Labour LAW -2 Model Answers -2021

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LABOUR LAWS- II

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Q. No. 1. Fundamental rights and directive principles of state policy are the backbone of industrial jurisprudence elucidate

SYNOPSIS

1. **Introduction**
2. **Fundamental rights**
3. **Directive principles of state policy**
4. **Conclusion**

1. Introduction

The concept of labour welfare is necessarily dynamic and varies from country to country, from time to time and even within the country, variation depends upon different nature of social institutions, degree of industrialization and general level of social and economic development. Thus, the concept of welfare can be approached from various outlooks. It is a relative concept, since it is related to time, place and change with the economic and scientific advancement of the country. Labour welfare generally refers to betterment of employees, relates to taking care of the well-being of workers by employers, trade unions, and government and non-governmental agencies. According to the Royal Commission on Labour (1931) "Labour welfare is a term which must necessarily be elastic, bearing a somewhat different interpretation from one country to another, according to the different social customs, the degree for industrialization and educational level of the workers".

Constitution is the supreme law of a nation and all legislations draw their inspiration from it. Constitution is a document of social revolution casting an obligation on every instrumentality including the judiciary to transform the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life and there should be equality of status and opportunity to all. The trinity of Indian Constitution, the Preamble, the Fundamental Rights and the Directive Principles of State Policy, embody the fundamental principles, which provide guide to all legislations, including the labour legislations. This constitutional trinity assures its citizens to provide "Socialistic Pattern of Society" and create "Welfare State" and all legislations, specially the Labour legislations, are deeply influenced by them.

2. *Constitutional framework*

The Constitution of India has conferred innumerable rights on the protection of labour. It not only guarantees some of the fundamental rights to its citizens but also has embodied Directive Principles of the State Policy for the attainment of a social order based on Justice, Liberty, Equality and Fraternity. Therefore the Constitution maintains a list of Fundamental Rights and Directive Principles of the State Policy which refers generally to the upliftment and promotion of the welfare of the people. Moreover under the Constitution of India, Labour is a subject in the Concurrent List where both the Central and State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

The Constitution protects the life and liberty of an individual, in the Olga Tellis case (AIR 1986 SC 180) the Supreme Court held that Right to livelihood is an integral part of Right to life and hence will be protected under Article 21. Other than this, the Constitution enlists several provisions which guarantee protection of the interests of employees and safeguards them against any kinds of discrimination in matters of public employment some essential provisions in the Constitution are discussed below.

❖ The Preamble

The importance and utility of the Preamble has been pointed out in several decisions of our Supreme Court. Though, by itself, it is not enforceable by the court of law, the preamble states the objectives which the Constitution seeks to establish and promote. Moreover in S. R. Bommai v. Union of India (1994) 3 SCC 1, the majority of nine Judges laid down a new application of the Preamble under the Constitution, it was held that the Preamble indicates the basic Structure of the Constitution

The Preamble to our Constitution serves two purposes.

1. It indicates the source from which it derives its authority, “the People”
2. It starts the objectives which it seeks to establish and promote.

The preamble states to secure to all its citizens:

- Justice; Social, Economic and Political
- Liberty of thought, expression, belief, faith and worship
- Equality of status and of opportunity
- Fraternity, assuring the dignity of the individual and unity and integrity of nation

These principles enshrined in Preamble of our constitution provide the bedrock for framing all labour and social. legislation and their progressive and creative interpretation in favour of working classes. These principles run through our labour legislations like invisible golden threads and provide them strength and stamina to meet the aspirations of working classes; whether it is protective legislations, social security legislations, welfare legislations or even industrial relations legislations, they all

heavily lean towards working classes due to the philosophy provided in the preamble.

❖ Fundamental Rights

The Fundamental Rights are the basic principles on which the democratic sovereign is founded and give direction to the state action in clear terms. When these principles are translated into practice, it leads to the development of a welfare state. Part III (Article 12 to 35) deal with Fundamental Rights

Since the Fundamental Rights have been guaranteed to protect the public from repressive state actions, judicial decisions tend to expand the scope of word 'State' as defined by Article 12 of the Constitution. A liberal interpretation is made of the words "other authorities" so as to include any instrumentality or agency of the Government whether an individual or a corporation like Life Insurance Corporation (Som Prakash Rakhi v. Union of India (AIR 1981SC 212) or society like the Indian Statistical Institute registered under the Societies Registration Act, 1960,or a company like Steel Authority of India. All have to fulfil the tests laid down by the court in their dealings with their employees. [Ajay Hasia v. Khalid Mujib Sehravardi (AIR 1981 SC 487)

➢ ARTICLE 14 : Right to Equality]

The idea of 'equal protection before the law' embodied in Article 14 of our Constitution serves as the philosophical foundation for equal treatment of similarly situated workers by the employer. This principle finds resonance in the idea of 'equal pay for equal work' enumerated in Article 39(d) which is further enforced through the Equal Remuneration Act, 1976. This statutory intervention also holds importance from the viewpoint of gender-justice since it was a clear command against discrimination between men and women who performed a similar quantum of work

Article 14 commands State to treat any person equally before the law. It explains the concept of Equality before law. The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land.

Thus, the rule is that the like should be treated alike and not that unlike should be treated alike. In Randhir Singh v. Union of India (AIR 1982 SC 879) the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39(d) of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational classification. This decision has been followed in a number of cases by the Supreme Court In Dhirendra Chamoli v. State of U.P (AIR 1986 SC 172) it has been held that the principle of equal pay for equal work is also applicable to casual workers employed on daily wage basis. Accordingly, it was held that persons employed in Nehru Yuwak Kendra in the country as casual workers on daily

wage basis were doing the same work as done by Class IV employees appointed on regular basis and, therefore, entitled to the same salary and conditions of service. It makes no difference whether they are appointed in sanctioned posts or not. It is not open to the Government to deny such benefit to them on the ground that they accepted the employment with full knowledge that they would be paid daily wages. Such denial would amount to violation of Article 14. A welfare State committed to a socialist pattern of society cannot be permitted to take such an argument.

Fundamental Rights are subject to reasonable restrictions. Therefore, Article 14, dealing with the right to equality and equal protection of law is subject to reasonable classification as absolute equality is impossibility. In Charanjit Lal Choudhary v. Union of India (AIR 1951 SC 41) it is observed "The guarantee... forbids class legislation but does not forbid classification which rests upon reasonable grounds of distinction". Classification can be on the basis of age, sex (provisions under Factories Act,1948, Sections 26,27 etc. for children and women), nature of trade profession or occupation framing rules for recruitment or promotions of public servants to secure efficiency (Gangaram v. Union of India (AIR 1970 SC 2178), fixing of different minimum wages for different industries (Chandra Boarding v. State of Mysore (AIR 1970 SC 2042). To be valid, the classification must be operational and not arbitrary. In the case, Bharatiya Dak Tar Mazdoor Munch v. Union of India, SC 1987, it was held that Classification of employees of P&T Department into regular employees and casual employees for the purpose of paying the latter less than minimum payable to regular employees is not tenable and violative of Article 14 and 16 of Constitution. It also amounts to exploitation of labour and is opposed to clause (2) of Article 38 which provides that the State in particular strive, to "minimise inequality in income".

➢ ARTICLE 16 : Equality of Opportunity in Matters of Public Employment

Article 16 (1) and (2) of the Constitution guarantees equality of opportunity to all the citizens in matter of appointment to any office or any other employment under the State. Clauses (3), (4) &(5) lay down, by way of exceptions, reasonable classification and provisions for backwards and for religious institutions.

Amita v. Union of India (2005) 13 SCC 721, In this case, the Supreme Court held that the expression “matters relating to employment or appointment” contained in Article 16(1) includes all matters in relation to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

Badrinath v. Govt. of T.N. (2000)8 SCC 395, In this case, the Court held that the right to be considered for promotion by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 provided a person is eligible and is in the zone of consideration, but the “consideration” must be “fair” and according to the established principles governing service jurisprudence.

➢ ARTICLE 19 : The Right to Form Associations and Unions

Article 19 in its various sub clauses provides, inter alia, freedom of association; freedom to carry on trade or business and freedom of speech, which are relevant to labour legislation.

In Damyanti Naranga v. The Union of India, 1971 SCR (3) 840, the Supreme Court held that "The right to form an association", the Court said, "necessarily implies that the person forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association".

➢ ARTICLE 21 : Right to Livelihood Under Right to Life

Article 21 proclaims that "no person shall be deprived of his life or personal liberty except according to procedures established by law". With passage of time, and compelling social needs, however, the courts have given a very liberal and wide interpretation of the terms "life" or "Personal Liberty".

The sweep of the right to life, conferred by Article 21 is wide and far reaching. 'Life' means something more than mere animal existence. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. There is thus a close nexus between life and the means of livelihood and as such that, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right of life.

Elaborating the same view the Court in Francis Coralie v. Union Territory of Delhi, 1981 SCR (2) 516, said that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.

In State of Maharashtra v. Chandrabhan Tale, 1983 SCR (3) 327, the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence

allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

In Olga Tellis v. Bombay Municipal Corporation (AIR 1986 SC 180) popularly known as the 'pavement dwellers case' a five judge bench of the Court has finally ruled that the word 'life' in Article 21 includes the 'right to livelihood' also. The court said: “It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39((a).and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.”

In Delhi Development Horticulture Employee's Union v. Delhi Administration (AIR 1992 SC 789) the Supreme Court has held that daily wages workmen employed under the Jawahar Rozgar Yojna has no right of automatic regularization even though they have put in work for 240 or more days. The petitioners who were employed on daily wages in the Jawhar Rozgar Yojna filed a petition for their regular absorption as regular employees in the Development Department of the Delhi Administration. They contended that right to life, includes the right to livelihood and therefore, right to work. The Court held that although broadly interpreted and as a necessary logical corollary, the right to life would include the right to livelihood and therefore right to work but this country has so far not found feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly therefore it has been placed in the chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same, "within the limits of its economic development".

In D.K. Yadav v. J.M.A. Industries, 1993 SCC (3) 259, the Supreme Court has held that the right to life enshrined under Article 21 includes the right to livelihood and therefore termination of the service of a worker without giving him reasonable opportunity of hearing is unjust, arbitrary and illegal. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and so it must be right, just and fair and not arbitrary, fanciful or oppressive. In the instant case, the appellant was removed from service by the management of the M/s. J.M.A. Industries Ltd. on the ground that he had willfully absented from duty continuously for more than 8 days without leave or prior permission from the management, therefore, "deemed to have left the service of the company under clause 12(2)(iv) of the Certified Standing Order. But the appellant contended that despite his reporting to duty every day he was not allowed to join duty without assigning any reason. The Labour

Court upheld the termination of the appellant from service as legal. The Supreme Court, held that the right to life enshrined under Article 21 includes right to livelihood and 'therefore' before terminating the service of an employee or workman fair play requires that a reasonable opportunity should be given to him to explain his case . The procedure prescribed for depriving a person of livelihood must meet the requirement of Article 14, that is, it must be right, just and fair and not arbitrary, fanciful or oppressive. In short, it must be in conformity of the rules of natural justice, Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. The Court set aside the Labour Court award and ordered his reinstatement.

InBandhua Mukti Morcha v. Union of India, 1984 SCR (2) 67, it was held that Article 21 assures a citizen the right to live with human dignity free from exploitation. The Govt. is bound to ensure observance of social welfare and labour laws enacted to secure for workmen a life compatible with human dignity. Again in Olga Tellis Supra, this was affirmed

In State of Maharashtra v. Manubhai Pragaji Vashi (AIR 1996 SC 1) the Court has considerably widened the scope of the right to free legal aid. The right to free legal aid and speedy trial are guaranteed fundamental rights under Art. 21. Art 39A provides "equal justice" and "free legal aid". It means justice according to law

➢ ARTICLE 23 : Prohibition of Traffic in Human Beings and Forced Labour

Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. '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. Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'. Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article, Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. The Bonded Labour System Abolition Act, 1976 is also enacted in this regard. Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and beggar and other similar forms of forced labour wherever they are found. Article 23 prohibits the system of 'bonded labour' because it is a form of forced labour within the meaning of this Article. "Beggar" means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause, therefore, does not prohibit

forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to "other forms of forced labour". It means to compel a person to work against his will.

In People's Union for Democratic Rights v. Union of India, 1983 SCR (1) 456, it was held that labour or services for a remuneration less than a minimum wages amounts to "forced labour". In this case, a letter written to Justice Bhagwati regarding the working conditions of construction workers engaged in building structures connected with Asian Games was entertained as Writ Petition, setting aside the technicalities of locusstandi and other procedures. The court held that when judicial redressal is sought for legal injury suffered by a person or persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the court and the attention of the court is drawn to such legal injury by a member of public, even by a letter, the same will be entertained by the court as a writ petition to bring justice within the reach of the poor masses.

In Bandhua Mukti Morcha v. Union of India (SC 1984) the Apex Court held that Government was bound to ensure observance of social welfare and labour laws enacted to secure to workmen a life of basic human dignity. So also, Neerja Choudhary vs. State of M.P. (AIR 1984 SC 1099) held that wherever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labour, unless the employer or the state government proves otherwise. Similarly, the Court said that the plainest requirement of Article 21 and 23 is that bonded labour not only be identified and redressed but also suitably rehabilitated

➢ ARTICLE 24 : Prohibition and Regulation of Child Labour

Article 24 of the Constitution prohibits the employment of children below the age of 14 years in factories, mines or any other hazardous work. The idea is to protect the health and well being of children. However, the article does not prohibit the employment of children in easy and less strenuous work. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasizes the need to protect the health and strength of workers, and also to protect children against exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.

➢ ARTICLES 32-35 : Right to Constitutional Remedies

Articles 32 to 35 guarantee the right to constitutional remedies, as right without a remedy is a meaningless formality. It is the remedy which makes the right real. In view of this, the S.C. has evolved the innovative strategy by encouraging Public Interest Litigation aimed at providing easy access to justice to the poor and weaker sections of Indian Society (generally labourers) and giving a powerful tool to public spirited individuals and social action groups to combat exploitation and injustice. In the cases like People's Union for Democratic Rights supra, Bandhua Mukti Morcha supra etc., the S.C. departed from traditional principles of locus standi to entertain even the letter by a member of public as writ petition to give relief to poor and illiterate workmen.

❖ Directive Principles of State Policy

An important feature of the constitution is the Directive Principles of State Policy. Although the Directive Principles are asserted to be "fundamental in the governance of the country," they are not legally enforceable. Instead, they are guidelines for creating a social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the constitution's preamble. Part IV, Articles 36 to 51 of the Indian constitution outlines the directive principles that a state should remember while framing laws for the society. Directive principles call for the provision of social justice and economic welfare and ensure peace and harmony by trying to remove the prevalent social evils. They also deals with the concept of Welfare State. These principles act as a check on the government and as a yardstick to measure government performance. However, these provisions are not enforceable in any court of law; a fact that makes us questions the relevance of directive principles. Though earlier decisions of the Supreme Court paid scant attention to the Directives on the ground that they are not enforceable in law courts, later decisions, specially from Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225, onwards, the following propositions have come before the courts for consideration.

1) There is no disharmony between Directive Principles and Fundamental Rights. They supplement each other.

2) Even Fundamental Rights can not be ensured unless Directive Principles are implemented.

3) Parliament is competent to amend or abrogate any Fundamental Right to enable state to implement Directives

In Minerva Mills v. Union of India (AIR 1980 SC 1789) it was held that Directive Principles and Fundamental Rights should be harmonised without considering Directives as inferior and subservient to Fundamental Rights. Similarly a law which is inconsistent with Directives should be regarded as unreasonable while any action taken to give effect to any of the Directives should be regarded as reasonable (Kasturi Lal Lakshmi Reddy v. State of Jammu And Kashmir, 1980 SCR (3)1338)

Coming to the Directive Principles of State Policy enumerated in Part IV of the Constitution, Article 38 reflects the intent of the State to work towards an egalitarian society where there is equal opportunity for all citizens and social justice prevails. In this respect Articles 39, 39-A, 41, 42, 43 and 43-A are considered to be the ‘magna carta’ of industrial jurisprudence in the Indian context. collectively it can be also termed as “Magna Carta of working class in India.”

➢ ARTICLE 39 : Certain principles of policy to be followed by the state

Articles 39 declares that the state shall, in particular, direct its policy towards securing

a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

b) that the ownership and the control of the material resources of the community are so distributed as to best subserve the common good;

c) that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment;

d) that there is equal pay for equal work for both men and women;

e) the health and strength of the workers, men and women and the tender age of the children not abused and that the citizens are not forced by economic necessity to enter the avocations unsuited to their health and strength;

f) the children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and are protected against exploitation against moral and material abandonment.

➢ ARTICLE 39A : Equal justice and free legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Legal Services Authorities Act,, 1987 aims towards this objective.

➢ ARTICLE 41 : Right to work, to education and to public assistance in certain cases

It directs that the State shall within the limit of its economic capacity and development make effective provision for securing right to work, to education, and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want. Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) , 2009 and Mahatma Gandhi National Rural Employment Guarantee Act (MNNREGA), 2005. These two are important Acts in this regard.

➢ ARTICLE 42 : Provision for just and humane conditions of work and maternity relief

It recommends that the State shall make provision for securing just and humane conditions of work and for maternity relief and the same is done by way of the Factories Act, 1948 and Maternity Benefit Act, 1961.

➢ ARTICLE 43 : Living wage, etc., for workers

It directs that the state shall endeavour to secure, by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or other living wage, conditions of work ensuring a decent. standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas. The Minimum Wages Act, 1948 etc. serves this purpose.

➢ ARTICLE 43A : Participation of workers in management of industries

Article 43-A which was introduced by the 42nd Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments. The other principles enumerated in Part IV which have a bearing on Labour Laws are Article 45 that talks about the obligation to provide free and compulsory education for the promotion of educational and economic interests of weaker sections and Article 47 that emphasizes the need for improvement in

the level of the standard of living and of public health. Certainly these Articles envisage labour legislation as reasonable restrictions upon certain fundamental rights, ,specially freedom of business. Thus an employer must pay minimum bonus even during a year of loss. - (Jalan Trading Co. (P) Ltd. V. D.M. Aney, AIR 1979 SC 233) This would mean that workers would no longer be hired labourers, but partners, (Hindustan Tin Works v. Employers - SC 1979, Gujarat Steel Tubes v.. Mazdoor Sabha - SC 1980) interested in the success of the enterprise and would have share in the profits. All these are fine. But while inserting Article 5IA - Fundamental Duties, no mention was made of their duty nor even moral obligation to refrain from slowing down, striking etc. without observing legal formalities

Conclusion

The Indian labour legislations are based on the principles of Welfare State and attempted incorporate the same spirit of constitution in different enactments. As the directive principles of state policy has entrusted the responsibility of implementing the programmes and policies laid down in the constitution as announced in the Constituent Assembly a series of Labour Legislations were enacted. The legislations enacted to safeguard and promote the interest of labour covering several aspects as fair wages and regular payments, working conditions, holidays and leave, safety and health, conditions of works, labour welfare, social security, industrial relations, protection of interest of women and child labour, labour indebtedness, housing, recruitment and training. The legislations cover all workers engaged in factories mines, plantations, railways, motortransport, shops, etc. The Constitution of India has given clear direction to the Centre and State Government to ensure all-round development of labour in every walk of life and they should not lag behind either in social or in political life. The labour legislations enacted after the introduction of constitution aims at achieving this end.

Q. No. 2. Explain the objective of equal renumeration act .

SYNOPSIS

1. **Introduction**
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3. **Sexual harassment of women at workplace as a problem**
4. **Need for appropriate and effective legislation**
5. **National legislative framework**
6. **Salient features of Sexual Harassment of Women at Workplace Act**
7. **Conclusion**

1. Introduction

Under the Industrial Laws the women have been bestowed the special position in the view of their unique characteristics, physically, mentally and also biologically. As the Constitution of India, 1950 is the basic law of land which enshrines number of provisions of prohibit gender discrimination and protect the interest of women, whether it is political field or industrial field. The State under its constitutional power had formulated number of legislations pertaining to women engaged in industrial activities. Though labour welfare enactments have provided various protections, safeguards and benefits to working women in our country, there was an emergent need to give more protection to female workers who are discriminated as regards employment and wages. Generally speaking, the wages of women have traditionally tended to lag behind those of men, except in a very few cases. Moreover, the net earnings of women invariably happen to be lower than those of men. Women all over the world, had till recently been very much inarticulate and were prepared to accept lower wages even when they were employed on the same jobs as men. Even in the economically and socially advanced countries while remarkable progress has been made, discrimination still exists. The principle of equal value has not been always fully implemented. In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and social handicaps of the poorer classes, recruited women on a large scale at lower wages and made them work under inhuman conditions. Discrimination against women workers has hampered our economic growth and social development for too long.

International Conventions

Gender Justice is an important ingredient of every civilized society. It's no longer the popular mindset that the female is a weaker sex. To imbibe this principle in the society, various steps were taken at the international level:

• The ILO Convention No. 100, "The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, or Equal Remuneration Convention, 1951"
; • The ILO Convention No. 111 regarding Discrimination in Employment and Occupation, 1958;
• The Universal Declaration of Human Rights, under Article 23 ensures that everyone without any discrimination has the right to equal pay for equal work;
• The Convention on Elimination of all form of Discrimination, 1979 has it's the main objective to prevent discrimination especially in the case of women.

The Indian Constitution

The Apex Court in Associate Bank Officers Association v. State Bank of India, 1998 (1) SCC 429, has explained the history and evolution of the principle "equal pay for equal work". Historically, equal pay for equal work has been/a slogan of the women's sex based discrimination in the pay scales of men and women doing same or equal work in the same organisation. It is meant to prevent discrimination on the ground of sex, against women in the matter of employment.

At the national level, certain legislations were enacted by the British India. But it's the national leaders, freedom fighters and intellectuals and the democratic movements sweeping the world over brought about

positive changes in the position of women and in achieving equality.

The Principle of "Equal Pay for Equal Work" → Article 39(d)

The principle of equal pay for equal work is contained in Clause (d) of Article 39 of the Indian Constitution which envisages that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. This principle implies that where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

In Randhir Singh v. Union of India (1982) LLJ 344, the Supreme Court held that the principle of equal pay for equal work though not a fundamental right is certainly a constitutional goal and therefore capable of enforcement through constitutional remedies under Article 32 of the Constitution. Article 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as the directive principle of State policy. Equal pay for equal work for both men and women means equal pay for equal work for everyone and as between sexes. Directive principles. has been pointed out in some of the judgment of this court have to be read into the fundamental rights as the matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to every one. To the vast minority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay get. To them the equality clauses will have some substance if equal work means equal pay. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a sovereign socialist democratic republic. Again the word 'socialist' must mean something. Even if it does mean 'to each according to his need' it must at least mean 'equal pay for equal work'

In Surindher Singh v. Engineer-in-chief C. P. W. D. (AIR 1986 SC 534) the doctrine of equal pay for equal work is applicable to persons employed on a daily wage basis. Daily wagers are entitled to the same wages as other permanent employees in the department employed to do the

identical work. Equal pay for equal work finds its place in the Directive Principles of State Policy and it is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution of India. Nevertheless the abstract doctrine of equal pay for equal work cannot be read in Article 14. Reasonable classification based on intelligible criteria, having nexus to the object sought to be achieved, is permissible.

Salient Features of the Act

With a view to give effect to the goal of equal pay for equal work set out in clause (d) of Article 39 of the Constitution and Equal Remuneration Convention of the ILO, the President of India promulgated on 26th September, 1975, the Equal Remuneration Ordinance, 1975 so that the above Directive Principle could be implemented in the year which was being celebrated as the International Women's year. The above Ordinance was later converted into an Act as Act No. 25 of 1976. The Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers and for prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. The Act ensures against discrimination in recruitment and promotion of men and women. It provides for the setting up of Advisory Committees to promote employment opportunities for women. It consist of III Chapters and 18 Sections.

Object of the Act

The preamble of the Act states that it is an Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on he ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

Duties of Employer

(A) Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature. (Sec. 4)

As per Sec. 4 of the Act, no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less

favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature. Further no employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

In M/s. Mackinnon Mackenzie and Co. Ltd. v. Andrey D'Costa and another supra, a female confidential stenographer after the termination of her services filed a petition under sub-section (1) of Section 7 of the Equal Remuneration Act, 1976 complaining that during the period of her service she was paid remuneration at lesser rates than those of male stenographers who were also performing same or similar work. The employer contended that the lady was working as a Confidential Stenographer and is part of a different class. The court rejected the plea of the employer that the woman was in a different class. It held, 'If only women are working as Confidential Stenographers it is because the management wants them there. Women are neither specially qualified to be Confidential Stenographers nor disqualified on account of sex to do the work assigned to the male Stenographers. Even if there is a practice in the establishment to appoint women as Confidential Stenographer such practice cannot be relied on to deny them equal remuneration due to them under the Act.' Therefore, the Court applied the Equal Remuneration Act to grant equal salary to female stenographers.

➢ Exception (Sec. 16

"Where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration, or men and women workers in any establishment or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be contravention of any provision of this Act."

In C. Girijambal v. Government of AP, [(1981) 2 SCC. 155], it has been held that the principal of equal pay for equal work is not applicable in professional services. In M/s. Mackinnon Mackenzie and Co. Ltd. v. Andrey D'Costa and another supra, It was also held that the Act does not permit the Management to pay to a section of its employees doing the same work or work of a similar nature lesser pay contrary to Section 4(1) of the Act because of its financial position which does not permit payment of equal remuneration to all. The applicability of the Act does

not depend upon the financial ability of Management to pay equal remuneration as provided by the Act.

In Ashok Kumar Garg v. State of Rajasthan, [(1994) 3 SCC 357] it has been observed that the question of equal work depends on various factors like responsibility, skill, effort and condition of work.

In State of AP and others v. G Sreenivasa Rao & others, 1989 SCC (2) 290, It was held that equal pay for equal work does not mean that all the members of the same cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service.

No discrimination to be made while recruiting men and women workers (Sec.5)

As provided under Section 5 of the Act, no employer shall be allowed to make discrimination while making recruitment for the same work or work of a similar nature or make any discrimination on the basis of sex unless that particular employment of women or men is restricted or prohibited by any statute. Therefore, in matter of recruitment policy and condition of service such as promotions, training or transfer, the employer is not authorised to make discrimination against women only on the basis of sex. This provision is similar to the provision contained in Article 16(1) of the Constitution of India, 1950.

Provided that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees of any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

(C) Duty to Maintain Registers (Sec. 8)

As per section 8, it is the duty of every employer, to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

Advisory Committee (Sec. 6)

(1) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with

regard to the extend to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf.

(2) Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.

(3) In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment, and such other relevant factors as the Committee may think fit

(4) The Advisory Committee shall regulate its own procedure.

(5) The appropriate Government may, after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit.

Power of Appropriate Government to Appoint Authorities for Hearing and Deciding Claims and Complaints (Sec. 7)

The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding—

(a) complaints with regard to the contravention of any provision of this Act;

(b) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, and may, by the same or subsequent notification, define the local limits within which each, such authority shall exercise its jurisdiction.

Inspectors (Sec. 9)

The appropriate Government may, by notification, appoint such persons as it think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation. Every Inspector shall be deemed to be a public servant, they have certain powers to enter the premises of establishments and inspect and investigate the affairs pertaining to equal remunerati

Q. No. 3. Discuss the role of ILO for social security of labour.

SYNOPSIS

1. **Introduction**
2. **ILO and Social security**
3. **Conventions and Recommendations Relating to Social Security**
4. **ILO and India**
5. **Conclusion**

1. Introduction

The International Labour Organization (ILO) is the only tripartite U.N. agency, since 1919 which brings together governments, employers and workers of 187 member States to set labour

standards, develop policies and devise programmes promoting decent work for all women andmen. India is a founder member of ILO.

In 1969, the organization received the Nobel Peace Prize for improving fraternity and peace among nations, pursuing decent work and justice for workers, and providing technical assistance to other developing nations.

The ILO has developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.

ILO's work in the field of social security has been pioneering. From the date of its inception, 1919, ILO has been constantly engaged in formulating standards with a view to extending social security benefit to larger section of people in greater number of contingencies. The Philadelphia Declaration recognizes the solemn obligation of the ILO to further among nations of the world programmes which will have to achieve "the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care". Co-ordination of social security legislations among countries has been a major concern of ILO along with international and intergovernmental organizations in the social security field. International Labour Office serves as the secretariat of the International Social Security Association which groups together government services as well as central institutions and national unions for social security of different countries. ILO sets ideal standards for their universal application to ameliorate the working conditions of the workers and to ensure social justice to them. These universal standards are known as Conventions and Recommendations.

2. ILO and Social Security

The ILO is the UN's agency with a mandate to improve standards, conditions and social security of workers throughout the world. The ILO's most important function is to adopt Conventions and Recommendations, which set minimum labour standards internationally. The principles embodied in the conventions, if adopted and ratified, impose a duty to comply on the ratifying states

The ILO has played a major role in developing an international defined normative framework guiding the establishment, development and maintenance of social security systems across the world and has become the world's leading point of reference for efforts to this end.

Following its establishment in 1919 and being the first to recognise the right to social security in 1944 through the Declaration of Philadelphia, now appended to the ILO Constitution, the Organization's tripartite constituents (Governments, employer's and workers organisations of the ILO's 187 member States) have elaborated and adopted a series of Conventions and Recommendations establishing social security as a separate branch of international law and providing a framework to enhance and extend social protection in countries from all regions of the world.

Social security was established as a basic human right in the ILO's Declaration of Philadelphia (1944) and its Income Security Recommendation, 1944 (No. 67). This right is upheld in the Universal Declaration of Human Rights, 1948, and the International Covenant on Economic, Social and Cultural Rights, 1966. The ILO has progressively developed the normative content of the right to social security since the adoption of its constitution in 1919; laying the foundations for the establishment of a separate branch of international law, namely international social security law. There are about 31 conventions and 24 recommendations adopted in the area of social security between 1919 and 2012 by the ILO's tripartite constituents.

❖ ***What makes ILO's social security standards unique?***

ILO social security standards provide a set of inter-nationally accepted norms for its member States since the ILO's establishment in 1919. They comprise Conventions, Protocols to these Conventions, as well as Recommendations.

Unlike other international treaties, ILO standards are adopted by the International Labour Conference by a 2/3 majority of the votes of its tripartite stakeholders – a feature that guarantees they are the result of a participatory process and fully correspond to the diverse needs of all ILO member States and constituents. Once adopted, these standards represent a major international and national reference point crystallizing consensus that can be used to build consensus at the national level during reforms and for improving the available protection mechanisms.

ILO Member States that ratify ILO Conventions assume the legal obligations and duties contained in the Convention upon its entry into force and need to demonstrate compliance with these minimum requirements periodically in law and in practice. The application of ratified ILO Conventions is monitored by a supervisory machinery based on periodic reporting to demonstrate compliance and special complaint-based procedures.

ILO Recommendations provide non-binding guidelines based on best practices. They are not open to ratification, but provide essential guidance for ILO member States in formulating their national social protection strategies and legal frameworks, and designing, implementing and monitoring their social protection systems.

3. Conventions and Recommendations Relating to Social Security

The ILO has done the pioneering work in the field of social security. It have made many efforts regarding social security at international level by number of Conventions and Recommendations. A number of recommendations and conventions deal with workmen's compensation, sickness insurance, invalidity, old-age, and survivor's insurance, unemployment provisions, maternity protection and general aspects of social security. Important among them are discussed below.

An essential means of action available to the ILO for the realization of its mandate of extending social security to all is the setting of international labour standards. Since 1919, the ILO has adopted 31 Conventions and 23 Recommendations in this area, which have greatly contributed to the development of social security as a universal human right– notably by laying down specific obligations and guidelines for member States. In 2002, the ILO Governing Body confirmed 8 out of these 31 Conventions as *Up-to-date Social Security Conventions.*

i. Social Security (Minimum Standards) Convention, 1952 (No. 102);
ii. Equality of Treatment (Social Security) Convention, 1962 (No. 118);
iii. Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121);
iv. Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128);
v. Medical Care and Sickness Benefits Convention, 1969 (No. 130);
vi. Maintenance of Social Security Rights Convention, 1982 (No. 157);
vii. Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168);
viii. Maternity Protection Convention, 2000 (No. 183).

Out of these eight Up-to-date Social Security Conventions, India has ratified only one convention, Equality of Treatment (Social Security) Convention, 1962 (No. 118).

(i) Social Security (Minimum Standards) Convention, 1952 (No. 102)

A key reference for the development of social security systems, Convention No. 102 is the flagship of the up-to-date social security Conventions since it is deemed to embody the internationally accepted definition of the very principle of social security. It sets out, into a single, comprehensive and legally binding instrument, the minimum standards for each of the nine classical branches of social security.

It is the only international Convention that defines the nine branches of social security, sets minimum standards for each of these branches, and lays down principles for the sustainability and good governance of those schemes. It is considered as a tool for the extension of social security coverage and provides ratifying countries with an incentive for doing so by offering flexibility in its application, depending on their socio-economic level. It came into force on April 27, 1955. By January 2019, 55 countries had ratified the Convention. India has not ratified the Convention yet. The Convention has divided social security into nine components. In other words the Convention consolidates the main provisions of the ILO instruments relating social security and establishes minimum standards for 9 fundamental branches of social security namely:

(a) Medical care;
(b) Sickness benefit;
(c) Unemployment benefit;
(d) Old-age benefit;
(e) Employment injury benefit;
(f) Family benefit;
(g) Maternity benefit;

(h) Invalidism benefit; and
(i) Survivor's benefit.

The Convention sets minimum objectives for each contingency with regard to population coverage, benefit adequacy and qualifying conditions, as well as a set of key principles. Another unique feature of Convention No. 102 is that it contains flexibility clauses, to ensure that it could be applied in all national circumstances, the convention offers states the possibility of ratification by accepting at least three of its nine branches and of subsequently accepting obligations under other branches, thereby allowing them to progressively attain all the objectives set out in the convention. The level of minimum benefits can be determined with reference to the level of wages in the country concerned. Temporary exceptions may also be envisaged for countries whose economy and medical facilities are insufficiently developed, thereby enabling them to restrict the scope of the convention and the coverage of the benefits granted.

(ii) Equality of Treatment (Social Security) Convention, 1962 (No. 118)

Convention No. 118 addresses the issue of the social security of migrant workers in a global manner. It covers the nine branches of social security and provides that, for each branch accepted under the Convention, a ratifying State undertake to grant equality of treatment to nationals of other ratifying States (and their dependents) with its own nationals (including refugees and stateless persons, if specifically accepted) within its territory. Convention No. 118 further lays down the principle of the provision of benefits abroad and the need to endeavour to participate in schemes for the maintenance of acquired rights and rights in the course of acquisition under the legislation of the nationals of the States for which the Convention is also in force. India has ratified this Convention on August 16, 1964.

(iii). Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No.121)

The contingencies covered by Convention No. 121 includes: a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease, and the loss of support as a result of the death of the breadwinner following employment injury. It belongs to ratifying States to define the notion of "industrial accident", including the conditions under which this notion applies to commuting accidents. Convention No. 121 indicates the cases in which accidents should be considered by national legislation as industrial accidents and under which conditions the occupational origin of the disease should be presumed. The national list of employment-related diseases has to comprise at least the diseases enumerated in Schedule I to the Convention. Convention No. 121 envisages that all employees, including apprentices in the public and private sectors, and in cooperatives, are to be protected. The Convention further lays down three types of benefits: medical care, cash benefits in the event of incapacity for work and loss of earning capacity (invalidity), and cash benefits in the event of the death of the breadwinner.

(iv). Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)

Reflecting the trend to find all three long-term benefits (i.e. invalidity, old-age and survivors' benefits) in a single national pension system, Convention No. 128 regroups these three branches into one instrument and extends coverage to all employees, including apprentices, or not less than 75 per cent of the whole economically active population, or all residents whose means during them contingency do not exceed certain limits. It further sets the periodical payment rate for invalidity benefit to at least 50 per cent of the reference wage and envisages the adoption of measures for rehabilitation services. In the case of old-age and survivors' benefit, the minimum amount should correspond to at least 45 per cent of the reference wage.

(v). Medical Care and Sickness Benefits Convention, 1969 (No. 130) and Medical Care and Sickness Benefits Recommendation, 1969 (No. 134)

It applies to medical care and sickness benefit of the employees. Convention No. 130 covers both the contingency of medical care benefits and cash sickness benefit reflecting the trend to establish comprehensive health insurance systems. All employees, including apprentices, or at least 75 per cent of the whole economically active population, or all residents whose means do not exceed certain limits should be covered for both contingencies. In relation to medical care, wives and children of employees should also covered. Convention No. 130 further extends the medical care required under Convention No. 102 to dental care and medical rehabilitation, including the supply, maintenance and renewal of prosthetic and orthopaedic appliances. It also provides for entitlement to benefit throughout the contingency and restricts the possibility of limiting the duration of sickness benefits; a limitation corresponding to 26 weeks is only authorized where the beneficiary ceases to belong to the categories of persons protected and if the sickness started while the beneficiary still belonged to such categories.

(vi). Maintenance of Social Security Rights Convention, 1982 (No. 157) and Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

Convention No. 157 and its accompanying Recommendation No. 167 specifically address the issue of the maintenance of social security rights of migrant workers and complement Convention No. 118, focusing on equality of treatment and exportability. Unlike Convention No. 118 however, which allows State Parties to choose one or more out of the nine branches, Convention No. 157 applies to all branches regardless of the type of scheme: general and special, contributory and non-contributory, as well as schemes consisting of obligations imposed on employers by legislation. The objective of Convention No. 157 is to promote a flexible and broad form of coordination between national security schemes and in particular through the conclusion of bilateral or multilateral social security agreements. Convention No. 157 also establishes a system based on the principle of the maintenance of acquired rights and the rights in the course of acquisition. Recommendation No. 167 proposes model provisions for the conclusion of bilateral or multilateral social security agreements regarding all contingencies and provides rules on maintaining social security rights and exporting benefits. It also proposes a model agreement for the coordination of bilateral or multilateral social security instruments.

(vii). Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

The main aim of Convention No. 168 is twofold: the protection of unemployed persons through the provision of benefits in the form of periodical payments and through the promotion of employment. Convention No. 168 therefore recognises the value of linking social security to broader social and economic policies directed at one priority goal: the promotion of full, productive and freely chosen employment. In addition to provided benefits in case of unemployment at a minimum replacement rate of 50 per cent of the reference wage, ratifying States are therefore also called to adopt appropriate steps to coordinate their system of protection against unemployment and their employment policy. The system of protection against unemployment should therefore be such to encourage employers from offering, and workers from seeking, productive employment. Persons protected must comprise prescribed classes of employees, constituting not less than 85 per cent of all employees, including public employees and apprentices, or all residents whose resources during the contingencies do not exceed prescribed limits.

(viii). Maternity Protection Convention, 2000 (No. 183)

Under Convention No. 183, all employed women, including those in atypical forms of dependent work, should be covered for pregnancy, child birth and their consequences. In particular, persons protected should be entitled to maternity benefits for a minimum period of 14 weeks (including six weeks of compulsory leave after childbirth) at not less than two-thirds of their previous earnings. The medical benefits provided to protected persons must include prenatal, childbirth and post-natal care. Convention No. 183 also lays down the right to work breaks for breastfeeding, as well as provisions relating to health protection, employment protection and non-discrimination.

- ***Recommendations***

➢ ***Income Security Recommendation, 1944 (No. 67) and Medical Care Recommendation, 1944 (No. 69)***

Recommendations No. 67 and 69 are at the origin of the development of social security in ILO instruments and can be considered the blueprint for comprehensive social security systems. Together, they establish a comprehensive system of income security and medical care protection for each of the nine classical branches of social security in addition to general neediness (called "general want" in 1944), with the objective of relieving want and preventing destitution. Recommendation No. 67 and No. 69 are grounded on the guiding principle of universal coverage following which income security and medical care services should be extended to the population as a whole through a combination of social insurance and social assistance.

➢ ***Social Protection Floors Recommendation, 2012 (No. 202)***

Recommendation No. 202 is the first international instrument to offer guidance to countries to close social security gaps and progressively achieve universal protection through the establishment and maintenance of comprehensive social security systems. To this aim, the Recommendation calls for (1) the implementation, as a priority, of social protection floors (SPF)

as a fundamental element of national social security systems and as a starting point for countries that do not have a minimum level of social protection; and (2) the extension of social security with a view to progressively ensure higher levels of social security to as many people as possible according to national economic and fiscal capacity and as guided by ILO's other social security standards. Social protection floors should comprise at least four basic social security guarantees including access to essential health care and basic income security for children, persons of active age who are unable to earn sufficient income, and older persons and should be set at a level that allows people to live in dignity. Through the social protection floors concept, Recommendation No. 202 provides the minimum core content of the human right to social security. A major achievement of Recommendation No.202 is the policy guidance it offers States to give effect to their general and overall responsibility to establish and maintain these comprehensive social security systems. It does this through a set of principles that provide instructions for the design and implementation of social security programs. These guiding principles intentionally echo both fundamental human rights principles but also core principles related to the good governance, delivery and financing of social security systems.

- ***Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)***

This Recommendation recognizes the lack of protection of workers in the informal economy, and provides guidance for improving their protection and facilitating transitions to the formal economy. It also includes guidance on the extension of social security coverage to workers in the informal economy and its role in facilitating transitions to the formal economy.

Other than these there are other certain Conventions and Recommendations pertaining to social security which are playing a pivotal role in protecting the interest of working classes. ILO standards on social security provide for different types of social security coverage under different economic systems and stages of development. Social security Conventions offer a wide range of options and flexibility clauses which allow the goal of universal coverage to be reached gradually.

4. ILO and India

India, a Founding Member of the ILO, has been a permanent member of the ILO Governing Body since 1922. The first ILO Office in India started in 1928. The decades of productive partnership between the ILO and its constituents has mutual trust and respect as underlying principles and is grounded in building sustained institutional capacities and strengthening capacities of partners. It has a two-directional focus for socio-economic development: overall strategies and ground-level approaches.

Among all Conventions, India has ratified these Conventions relating to social security:

They are:

(i) Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18);

(ii) Equality of Treatment (Accident Compensation) Convention 1925 (No. 19);

(iii) Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42); and

(iv) Equality of Treatment (Social Security) Convention, 1962 (No. 118).

ILO, an organization committed to the case of social justice, India a welfare state committed to the same goal. The approach of India with regard to international labour standards always has been positive. The ILO instruments have provided "guidelines and useful framework for the evolution of legislative and administrative measures for the protection and advancement of interest of workers". But, India's response to ratification of ILO Conventions relating to social security has been poor. But effective implementation of the ILO Convention can be noticed though legislations and administrative actions.

5. Conclusion

The role of the International Labour Organisation since its inception in 1919 gave an added dimension to the effectuation of social security measures not only in the advanced countries but in the developing world as well. Through many conventions and recommendations the ILO exerted its influence to extend the range of security and the classes of persons protected there under.

The ILO social security standards represent a unique set of legal instruments that give a concrete meaning to the human right to social security enshrined in the Universal Declaration on Human Rights (1948) and in the International Covenant of Economic, Social and Cultural Rights (1966). All ILO standards are negotiated and adopted by the Governments, workers and employers' representatives of the ILO's 187 member States.

ILO social security standards, and notably the landmark Social Security (Minimum Standards) Convention, 1952 (No. 102), are globally recognized as a key reference for the design of rights-based, sound and sustainable social protection systems. They are also being used as a reference by human rights bodies to assess the implementation of the human right to social security and, at the regional level, as a model for crafting regional social security instruments.

Q. No. 4. Enumerate the salient features of the Unorganized Workers' Social Security Act, 2008. Critically Comment on its implementation.

SYNOPSIS

1. **Introduction**
2. **Salient features of the Unorganized Workers' Social Security Act**
3. **Implementation of the Act**
4. **Conclusion**

1. Introduction

The role of Unorganised labour in providing various products to meet out the basic necessaries of life has not been less significant than the organised labour. It is another matter that they had lesser bargaining power and thus have been subject to exploitation. They could not get appropriate price of their untiring labour invested in industrial processes. Although their percentage in the total employment in the country has been more, nevertheless the measures of social security could not be provided to them in the proper and needful manner. It was the need of the day to provide to them coverage and the protection of the umbrella of the Social Security as enshrined in the Directives laid down in the Constitution of India. The welfare State took it seriously and enacted the Unorganised Workers' Social Security Act, 2008. An Act to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto. The Central Government in exercise of powers conferred by Section 13 of the said Act, has made the rules namely "Unorganised Workers' Social Security Rules, 2009". It shows that the Government of India is committed to carry out its provisions to achieve its sublime aims and objects.

2. Salient Features of the Act

2.1. Statement of Objects and Reasons

It is estimated that the workers in the unorganised sector constitute more than ninety-four per cent of the total employment in the country. On account of their unorganised nature, these workers do not get adequate social security. Some welfare schemes are being implemented by the Central Government for specific groups of unorganised sector workers such as beedi workers, non-coal mine workers, cine workers, handloom weavers, fishermen, etc. State Governments are implementing welfare programmes for certain categories of unorganised sector workers and some Non-Government Organisations also provide social security to certain categories of workers. Despite all these efforts, there is a huge deficit in the coverage of the unorganised sector workers in the matter of labour protection and social security measures ensuring the welfare and well-being of workers in the unorganised sector, such as agricultural workers, construction workers, beedi workers, handloom workers, leather workers, etc.

The Unorganised Workers' Social Security Act, 2008 aims to provide for social security and welfare of the unorganised sector workers and for matters connected therewith or incidental thereto. It consist of VI Chapters, 17 Sections and 2 Schedules.

2.2. Extent and Commencement (Sec. 1)

Section 1 deals with title, extent and date of enforcement of the Act. It extends to the whole of India and shall come into force on the date notified by the Central Government in the Official Gazette.

2.3. Definitions (Sec. 2)

Section 2 contains definitions of certain terms used in the Act providing that unless the context otherwise requires the meaning of these terms shall be attached as contained herein.

(a) "employer" means a person or an association of persons, who has engaged or employed an unorganised worker either directly or otherwise for remuneration;

(b) "home-based worker" means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs;

(c) "identity card" means a card, document or certificate issued to an unorganised worker by the District Administration under sub-section (3) of Section 10;

(d) "National Board" means the National Social Security Board for unorganised workers constituted under sub-section (1) of Section 5;

(e) "notification" means a notification published in the Official Gazette;

(f) "organised sector" means an enterprise which is not an unorganised sector;

(g) "prescribed" means prescribed by rules made under this Act by the Central Government or the State Government, as the case may be;

(h) "registered worker" means an unorganised worker registered under sub-section (3) of Section 10;

(i) "Schedule" means the Schedule annexed to the Act;

(j) "State Board" means the (name of the State) State Social Security Board for unorganised workers constituted under sub-section (1) of Section 6;

(k) "self-employed worker" means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government;

(l) "unorganised sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;

(m) "unorganised worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organisedsector who is not covered by any of the Acts mentioned in Schedule II to this Act; and

(n) "wage worker" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.

This legislation has been codified for the welfare of the unorganised workers and the bare reading of the provisions of Section 2 makes it clear that the beneficiaries of this legislation are home-based workers, self-employed workers and wage workers. These workers may be generally found in unorganised sector but may also be found in organised sector if they are not covered by any of the Acts mentioned in Schedule II namely;

i) Workmen's Compensation Act, 1923 (now known as Employees' Compensation Act, 1923 w.e.f. 18.1.2010);
ii) Industrial Disputes Act, 1947;
iii) The Employees State Insurance Act, 1948;
iv) Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
v) The Maternity Benefit Act, 196; and
vi) The Payment of Gratuity Act, 1972.

The rationale behind this provision is that all those workers who are covered by these Acts have social security benefits provided therein but if some workers are not covered by these enactments have no security coverage and were in bare need of social security, therefore, to meet out this problem the said Act has been brought on the statute book. In other words, the provisions of this Act shall apply to those workers who are unorganised workers within the meaning of Section 2 (m) of the Act including those in the organised sector provided they are not covered by the Acts specified in Schedule II. The workers who are covered by the Scheduled Acts cannot claim benefits of Unorganised Workers' Social Security Act, 2008.

2.4. Social Security Benefits (Sec. 3 and 4)

- ***S. 3. Framing of Scheme***

Section 3 deals with framing of schemes for social security benefits. It makes it obligatory on the part of the Central Government to formulate and notify from time to time suitable welfare schemes for unorganised workers on matters relating to-

(a) life and disability cover;
(b) health and maternity benefits;
(c) old age protection; and
(d) any other benefit as deemed fit by the Central Government.

Sub-section (2) of Section 3 provides that the schemes included in Schedule I shall be deemed to be the welfare schemes under subsection (1) of Section 3.

The following Schemes are included under Schedule I:

i. Indira Gandhi National Old Age Pension Scheme
ii. National Family Benefit Scheme
iii. Janani Suraksha Yojana
iv. Handloom Weavers' Comprehensive Welfare Scheme
v. Handicraft Artisans' Comprehensive Welfare Scheme
vi. Pension to Master craft persons
vii. National Scheme for Welfare of Fishermen and Training and Extension
viii. Janshree Bima Yojana
ix. Aam Admi Bima Yojana
x. Rashtriya Swasthya Bima Yojana

The Central Government has been empowered under Section 3(3) to amend the Schedules annexed to this Act by notification in this behalf.

Similarly under sub-section (4) the State Government is under statutory duty to formulate and notify from time to time, suitable welfare schemes for unorganised workers including schemes relating to-

a) provident fund;
b) employment injury benefit;
c) housing;
d) educational schemes for children;
e) skill upgradation of workers;
f) funeral assistance; and
g) old age homes.

- ***S. 4. Funding of Central Government Scheme***

It is a fact that no welfare scheme can be carried out without sufficient financial assistance. Section 4 makes specific provisions as to how such schemes may be funded. It provides in its sub-section (1) that any scheme notified by the Central Government may be (i) wholly funded by the Central Government; or (ii) partly funded by the Central Government and partly funded by the State Government or (iii) partly funded by Central Govemment and partly funded by State Government and partly funded by the contributions collected from the beneficiaries of the schemes or employers as may be specified in the scheme by the Central Government.

Sub-section (2) of this section lays down that the Central Government is required to provide for such matters for the efficient implementation of the scheme including the matters relating to scope of the scheme; beneficiaries of the scheme; resources of the scheme; agency or agencies for implementation of the scheme; redressal of grievances; and any other relevant matter deemed fit.

2.5. National Social Security Board For Unorganised Workers (Sec. 5)

- **Composition**

(1) The Central Government shall, by notification, constitute a National Board to be known as the National Social Security Board to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The National Board shall consist of the following members, namely:—

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

(3) The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(4) The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Board shall be such as may be prescribed:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.

(5) The term of the National Board shall be three years.

(6) The National Board shall meet at least thrice a year, at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.

(7) The members may receive such allowances as may be prescribed for attending the meetings of the National Board.

- ***Functions***

(8) The National Board shall perform the following functions, namely:—

a) recommend to the Central Government suitable schemes for different sections of unorganised workers;
b) advise the Central Government on such matters arising out of the administration of this Act as may be referred to it;
c) monitor such social welfare schemes for unorganised workers as are administered by the Central Government;

d) review the progress of registration and issue of identity cards to the unorganised workers;
e) review the record keeping functions performed at the State level;
f) review the expenditure from the funds under various schemes; and
g) undertake such other functions as are assigned to it by the Central Government from time to time.

2.6. State Social Security Board For Unorganised Workers (Sec. 6-9)

➢ S. 6. Composition and Functions

- **Composition**

(1) Every State Government shall, by notification, constitute a State Board to be known as (name of the State) State Social Security Board to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The State Board shall consist of the following members, namely:—

a) Minister of Labour and Employment of the concerned State—Chairperson, *ex officio*;
b) the Principal Secretary or Secretary (Labour) —Member-Secretary, *ex officio*; and
c) twenty-eight members to be nominated by the State Government, out of whom—
i. seven representing the unorganised workers;
ii. seven representing employers of unorganised workers;
iii. two representing members of Legislative Assembly of the concerned State;
iv. five representing eminent persons from civil society; and
v. seven representing State Government Departments concerned.

(3) The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(4) The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Board shall be such as may be prescribed:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.

(5) The term of the State Board shall be three years.

(6) The State Board shall meet at least once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.

(7) The members may receive such allowances as may be prescribed for attending the meetings of the State Board.

- **Powers**

(8) The State Board shall perform the following functions, namely:—

a) recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;
b) advise the State Government on such matters arising out of the administration of this Act as may be referred to it;
c) monitor such social welfare schemes for unorganised workers as are administered by the State Government;
d) review the record keeping functions performed at the District level;
e) review the progress of registration and issue of cards to unorganised sector workers;
f) review the expenditure from the funds under various schemes; and
g) undertake such other functions as are assigned to it by the State Government from time to time.

- **S. 7. Funding of State Government Schemes**.—

(1) Any scheme notified by the State Government may be—

(i) wholly funded by the State Government; or

(ii) partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the State Government.

(2) The State Government may seek financial assistance from the Central Government for the schemes formulated by it.

(3) The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

- **S. 8. Record keeping by District Administration**

It is always necessary to keep and maintain proper records for information relating to schemes formulated by the Government for the welfare of the unorganised workers under the Act so that improvements can be made on the basis of past experience and also to meet out querries made under Right to Information Act. Section 8 of the Act makes provision for record keepingby District Administration. However, the State Government has been authorised to direct that the record keeping function shall be performed by the District Panchayat in rural areas; and the Urban Local Bodies in urban areas. It has been deemed necessary to make such a provision because the welfare schemes aim at to provide social security benefits to the unorganised labour where so ever and if the scheme is being carried out in the rural areas then the record keeping will be easy and authentic to be maintained by the District Panchayat concerned.

- **S. 9. Workers Facilitation Centres**

Generally unorganised labour is illiterate or less educated who may not be aware of the welfare schemes in operation and also may not be aware of the procedure to avail the benefits thereof, it is, therefore, necessary to establish centres to facilitate them in all these matters. Section 9 makes a clear-cut provision in this regard. The State Government has been authorised to set up such Workers Facilitation Centres as and when considered necessary to perform functions Specified in its clauses (a) to (d) namely:

a) disseminate information on available social security schemes for the unorganised workers;
b) facilitate the filling, processing and forwarding of application forms for registration of unorganised workers;
c) assist unorganised worker to obtain registration from the District Administration;
d) facilitate the enrollment of the registered unorganised workers in social security schemes.

These centres have been entrusted with the very important functions and they are to play key role in the success of such welfare schemes.

2.7. Eligibility for Registration and Social Security Benefits (Sec. 10)

Section 10 lays down eligibility conditions for registration for social security benefits under the schemes. Like Child Labour (Prohibition and Regulation) Act, 1986 there is also age requirement that is, he or she must have completed fourteen years of age and he or she is required to make a self-declaration that he / she is an unorganised worker. Such eligible candidate is required to make an application in the prescribed form to the District Administration for registration. The District administration is under duty to register and issue an identity card which shall be a smart card carrying a unique identification number and shall be portable. It has been made clear that he may be asked to pay contribution to avail the benefits of the scheme in terms of scheme concerned. For financial assistance the Central or the State Government are required to contribute regularly in terms of the Scheme if the scheme requires such contribution to be paid by the said Government.

2.8. Miscellaneous (Secs. 11-17)

Sections 11-17 of the Act provides miscellaneous matters.

3. Implementation of the Act

- **Evaluation of Working of the Legislation Over a Decade**

It has been a decade since the bill passed. It is important to note that the Act neither provides for regulation of conditions of employment nor any social security schemes; Neither extends to all unorganised workers nor encompasses agrarian labourers; Neither it makes a categorical definition of unorganised workers nor binds the government to any commitment; Neither it provides a mechanism for implementation nor suggests penalty for non-implementation; Neither it creates a corpus fund nor makes a categorical promise of generating resources.

Furthermore, it has defined unorganised sector and unorganised workers. The unorganised workers will also be subjected to the condition of a ceiling on monthly earnings, which isn't defined. It could be the ceiling for determining BPL in rural and urban areas or could be the extent of landholding or could be anything which is unknown and yet to be notified by the government.

- **Social security: a mirage**

The act has mentioned that the government would periodically notify the benefits as may be determined by the central government. It has also mentioned ten schemes. The schemes are not new and are mostly applicable only for BPL families.

Neither agricultural labourers have been brought under the purview of the act nor a separate bill for agricultural labourers tabled. Two bills were prepared by the NCEUS. The social security has been dumped and it confines itself only to social security in its most diluted form.

The Act appears to have excluded vast sections of unorganised workers. This exclusion reveals the true colours of the "politics of inclusiveness". The act is applicable only to a small section of unorganised labourers. The special problem of women unorganised workers do not figure in the Act. Their problems have been totally neglected.

For the establishment of a central welfare fund, the passage of the act is not accompanied by any legally stipulated guarantee.

There is no provision for penalties in the act to punish those employers who violates it. Not only penalty exclusion but also no action against the bureaucrats who refuse to register any unorganised worker under any of the twin scheduled schemes.

In order to overcome the drawbacks which are evident in the unorganised sectors various requirements needed to curb such as a situation on the part of legislature and government. The Act has become a major farce of millennium. It has been taken as a beginning. It is for the working class and trade union movement to take up the challenge that can cover not only social security and the conditions of employment.

4. Conclusion

In India, out of an estimated work force of 91 percent all should be having the benefit of formal Social Security protection including the workers who are in the unorganised sector. Several and successive attempts have been made in the past to address the multifarious problems faced by the workers in the unorganised sector through legislative as well as programme oriented measures. Even though these measures have not succeeded in achieving the desired object partly on account of the ignorance, illiteracy and lack of unionisation of workers on the one hand and the resource constraints of the State on the other, some of the programmes have provided a good setting through which the hopes and expectation of the workers in the unorganised sector have been considerably aroused.

In the initial years of development planning, it was believed that with the process of development, more and more workers would join the organized sector and eventually get

covered by formal Social Security arrangements. However, experience has belied this hope. The opening up of the economy, under the regime of economic reforms, has only exacerbated the problem. There is now almost a stagnation of employment in the organized sector with the resultant increase in the inflow of workers into the informal economy.

The well designed Social Security system for the workers in the unorganised sector will help in improving productivity, contribute to the harmonious labour relations and thus to socio and economic development. It will encourage and propagate the social peace by reducing the frequency of industrial conflicts, increase the willingness to work, make it easier to meet delivery commitments and lead to improved quality product, a better investment climate and thereby enhancing the competitiveness of the economy.

Q. No. 5. Explain the deductions which may be made from wages under the Payment of Wages Act, 1936.

SYNOPSIS

1. **Introduction**
2. **Definition of wages**
3. **Permissible deductions from wages**
4. **Conclusion**

1. Introduction

Various labour welfare legislations have been enacted to protect the employees' rights and prevent them from any injustice done by their employers. The Payment of Wages Act 1936was enacted to ensure timely payment of wages and to prevent unauthorised deductions thereof by the employers. The provisions of the Act are applicable to individuals employed in factories, railways and any other establishments which the Central or State Government may specify in this regard.

The benefit and protection accorded by the provisions of the Act is available only to employees whose average monthly wage is less than Rs 24,000.

2. Definition of Wages

The Act defines 'wages' to mean all remuneration expressed, or capable of being expressed in terms of money, which would be payable to the employee if the terms of employment are fulfilled, including:

- any remuneration payable in accordance with any award or settlement between the parties or an order of a court;
- overtime wages or any other additional remuneration payable under the terms of employment;

- any sum which is to be paid by the employer, as per any contract or other law, upon termination of employment of employee; and
- any other sum to which the person employed is entitled under any scheme framed under any law.

  However, wages do not *inter alia* include bonus, or any contribution paid by an employer to any pension fund or provident fund.

3. Permissible Deductions from Wages

From wages as defined above, an employer is permitted to make deductions only under the heads as specified in Section 7 of the Act, and not otherwise. The total amount of any such deductions in any given wage period cannot exceed 50 percent of the wages. The deductions allowed under the Act are discussed below:

7(2) of the Payment of Wages Act, 1936 provides that:

"(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

(a) fines;

(b) deductions for absence from duty;

(A) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business or Subsidising house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;

(e) deductions for such amenities and services supplied by the employer as the State Government or any officer specified by it in this behalf may, by general or special order, authorise;

Explanation: The word "services" in this clause does not include the supply of tools and raw materials required for the purposes of employment;

(f) deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages;

(ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;

(fff) deductions for recovery of loans granted for house-building or other purposes approved by the State Government, and the interest due in respect thereof;

(g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or any recognized provident fund as defined in clause (38) of Section 2 of the Income-tax Act, 1961 (43 of 1961) or any provident fund approved in this behalf by the appropriate Government, during the continuance of such approval;

(j) deductions for payments to co-operative societies as approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office;

(k) deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any appropriate Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;

(kk) deductions made, with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer or ‘a trade union registered under the Trade Unions Act, 1926 (16 of 1926), for the welfare of the employed persons or the members of their families, or both, and approved by the appropriate Government or any officer specified by it in this behalf, during the continuance of such approval.

(kkk)deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926);

(l) deductions, for payment of insurance premia on Fidelity Guarantee Bonds;

(m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

(n) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, Whether in respect of fares, freight, demurrage, wharfage and cranage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;

(o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;

(p) deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;

(q) deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees."

4. Conclusion

Section 7 of the Payment of Wages Act, 1936 is one of the most important provisions of the Act which protects the employees from any unauthorised deductions and provides an effective mechanism for the employees to claim against such deductions.

The competent authority appointed by the appropriate government under the Act, has powers to award compensation up to 10 times of the amount deducted, in addition to directing the refund of the amount deducted. Therefore, employers must exercise caution before making any kind of deductions from the employees' wages and ensure that the deductions are within the prescribed limits of the Act.

Q. No. 6. Discuss the provisions pertaining to regulation of conditions of work of children under the Child Labour (Prohibition and Regulation) Act, 1986.

SYNOPSIS

1. **Introduction**
2. **Objective of the Act**
3. **Regulation of conditions of work of children**
4. **Conclusion**

1. Introduction

The children are delicate and precious flowers of life. It is undisputed that they are the potential embodiment of our ideals, aspirations, ambitions, dreams and hopes. One may sincerely visualize in their innocent. personalities the great scientists, philosophers, committed rulers, devoted policy makers, utilitarian legislators, efficient administrators, worthy engineer, enlightened industrialists, patriotic and dedicated soldiers and best citizens always to serve nation and apostle of International peace and security of 21st century. The child, for the full and the harmonious development of his or her personality should grow up in a very congenial family environment, in an atmosphere of happiness, love and understanding. In fact, child by virtue of his physical and mental immaturity needs special safeguards and care including appropriate legal protection, before and after birth.

The Child Labour (Prohibition and Regulation) Act, 1986 is one the most debated acts regarding children in India. It outlines where and how children can work and where they can not.

2. Objective of the Act

The object of the Act is to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain employments.
As per section 2(ii) "child" means a person who has not completed his fourteenth year of age.

3. Regulation of conditions of work of children

Part III of the act outlines the conditions in which children may work in occupations/processes not listed in the schedule.

- **Section 6. Application of Part.-**

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

COMMENTS

This section regulates the working conditions of the children in employment where they are not prohibited from working by section 3 of this Act.

- **Section 7. Hours and period of work.-**

(1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.
(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
(3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
(4) No child shall be permitted or required to work between 7 p.m. and 8 a.m.
(5) No child shall be required or permitted to work overtime.
(6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

COMMENTS
This section stipulates that no child shall work for more than 3 hours before he has had an interval for rest for at least one hour. The double employment of a child is banned.

- **Section 8. Weekly holidays.-**

Every child employed in an establishment shall be all 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 so specified shall not be altered by the occupier more than once in three months

COMMENTS
The child employed in an establishment is entitled for a holiday of one whole day in each week.

- **Section 9. Notice to Inspector.-**

(1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:-
(a) the name and situation of the establishment;
(b) the name of the person in actual management of the establishment;
(c) the address to which communications relating to the establishment should be sent; and
(d) the nature of the occupation or process carried on in the establishment.
(2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars as are mentioned in sub-section (1).
Explanation.- For the purposes of sub-sections (1) and (2), "date of commencement of this Act, in relation to an establishment" means the date of bringing into force of this Act in relation to such establishment.
(3) Nothing in sections 7, 8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

- **Section 10. Disputes as to age.-**

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

- **Section 11. Maintenance of register.-**

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing-
(a) the name and date of birth of every child so employed or permitted to work;
(b) hours and periods of work of any such child and the intervals of rest to which he is entitled;

(c) the nature of. work of any such child; and
(d) such other particulars as may be prescribed.

- **Section 12. Display of notice containing abstract of sections 3 and 14.-**

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

- **Section 13. Health and safety.-**

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

(2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:-
(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) spittoons
(j) fencing of machinery
(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 power
(0) self-acting machines
(P) easing of new machinery
(q) floor, stairs and means of access
(r) pits, sumps, openings in floors, etc.
(s) excessive weights
(t) protection Of, eyes
(u) explosive or inflammable dust, gas, etc.
(v) precautions in case of fire
(w) maintenance of buildings and
(x) safety of buildings and machinery.

COMMENTS

The appropriate Government is empowered to make rules in such matters as cleanliness, disposal of wastes, dust, lighting, precaution against fire, protection of eyes, spittoons and ventilation, etc., in any establishment for the health and safety of the children employed or permitted to work.

4. Conclusion

Part III of the act outlines the conditions in which children may work in occupations/processes not listed in the schedule. The number of hours of a particular kind of establishment of class of establishments is to be set and no child can work for more than those many hours in that particular establishment. Children are not permitted to work for more than three hour stretches and must receive an hour break after the three hours. Children are not permitted to work for more than six hour stretches including their break interval and can not work between the hours of 7 p.m. and 8 a.m. No child is allowed to work overtime or work in more than one place in a given day. A child must receive a holiday from work every week. The employer of the child is required to send a notification to an inspector about a child working in their establishment and keep a register of all children being employed for inspection.

If there is a dispute as to the age of the child, the inspector can submit the child for a medical exam to determine his/her age when a birth certificate is not available. Notices about prohibition of certain child labour and penalties should be posted in every railway station, port authority and workshop/establishment.

The health conditions of work being undertaken by children shall be set for each particular kind of establishment of class of establishments by the appropriate government. The rules may cover topics such as cleanliness, light, disposal of waste and effluents, drinking water, bathrooms, protection of eyes, maintenance and safety of buildings, etc.

Q. No. 7. Explain the salient features of the Karnataka Shops and Commercial Establishments Act, 1961.

SYNOPSIS

1. **Introduction**
2. **Scheme of the Act**
3. **Salient features of the Act**
4. **Conclusion**

1. Introduction

The Karnataka Shops and Establishment Act regulates the operations of shops and commercial establishments. The Karnataka Shops and Establishment Act was introduced to regulate the

hours of work, annual leave with wages, wages and compensation, employment of women and children and other aspects of a shops or commercial establishment.

2. *Scheme of the Act*

The Act consist of IX Chapters, 44 Sections and a Schedule. Chapter I (Secs. 1-3) deals with Preliminary- Extent, commencement, application, definitions and exemptions from applicability of the Act. Chapter II (Secs. 4-6A) deals with Registration of Establishment. Chapter III (Secs. 7-13) deals with Hours of work. Chapter IV (Secs. 14-20) deals with Annual leave with wages. Chapter V (Secs. 21-23; Sec. 23 Repealed) deals with Wages and compensation. Chapter VI (Secs. 24 and 25) deals with Employment of children and women. Chapter VII (Secs. 26-29) deals with Enforcement and inspection. Chapter VIII (Secs. 30-33) deals with Offences, penalties and procedure. Chapter IX (Secs. 34-44) deals with Miscellaneous.

3. *Salient Features of the Act*

3.1. Objectives

The Preamble of the Act states, this as an Act to provide for the regulation of conditions of work and employment in shops and commercial establishments. WHEREAS it is expedient to provide for the regulation of conditions of work and employment in shops and commercial establishments and other incidental matters;

3.2. Commencement and Application (Secs. 1 and 2)

- This act has been enforced from 01-03-1962 in Karnataka state and time to time amendments are made.
- This Act applies to the areas specified in the Schedule and to the areas as notified by the Karnataka Government.

3.3. Important Definitions (Sec. 2)

- ***S. 2(e) commercial establishment***

"commercial establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed are mainly engaged in office work, a hotel, restaurant, boarding or eating house, a cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishments as the State Government may by notification declared to be a commercial establishment for the purposes of this Act;"

- ***S. 2(g) employee***

"employee" means a person wholly or principally employed in or in connection with, any establishment whether working on permanent, periodical, contract or piece-rate wages, or on commission basis, even though he receives no reward for his labour and includes an apprentice, any clerical or other member of the staff of a factory or industrial establishment who falls

outside the scope of the Factories Act, 1948, but does not include a member of the employer's family; and "employed" shall be construed accordingly;

- ***S. 2(h) employer***

"employer" means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes members of the family of an employer, a manager, agent or other person acting in the general management or control of an establishment;

- ***S. 2(i) establishment***

"establishment" means a shop or a commercial establishment;

- ***S. 2(u) shop***

"shop" means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948.

3.4. Exemptions from Applicability (Sec. 3)

Establishments Exempted from Karnataka Shops and Establishment Act

- **The Act does not apply for the following types of establishments (total exclusion)**

(a) Offices of or under the Central or State Governments or Local Authorities, except commercial undertakings;
(b) Any railway service, water transport service, postal, telegraph or telephone service, any system of public conservancy or sanitation or any industry, business or undertaking which supplies power, light or water to the public;
(c) Railway dining cars;
(d) Establishments for the treatment or care of the sick, infirm, or the mentally unfit;
(dd) Establishments of the Food Corporate of India;
(e) Offices of legal practitioners and medical practitioners in which not more than three persons are employed;
(f) Offices of a banking company;
(g) Any person employed in any business from point 1 – 7 above;
(h) Persons occupying positions of management in any establishment;
(i) Persons whose work is inherently intermittent such as drivers, care-takers, watch and ward staff, or canvassers;
(j) Persons directly engaged in preparatory or complementary work, such as, clearing and forwarding clerks responsible for the despatch of goods.

- **Further, Provisions relating to opening and closing hours (S. 11) and weekly holidays (Subsection (1) of S. 12) in the Karnataka Shops and Establishment Act does not apply to:**

(a) Shops dealing mainly in medicines or medical or surgical requisites or appliances;
(b) Clubs, residential hotels, boarding houses, hostels attached to schools or colleges, and establishments maintained in boarding schools in connection with the boarding and lodging of pupils and resident-masters;
(c) Stalls and refreshment rooms at railway stations, bus stands, ports or aerodromes;
(d) Shops of barbers and hairdressers;
(e) Shops dealing mainly in meat, fish, poultry, eggs, dairy produce, bread, confectionery, sweets, chocolates, ice, ice-cream, cooked food, fruits, flowers, vegetables or green fodder;
(f) Shops dealing in articles required for funerals, burials or cremations;
(g) Shops dealing in pan, pan with beedies or cigarettes, or liquid refreshments sold retail for consumption on the premises;
(h) Shops dealing in newspapers or periodicals, editing sections of newspaper offices and offices of news agencies;
(i) Cinemas, theaters and other places of public entertainment and stalls and refreshment rooms attached to such cinemas, theaters and places of public entertainment;
(j) Establishments for the retail sale of petrol;
(k) Shops in regimental institutes, garrison shops and troop canteens in cantonments;
(l) Tanneries;
(m) Retail trade carried on at an exhibition or show, if such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show;
(n) Oil-mills and flour-mils not registered under the Factories Act, 1948;
(o) Brick and lime kilns;
(p) Commercial establishments engaged in the manufacture of bronze and brass utensils so far as it is confined to the process of melting in furnaces;
(q) Information technology establishments;
(r) Bio-technology and research centers or establishments of epidemic and other diseases;

3.5. Registration of Establishments (Secs. 4-6A)

Under the Act registration is mandatory for all shops and commercial establishments in Karnataka, expect those exempted.

New shops or commercial establishments in Bangalore or Karnataka are required to apply for Karnataka Shops and Establishment Act Registration within 30 days of commencing operations. The Shops and Establishment Act Registration must be submitted in the prescribed format to the Labour Inspector of the area concerned. The following information must be provided as a part of the Shop and Establishment Act Registration application:

- The name of the employer and manager, if any
- The postal address of the establishment;
- The name, if any, of the establishment; and
- Such other particulars as may be prescribed.

On submission of the application, the Inspect would verify and provide the Registration Certificate. Registration certificate must be displayed on visible place inside the office premises. Registration certificate is valid for '5' years period. Before the expiry of the period, renewal application to be submitted for the next period.

It shall be the duty of an employer to notify to the registration authority, in the prescribed form, any change with respect to any information contained in his statement during registration/renewal within 15 days after the change. Ex. Change in address, change in ownership, change in number of employee etc.

Every employer, employing any person in or in connection with his establishment, shall issue an appointment order in writing indicating the name, designation, wage scale of such person and terms and conditions of his employment and serve the same on such person within thirty days from the date of appointment in his establishment.

After closing the business of his establishment, should surrender the registration certificate to the registration authority.

3.6. Hours of Work (Secs. 7-13)

3.6.1. Daily and weekly hours and extra wages for overtime work

As per the Act, employees can only work for nine hours on any day and forty-eight hours in any week. If the employee works more hours, then wages need to be provided for overtime. Further, the period of work of an employee in an establishment should be fixed so that, no period or work exceeds five hours without an interval.

3.6.2. working hours (Opening and closing hours)

Any establishment shall not run its business before and after following hours.

- In Bangalore city; Morning before 6 am and Night after 9 pm.
- Other places; Morning before 8 am and Night after 8 pm.

3.6.3. Weekly holiday

Every establishment shall remain closed for one day of the week. The employer shall fix such day in the beginning of the year and notify it to the registration authority and specify it in a notice prominently displayed in a conspicuous place inside the establishment. Instruction: Any employer is taking exemption from weekly holiday, shall fix different days as holiday for his establishment and shall obtain the weekly holiday break by submitting the report to the deputy labour commissioner.

3.6.4. Selling outside establishments prohibited after closing hours

Save as provided by or under any other enactment for the time being in force, no person shall carry on, in or adjacent to a street or public place, the sale of any goods after the hour fixed

under section 11 for the closing of establishments dealing in the same class of goods in the locality in which such street or public place is situated:

Provided that nothing in this section shall apply to the sale of news papers and such other articles as may be exempted by notification by the State Government.

3.7. Annual Leave with Wages (Secs. 14-20)

Employees working in an establishment in Karnataka should be allowed to avail a leave with wages at the rate of one day for every twenty days of work performed. In case, of young persons, the employee should be allowed to avail a leave with wages at the rate of one day for every fifteen day of work performed.

3.8. Wages and Compensation (Secs. 21 and 22)

With respect to wages and compensation certain existing labour laws are made applicable, which are as follows;

(a) Payment of Wages Act, 1936;
(b) Minimum Wages Act, 1948;
(c) Payment of Gratuity Act, 1970(Only when there is more than10 employees);
(d) Payment of Bonus Act of 1965(Only when there is more than 10 employees);
(e) The Employees Compensation Act, 1923; and
(f) Industrial Dispute Act, 1947.

- **Minimum Wages**

Minimum wages to the labours working in shops and commercial establishment has been fixed by the Karnataka state Government; first time in the year 1988.Time to time revision is done. Presently 2003 revised notification is in force.

3.9. Employment of Child, Young Persons and Women (Secs. 24 and 25)

The Act prohibits the employment of child at any establishment. A child is any person who has not completed fourteen years of age.

Also, young person and woman cannot be required or allowed to work whether as an employee or otherwise in any establishment during night. A young person is anyone who has completed the age of fourteen, but not eighteen.

However IT/BT organizations can get permission to allow women to work after 8 pm by submitting Form 'R' with necessary information.

3.10. Enforcement and Inspection

To enforce this act, the Labour Commissioner will be the *Chief Inspector*. It is notified that Inspector/Senior Inspector will be *Inspector* and all department-level authorities will be *Additional Inspector*.

Power Devolution:

Responsibilities are delegated among the department administration hierarchy.

a) Labour/Senior Labor Inspector: Authority for registration/Renewal of establishment.
b) Assistant Labour Commissioner: Appealing Authority to enquire the employee dismissal case.
c) Deputy Labour Commissioner: Authority for Weekly holiday exemption, Woman working hour exemption.

3.11. Duties of Employer

❖ **Employment and Regulation:**

- Every employer, employing any person in or in connection with his establishment shall issue an appointment order in form 'P'.
- Every day, employee attendance shall be registered in form 'T.
- The organizations having weekly holiday exemption, after taking continuous service of 6 days from any employee, shall give 7^{th}day as mandatory holiday for him. In special cases 7^{th} day can not be given as holiday, 11^{th} day should be given as mandatory holiday.
- After each month salary shall be paid before 7^{th} date of next month.
- Working period of any employee should not exceed 48 hours and 58 hours including extra working hours.
- End of the year, counting the working day of the employees for present year; 1 day per 20 days as earned leave and 1 day per 30 days as sick leave shall be calculated. This leave account shall be recorded in the format 'F'.
- Any employee who has completed 180 days service to the establishment can not be dismissed without prior notice.

❖ **Records management:**

- Use format 'A'; for Establishment registration/Renewal/To report change of information.
- Use format 'P'; to fix the different day as the weekly holiday.
- Use format 'F'; to maintain leave records and Use format 'H'; to give the copy to the employee.
- Use format 'T'; to maintain daily attendance of employee.
- Use format 'R'; to get permission to allow women to work after 8 pm.

❖ **Submission of annual report:**

Annual report ending with 31^{st} December shall be submitted before 31st January of next year in the format 'U'.

3.12. Employees' Rights

- Every employee have rights to take weekly one day as compulsory holiday.

- Where an employee works in any establishment for extra hours in any day or any week, he shall in respect of such overtime work to be entitled to wages at twice the rate of normal wages.
- Every employee shall be entitled to preserve earned leave for 40 days.
- Every employee shall be entitled to encash unavailed earned leaves.
- An employee, removed or dismissed shall have a right of appeal to jurisdiction officer on the ground that there was no reasonable cause for the removal or dismissal.
- Where an employee has been removed or dismissed without reasonable cause or without proof of misconduct is proved, the employee shall be entitled to get compensation as one month's pay for every year of service.

3.13. Penalties

Certain penalties have been prescribed for the contravention of provisions of the Act. All of them are in terms of fine except employment of children for which imprisonment for three months may be awarded and in case the offence is repeated same may be increased up to one year.

4. Conclusion

This is an act to provide for the regulation of conditions of work and employment in shops and commercial establishments in the state of Karnataka. The accurate name for this legislation is *The Karnataka Shops and Commercial Establishments Acts, 1961 and Rules, 1963*. This act covers shops and commercial establishments (offices, storerooms, godowns, or warehouses). The act is applicable even if you have one employee or none. In spite of this Act,the workers are subject to severe exploitation by the rest of the society. They work under poor working conditions, get wage much below than in the formal sector and even for closely comparable jobs where labour productivity is not different. The work status is of inferior quality in terms of both remuneration and employment. Hence there is a need for effective implementation of the Act.

Q. No. 8. Write a short note on any two of the following:

a) Social insurance and Social assistance

The term 'social security' is all embracing. The scope of social security is, therefore, very wide. It covers the aspects relating to social and economic justice. The social security benefits are provided in three major ways such as social assistance, social insurance and allied services. The most well known techniques adopted by social security at present are no doubt social assistance and social insurance which are discussed as follows:

- ***Social Insurance***

The ILO defines social insurance as “a scheme that provides benefits for persons of small earnings granted as of right in amounts which combine the contribution of the insured with subsidies from the employer and the State.”

The social insurance protects persons of small earnings. The purpose of social insurance is to render the wage earner as independent of poor relief as possible on the principle that his wage should include an insurance premium covering the risk of its involuntary loss, the inability of the State being merely subsidiary. Thus social insurance historically provided protection to industrial worker in the first instance. Almost all pension and unemployment insurance schemes are tripartite in character, that is, they are maintained by the contributions from the employees, employers and the State. However, there are exceptions. For example, the American Unemployment Schemes are financed by the employers only, the Netherlands and Spanish pension schemes are financed by the employers and the State and the Greek Pension Scheme and the Italian Unemployment Scheme are financed jointly by workers and the employers. The employer contributes in every case, probably because he is the owner of the industry and most benefited party. In order that the benefits provided by social insurance may be closely adapted to the variety of needs, the contingencies covered should be classified as sickness, maternity, invalidity, old age, death of bread winner, unemployment, emergency expenses and employment injuries.

Social insurance is social because it involves the collective effort of beneficiaries, their employers, if any, and the State. It is insurance because the beneficiary has to pay contribution before he is entitled to secure benefits. Thus the benefits are not paid gratis, they are systematically financed, since the scheme is subsidised, a device is evolved to exclude the cases which do not deserve any subsidy from the State. However, almost all schemes of social insurance set a limit of income beyond which protection is not available. Moreover, benefits arise as of right. The beneficiary claims the benefit, he does not apply for it. in addition to this, social insurance is a compulsory measure. The persons who fall under the purview of the insured population cannot refuse to get insured. It has been made compulsory becauseotherwise really poor will be least willing to pay contributions.

To sum up, it may be observed that social insurance is compulsory in nature based on contributory principle to provide protection in specified contingencies on fulfilling specified qualifying conditions laid down under the provisions of social welfare legislation.

The following legislative measures adopted by the Government of India by way of social security schemes for industrial workers falls under the category of Social Insurance.

- Employees’ Compensation Act, 1923;
- Employees’ State Insurance Act, 1948;
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- Payment of Gratuity Act, 1972 etc.

Social insurance schemes are different from private insurance schemes. The private insurance schemes are optional and one policy covers only one risk generally and they are entirely voluntary. Private insurance exists for those who feel the need for protection of life or properly

against certain contingencies sufficiently to join voluntarily, with others, exposed to a similar risks, in maintaining a fund from which will be paid for the risks that occur within the group.

Like in India the Life Insurance Corporation of India and National Insurance Co. Ltd., do not come under social insurance as they are open to all with sole object of economic profit for the insured persons and their legal heirs though they are run under State statutes.

- ***Social Assistance***

The ILO defines social assistance scheme as "one that provides benefits to persons of small means granted as of right in amounts sufficient to meet a minimum standard of need and financed from taxation." Thus it is a scheme of institutional charity. However it differs from charity in so far as charity is voluntary, it has no legal basis while social assistance has a legal basis. It is organised under the provisions of a statute. The benefits arise as of right. Charity is unexpected and irregular while social assistance benefits are paid at specified intervals and they continue as long as the need remains. Thus social assistance removes the social and moral stigma so painfully associated with doles paid under the English Poor Law or the aims offered by God-fearing individuals for religious considerations.

In general terms social assistance refers to providing of basic security irrespective of participation in specific insurance programs where eligibility may otherwise be an issue. For instance, assistance given to newly arrived refugees for basic necessities suchas food, clothing, housing, education, money, and medical care.

The special characteristic of this measure is that it is financed wholly from the general revenues of the state and the benefits are provided free of cost. But the beneficiary has to satisfy means test which means certain prescribed conditions. The first risk to be covered was that old age, but gradually non-contributory benefits were also introduced for invalids, survivors and unemployed persons as well. Today social assistance programmes cover programme like unemployment assistance, old age assistance, national assistance

Social assistance is a device organised by the State by providing cash assistance and medical relief, to such members of the society as cannot get them from their own resources. The social assistance underlines the idea that the care of the poor could not be left to voluntary charity and should be placed on a compulsory and statutory basis. The State had to intervene because individualised charity proved to be inadequate and the floating mass of paupers and destitute constituted a threat to society.

Following are some of the national social assistance schemes implemented in India:

- Old Age Pension (OAP) / Widow Pension (WP);
- Indira Gandhi National Disability Pension Scheme;
- Annapurna Antyodaya Yojana etc.

Similarities and Differences between Social Assistance and Social Insurance

Social assistance and social insurance have some similar features because both are social in approach and are organised under a law passed in this behalf. Both provide a legal title to benefits. But both differ from each other in some respects. First, social assistance is financed by the general tax payers, while social insurance is financed by tripartite or bipartite contributions. Secondly, social assistance aims at to provide minimum subsistence to those who cannot make it on their own. Hence, the beneficiary has to satisfy a means test for being entitled to such benefits while social insurance schemes aim to protect a minimum standard of living related to beneficiaries' immediate standard of living as reckoned by his daily earning. Thirdly, social insurance ignores the income and means of liable relations while social assistance makes the beneficiary a first charge on the liable relation. Benefits are paid only when the specified relations do not possess sufficient means to support the beneficiary. Thus social assistance is a progression from private charity towards private insurance whereas social insurance is a progression from private insurance towards public welfare measures.

b) Payment of minimum and maximum bonus

- **Payment of Minimum Bonus**

Section 10 of the Payment of Bonus Act, 1965 stipulates that, subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of every accounting year, a minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or Rs.100 (Rs.60 in case of employee below the age of 15 years), whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

Even if the employer suffers losses during the accounting year he is bound to pay minimum bonus as prescribed by Section 10. This Act creates a statutory right in the employees to get minimum bonus and also creates a statutory liability upon the employers covered by the Act to pay minimum bonus.

- **Payment of Maximum Bonus**

Section 11 provides, where, in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of 20% of such salary or wage.

In computing the allocable surplus under the above-mentioned provision, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provision of that section.

- **Calculation of Bonus with respect to certain Employees**

According to section 12, where the salary or wage of an employee exceeds ten thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wages were ten thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem.

For the purposes of this section, the expression "scheduled employment" shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act, 1948.

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c) Impact of globalisation on industry and labour

- **Concept of Globalisation**

Globalisation essentially means integration of the national economy with the world economy. It implies a free flow of information, ideas, technology, goods and services, capital and even people across different countries and societies. It increases connectivity between different markets in the form of trade, investments and cultural exchanges.

- **Effects of Globalisation on Industry and Labour**

After Independence in 1947 Indian government faced a significant problem to develop the economy and to solve the issues. Considering the difficulties pertaining at that time government decided to follow LPG Model. The Growth Economics conditions of India at that time were not very good. This was because it did not have proper resources for the development, not regarding natural resources but financial and industrial development. At that time India needed the path of economic planning and for that used 'Five Year Plan' concept of which was taken from Russia and feet that it will provide a fast development like that of Russia, under the view of the socialistic pattern society. India had practiced some restrictions ever since the introduction of the first industrial policy resolution in 1948.

Soon after independence, the period was known as License Raj. As a result of the restriction in the past, India's performance in the global market has been very dismal; it never reached even the 1% in the worldwide market. India has vast natural resources with high-efficiency labor, but after all this, it was still contributing with 0.53% till 1992.

The Government of India announced a New Economic Policy on July 24, 1991.After liberalization, India became the second world of development and became the 7th largest

economies. It contributed 1.3 trillion in the world's GDP. Dr. Manmohan Singh, the former finance minister, opened the way for a free economy in the country which led to the significant development of the country.

It is pertinent to note that the adoption of open economy affected the country positively and as well negatively. On the one hand, it witnessed high economic development, infrastructure development, and urbanization and on the other hand had a widening cleft between the rich and poor and class divide continues to plague the country. Social and human development remains absurdly low leading to a profoundly fragmented nation.

The noteworthy impacts of the policy on industry and labour are as follows:

- Organized workforce

Organized workforce is decreasing. Number of operations given to sub-contractors have increased and that also in the unorganised sector.

- Trade unions

Trade unions are on a decline. Thus is a world wide phenomenon. It is generally agreed that the trade unions movement has fallen on hard tunes. The extent of its difficulties may sometimes, of-course, be exaggerated by overemphasising adverse national situation. Nonetheless, workers' organizations are losing members. Some even have doubts about their future.

- Wages and employment

The increase in international competition and rapid changes in the technology has led to a fall in real wages of unskilled workers and increased inequalities in the developed countries. Worst employment crisis is being faced by the world after 1930s. About one-third of the earth's 2.8 billion workers are either jobless or underemployed and many of those employed receive low wages and the working condition is poor. New labour saving technologies have increased the woes of the workers. The process has gained momentum due to global competition and financial squeeze on governments. Growing income inequality, job insecurity and unemployment have resulted due to globalisation.

Except in few countries, real wages fell, and the labour market conditions started to deteriorate. Although open employment fell in my instances job tended to become more precarious and the urban informal sector proliferated. Living condition in general worsened. Globalisation has compelled the developing countries also to carry out structural adjustments programmes. These program are having an adverse impact on their workers. Due to closure of uneconomic units, shrinkage in public sector employment, reduction in expenditure in different activities of governments many workers in developing countries have lost their jobs. Competition has forced restructuring of many units. This involves labour restructuring leading to loss of jobs and increased unemployment in different forms. The most vulnerable section of the society-the poor, women, children and the old suffer the most.

- Indian Scenario

Globalisation has also affected the Indian industry. In order to remain competitive, managements have introduced flexibility by restructuring companies. not employing permanent category employees, closing down units, departments, transferring jobs from bargainable to non-bargainable categories, introducing functional flexibility, putting pressure to increase productivity, opening parallel plants, employing contract workers and subcontracting out production. In order to keep the company small the trend is to outsource work as far as possible Units are being relocated in interior places reducing the power of the unions. VRS is being resorted to. Trade unions have been forced to give up or curb gain and accept Job loss due to threat or industrial closure. Norms relating to work load have gone up. Thus globalisation and liberalisation have created an enabling environment for cutting down regular, salaried jobs in organised sector through VRS, contractual employment, sub-contracting, outsourcing, feminisation, etc. and weakening trade unions. Links between the trade unions and political party is weakening which is reducing their economic strength and political influence.

➢ Conclusion

In order to remain competitive in the present phase of globalisation it has become imperative to restructure the economies. The capacity of governments to regulate labour markets is weakening in the face of heightened international economic competition. Informal sector is on rise. Trade unions have been adversely affected. Bargaining position of workers is decreasing. What is required is a holistic and long-term framework to cope with the challenges posed by globalisauon.

Q. No. 9. Solve any two of the following problems:

a) The Government of India as an employer employed some employees for the purpose of construction works. The minimum wages were denied to the employees. A public interest litigation was filed alleging that denial of minimum wages amounts to "forced labour" within the ambit of Article 23 of the Constitution. Decide.

SOLUTION:

Yes, the denial of minimum wages amounts to forced labour within the ambit of Article 23 of the Constitution. The same is abolished under the Bonded Labour System (Abolition) Act, 1976.

In ***People's Union for Democratic Rights v. Union of India*** (AIR 1982 SC 1473) popularly known as Asiad Workers case, where non-payment of minimum wages to construction workers was successfully challenged, among others, for the violation of Article 23, the Supreme Court, after an elaborate discussion on the background, philosophy and scope of that article, held that the prohibition against "traffic in human beings and begar and other

similar forms of forced labour" is "a general prohibition, total in its effect and all pervasive in its range". It is a charter of recognition of human dignity, the Court said, against all-State as well as private person. Rejecting the argument of the Union that it prohibit only begar or other unpaid labour the Court held that all unwilling labour is forced labour whether paid or not and is, therefore, prohibited. On the specific question of minimum wages the Court held that where someone works for less than minimum wages the presumption is that he is working under some compulsion. The compulsion may be either the result of physical force or of legal provisions or of want, hunger and poverty. Emphasizing on the last factor and declaring the non-payment of wages a forced labour the Court concluded:

"Any factor which deprives a person of a choice of alternatives and compels him to adapt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be forced labour."

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b)Mr. Karthik is working as a senior medical practitioner in a Government Hospital and drawing a salary of A scale. Mrs. Asha was appointed as junior medical practitioner in the same hospital and her salary was fixed on the basis of B scale. Mrs. Asha challenged her scale of payment as it is violating the provisions of Equal Remuneration Act. Whether Mrs. Asha will succeed? Give reasons.

SOLUTION:

No. Mrs. Asha will not succeed in this case.

As per section 4 of the Equal Remuneration Act, it is the duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature. But it is not applicable in the present case because Mrs. Asha is working in different capacity compare to Mr. Karthik.

The facts of the given case are similar to the following case;

In ***C. Girijambal v. Government of AP***, [(1981) 2 SCC. 155], it has been held that the principal of equal pay for equal work is not applicable in professional services.

In ***Ashok Kumar Garg v. State of Rajasthan***, [(1994) 3 SCC 357] it has been observed that the question of equal work depends on various factors like responsibility, skill, effort and condition of work.

In ***State of AP and others v. G Sreenivasa Rao & others***, 1989 SCC (2) 290, It was held that equal pay for equal work does not mean that all the members of the same cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service.

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c)An employer has deducted 60% of amount from the wages payable to one of his employee for absence from duty. Is it authorised deduction? Decide.

SOLUTION:

No it is not an authorised deduction. Even though the ground for deduction is valid but the quantum of deduction is against to the provisions of Payment of Wages Act. employers must exercise caution before making any kind of deductions from the employees' wages and ensure that the deductions are within the prescribed limits of the Act. As per section 7(3) of the Act the amount of deduction must not exceed 50%.

Section 7(3) in the Payment of Wages Act, 1936provides;

(3) Notwithstanding anything contained in this Act, the total amount of deductions which may be made under sub-section (2) in any wage-period from the wages of any employed person shall not exceed—

(i) in cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) of sub-section (2), seventy-five per cent. of such wages, and

(ii) in any other case, fifty per cent of such wages:

Provided that where the total deductions authorised under sub-section (2) exceed seventy-five per cent. or, as the case may be, fifty per cent of the wages, the excess may be recovered in such manner as may be prescribed.

-Abdul .M. Rawoother