are the welfare amenities provided to contract labour?

Drinking water, first-aid facilities and in certain cases rest-rooms and canteens have been made obligatory.

2. What do you mean by ‘Appropriate Government’?

Appropriate government means—

- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that other establishment is situated.

3. When shall the work performed in an establishment not be deemed to be of an intermittent nature?

Work performed in an establishment shall not be deemed to be of an intermittent nature

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

Answer the following (limit 250 words). (5 marks)

1. What provisions have been made under The Contract Labour (Regulation and Abolition) Act, 1927 towards canteens, rest-rooms and other facilities for the welfare and health of contract labour?

(1) Canteens.-

- (i) The appropriate Government may make rules requiring that in every establishment-
 - a) to which this Act applies,
 - b) wherein work requiring employment of contract of labour is likely to continue for such period as may be prescribed, and
 - c) wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.
- (ii) Without prejudice to the generality of the foregoing power, such rules may provide for:-
 - a) 'the date by which the canteens shall be provided;
 - b) the number of canteens that shall be provided, and the standards in respect of construction, . accommodation, furniture and other equipment of the canteens; and
 - c) the foodstuffs which may be served therein and the charges which may be made there for.

(2) Rest-rooms

- (i) In every place wherein contract labour is required to halt at night in connection with the work of an establishment-
 - a) to which this Act applies; and
 - b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed,

there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.

- (ii) The rest-rooms or the alternative accommodation to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

(3) Other facilities

It shall, be the duty of every contractor employing contract labour in connection with "the work of an establishment to which the Act applies, to provide and maintain-

- a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;
- b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
- c) washing facilities.

2. Write a note on first-aid facilities, liability of principal employer in certain cases and responsibility for payment of wages as a part of welfare and health of contract labour.

(1) First-aid facilities

There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.

(2) Liability of principal employer in certain cases

If any amenity required to be provided under section 16, section 17, section 18 or section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed there for, such amenity shall be provided by the principal employer within such time as may be prescribed.

- (i) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from

any amount payable to the contractor under any contract or as a debt payable by the contractor.

(3) Responsibility for payment of wages

- (i) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
- (ii) Every principal employer shall nominate a representative duly authorised 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 as may be prescribed.
- (iii) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.
- (iv) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so -paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.