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TABLE OF CONTENTS

1. THE FACTORIES ACT, 1948

DEFINATION

HEALTH

SAFETY

WELFARE

WORKING HOURS OF ADULTS

EMPLOYMENT OF YOUNG PERSON

ANNUAL LEAVE WITH WAGES

PENALTIES AND PROCEEDURE

2. THE PAYMENT OF BONUS ACT, 1965

APPLICABILITY OF BONUS ACT

DEFINITION UNDER BONUS ACT

APPLICATION OF BONUS ACT

LABOUR LAW

THE FACTORIES ACT, 1948

DEFINITION

Section 2(a) - "adult" :- means a person who has completed his eighteenth year of age;

Section 2(b) - "adolescent" :- means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

Section 2(bb) - "calendar year" :- means the period of twelve months beginning with the first day of January in any year;

Section (c) - "child" :- means a person who has not completed his fifteenth year of age;

Section 2(ca) - "competent person" :- in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to —

(i) the qualifications and experience of the person and facilities available at his disposal; or

(ii) the qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognized as a competent person in relation to a factory;

Section 2(cb) - "hazardous process" :- means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes, or effluents thereof would—

(i) cause material impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution of the general environment :

PROVIDED that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry, specified in the said Schedule;

Section 2(d) - "young person" :- means a person who is either a child or an adolescent;

Section 2(m) - Factory :- The definition of 'factory' as contained in clause (m) of Section 2 of the Factories Act 1948 runs as follows —

"factory" means any premises including the precincts thereof —

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, —

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Explanation I : For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;

Explanation II : For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

The definition has now been made wider than in the Factories Act, 1934 under which the use of power was necessary to bring a premise within the Act. Under the present Act even premises not using power will be a factory if twenty or more persons are employed thereon and if using power, ten or more than ten persons are employed. Under the English Factory and Workshop Act, places not using power are generally known as "workshops" and places using mechanical power and machinery are known as "factories". By a factory is meant premises where anything is done towards the making or finishing of an article up to the stage when it is ready to be sold or in a suitable condition to be put on the market. The expression "premises" means not only buildings but it includes lands also.

It has been observed by the Supreme Court in *Ardeshir H. Bhiwandiwalla v. State of Bombay, AIR 1962 SC 29*, that the word "premises" refers to land or buildings, or both, depending on buildings alone. It further observed that expression "premises including precincts" does not necessarily mean that the premises must always have precincts, even buildings need not have any precincts. The word "including" is not a term restricting the meaning of the word "premises" but is a term which enlarges its scope. The use of expression therefore does not indicate that the word "premises" must be restricted to mean buildings and be not taken to cover open land as well. Though some of the provisions of the Act cannot be applicable to salt works where the process of converting sea water into salt is carried on in the open, but there is nothing in the Act which makes it uniformly compulsory for every occupier of a factory to comply with every requirement of the Act. An occupier is required to comply with such provisions of the Act which apply to the factory he is working. Therefore, the salt work would come within the meaning of the expression "premises" in the definition of the word "factory" and would be a factory if the work carried on there comes within the definition of manufacturing process.

Test to determine whether any establishment is a factory :— In view of the definition of a 'factory' as contained Section 2 (m) of the Factories Act, 1948, and the judicial pronouncements, following tests may be laid down to determine whether a particular establishment is factory within the meaning of the Factories Act —

(1) There must be a place premises including precincts thereof where manufacturing process is carried on. There may be buildings or open land for the purpose of manufacturing process.

(2) There must be manufacturing process carried on with the aid of power or without aid of power, in any part of the premises including precincts thereof sought to be brought within the purview of the term 'factory'.

(3) There must be required number of persons working thereon depending on the context. That is, if the manufacturing process is being carried on with the aid of power, or ordinarily so carried on there must be ten or more workers working at the relevant time on any day of the preceding twelve months.

(4) If the manufacturing process is being carried on without the aid of power or is ordinarily so carried on, there must be 20 or more workers working at the relevant time on any day of the preceding twelve months.

(5) It is not necessary that a manufacturing process be carried on in whole of the building or

place or premises or precincts thereof, it is sufficient if manufacturing process is being carried on in any part thereof.

(6) The premises including precincts thereof may be factory even if there are less than 10 persons if working with the aid of power, and less than 20 persons if working without aid of power, if the State Government has issued a notification under Section 85(1) of the Factories Act to the effect that all or any of the provisions of the Act shall apply to any such place, provided that the manufacturing process is not carried on by the owner only with the aid of his family.

(7) The premises would not have been expressly excluded by the definition.

The definition of the factory expressly excludes mines, a mobile unit belonging to armed forces of the Union, a railway running shed, a hotel, restaurant or eating place.

Section 2(k) - Manufacturing process :— The manufacturing process has been defined in clause (k) of Section 2 of the Factories Act, 1948, —

"manufacturing process" means any process for —

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;

The definition of manufacturing process as contained in the Act is very wide in its scope. In 1976 the definition has been amended. Formerly clause (ii) was worded as "pumping oil, water or sewage or" but now it reads as pumping oil, water or sewage or any other substance; or now pumping of oil water or sewage or pumping of any other substance is included in the definition of manufacturing process.

It may be further pointed out that clause (vi) has been added by Amendment Act No. 94 of 1976. Thus now the process of preserving or storing any article in cold storage has been included in the definition of a manufacturing process. The scope of the amended definition of the manufacturing process has been extended to cover certain other processes which were not covered in the definition of a manufacturing process before amendment. It may be said that wherever it has been decided that the premises are a factory, the work or process carried on in the premises is a manufacturing process within the meaning of Section 2(k) of the Factories Act, simply because without manufacturing process being carried on in the place or premises, the place or premises cannot be covered within the definition of factory.

In *State of Kerala v. V.M.Patel, (1961) 1 Lab. LJ 549 (SC)*, the Supreme Court held that the work of garbling pepper by winnowing, cleaning, washing and drying it on concrete floor and a similar process of curing ginger dipped in lime and laid out to dry in warehouse are manufacturing processes. *Ardeshir H. Bhiwaniwala v. State of Bombay, AIR 1962 SC 29*, where the conversion of sea water into salt has been held to be a manufacturing process. It was observed that the conversion of sea water into salt is not due merely to natural forces, but is due to human efforts aided by natural forces.

Section 2(l) - Worker :— The Factories Act, 1948 under its Section 2(l) defines — "worker"

means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;

It is quite natural that a factory cannot be run without workers or no manufacturing process can be carried on without human agency, hence the persons who are employed in any manufacturing process as defined under Section 2(k) of the Factories Act or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process or the subject of the manufacturing process, are workers within the meaning of this section. What is necessary for covering a person within the scope of the term 'worker' is that he must be engaged or employed in the manufacturing process or in any other kind of work incidental to or connected with the manufacturing process.

It should be quite clear that the person sought to be covered within the scope of the term worker, need not be directly employed by the principal employer, it is sufficient if a person has been employed by or through any agency including a contractor even without the knowledge of the principal employer, even if he has been employed for remuneration or not. It has been held in *State v. Sri Krishna Das, AIR 1954, All. 44*, that only such persons can be classified as workers of a factory who are either directly or indirectly or through some agency, employed for doing the work of any manufacturing process or cleaning etc. With which the factory is concerned. But this case would have been decided differently after amendment in the definition of the term "worker" in the year 1976.

The definition of the 'worker' has been amended in the year 1976 and by amending it. Its scope has been widened. But at the same time certain persons have been expressly excluded from the purview of the word 'worker'. Therefore, it would be quite desirable to mention that in order to cover a particular person within the purview of term 'worker' following essential requirements must be fulfilled :

- (1) the person in question must be employed in any manufacturing process; or
- (2) he must be employed in cleaning any part of the manufacturing premises used for a manufacturing process; or
- (3) he must be employed in any other kind of work incidental to or connected with the manufacturing process; or
- (4) he must be employed in any other work which is subject of the manufacturing process; or
- (5) the premises or precincts where the person is employed must be factory within the meaning of Section 2(m) of the Factories Act; or
- (6) he must be employed directly by the principal employer; or
- (7) he may be employed through any agency including a contractor with or without the knowledge of the principal employer; or
- (8) he may be employed for remuneration or without remuneration; or
- (9) there must be a master-servant relationship between the person and the employer; or
- (10) he must not be member of armed forces of the Union.

Section 2(n) - Occupier — It has been defined in Section 2(n) of the Factories Act, 1948 that —

"occupier" of a factory means the person who has ultimate control over the affairs of the factory ;

PROVIDED that

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

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

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier:

PROVIDED FURTHER that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,-

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under

(a) section 6, section 7, section 7A, section 7B, section 11 or section 12;

(b) section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;

(c) section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the workers employed on such repair or maintenance;

(2) the owner of the ship or his agent or master or other office-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44, or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to —

(a) the workers employed directly by him, or by or through any agency; and

(b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person;

In order to determining whether a person is an occupier of a factory or not, the nature of his control over the affairs of the factory has to be examined and the question as to who is an occupier is a mixed question of law and fact. In order to be an occupier of the factory, it is not essential that he should have actually physical and immediate control over its affairs, and even a remote but ultimate control clothes him with that status.

The test as laid down in the definition of the work "occupier" is that in order to say a particular person to be occupier, it is necessary that he must have ultimate control over the affairs of the factory. It has been held in *Basha Khan, In re*, (1966) I MLJ 280, that where the owner of the factory has leased the same to another and has been only collecting the rent, therefore, the lessees will be the occupier within the meaning of Section 2(n) of the Factories Act , as they alone have ultimate control. For any violation of the provisions of the Act, it is the lessee that has got to be proceeded against and not the owner.

The definition in Section 2(n) does not indicate that only one person can have ultimate control over a factory. In case of joint owners who have equal powers none of them singly can be said to have ultimate control over affairs of the factory and all must be held to have such control. There-

fore, they are all occupiers. It has been held in *Ashfaq Hussain v. State*, AIR 1959 All. 555, that in the absence of managing agent all the owners must be held to be occupiers.

Measures to be adopted in the factories for health. Safety, welfare, working hours and employment of young persons.

The main purpose of codification of the Factory legislation has been to ameliorate working conditions in factories and to provide effective and proper measures for maintenance of health, safety and welfare of the working community. The main object of the Act was to protect human beings from being subject to unduly long hours bodily strain or manual labour. It also ensures that workers should work in healthy and sanitary conditions as far as possible and it ensures safety of workers from accidents. It makes provision for appointment of inspectors and welfare officers to look after the proper enforcement of the provisions of the Act.

Keeping in view the above scheme of the Act, the measures as contained in the different provisions of the Act may be classified into following classes for our convenience with a view to discussion :

- (A) Measures in regard to health;
- (B) Measures in regard to safety;
- (C) Measures in regard to welfare;
- (D) Measures in regard to Working hour of Adults;
- (E) Measures in regard to Employment of Young Persons;
- (F) Measures in regard to Annual Leave and Wages;
- (G) Measures in regard to miscellaneous matters.

(A) MEASURES IN REGARD TO HEALTH

The efficient working process needs sound health of the persons engaged therein. Unless the workers are physically and mentally healthy they cannot reform their duties effectively, properly and smoothly. It is, therefore, thought necessary to adopt measures to maintain their health. The environment of the factory wherein they are engaged in any manufacturing process must be cleaned, decorated and charming with proper arrangement of lighting ventilation and temperature free from infection, insanitation, dust and fume, artificial humidification, overcrowding and other conditions injurious to health of the workers.

The Factories Act, 1948 under its Chapter III contains various provisions regarding measures to be adopted by the occupier of the factory to maintain proper environment of work in factory. Following measures are required to be adopted in regard to health.

Section 11 :— 1. Cleanliness- Section 11 of the Factories Act provides that —

(1) Every factory shall be kept clean and free from effluvia from any drain, privy, or other nuisance, and in particular —

(a) Accumulations of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passage and disposed of in a suitable manner;

(b) The floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant where necessary, or by some other effective method;

(c) Where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(d) All inside walls and partitions, all ceilings or tops of rooms and all walls sides and tops of passages and staircases shall —

(i) where they are {painted otherwise than with washable water paint} or varnished, be re-painted or re-varnished at least once in every period of five years;

(ii) where they are painted or varnished or where they have smooth impervious surfaces be cleaned at least once in every period of fourteen months by such methods as may be prescribed;

(iii) in any other case, be kept whitewashed, or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;

(dd) all doors and window frames and other wooden or metallic frame work and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;

(2) If, in view of the nature of the operations carried on [in a factory or class or description of factories or any part of factory or class or class or description of factories] it is not possible for the occupier to comply with all or any of the provisions of sub-section (1), the State Government may by order exempt such factory or class or description of factories [or part] from any of the provision of that sub-section and specify alternative methods for keeping the factory in a clean state.

Section 12 : 2. Disposal of wastes and effluents — In order to maintain hygiene conditions in the factory it is necessary that effective arrangements be made for removal of wastes and effluents. It has been thus provided under Section 12 of the Factories Act, that effective arrangements shall be made in every factory for the treatments of wastes and effluents due to the manufacturing process carries on therein, so as to render them innocuous and for their disposal.

The State Government has been authorised to make rules prescribing the arrangements to be made under Section 12(1) or requiring that the arrangements made in accordance with Section 12(1) be approved by such authority as may be prescribed. Thus, the State Government has power to prescribe arrangements to be made in factory or to ask to get the arrangements made, approved by the prescribed authority.

Section 13 : 3. Ventilation and Temperature — In factories generally the environment remains full of dust and fume and there runs excessive temperature which affects the health of the workers engaged therein. In order to deal with this tiresome problem the Factories Act, 1948 under its Section 13 provides that :

(1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom —

(a) adequate ventilation by the circulation of fresh air. And

(b) such temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health and in particular,

(i) walls and roofs shall be of such material and so designed that temperature shall not be exceeded but kept as low as practicable;

(ii) where the nature of the work carried on the factory involves, or is likely to involve, the production of excessively high temperatures such adequate measures as are practicable shall be taken to protect the workers there from, by separating the process, which produces such temperature from the workroom, by insulating the hot parts or by other effective means.

The State Government has been empowered to prescribe a standard of adequate ventilation and reasonable temperature for any factory or class of factories or description of factories or description of factories or any part thereof and it has been given power to direct that {proper

measuring instruments, at such places and in such position as may be specified, shall be provided and such records, as may be prescribed, shall be maintained.

Section 14 : 4. Dust and fume — The Factories Act, under its Section 14 requires effective measures to be adopted to prevent inhalation and accumulation of any dust or fume or other impurity of such a nature, in any workroom given off by reason of the manufacturing process carried on in factory as it is likely to be injurious or offensive to the workers employed therein. If any exhaust appliance is necessary for the purpose, it shall be applied as near as possible to the point shall be enclosed so far as possible.

Section 15 : 5. Artificial humidification — In respect of all factories in which the humidity of the air is artificially increased, the State Government has been empowered under Section 15 of the Factories Act, 1948, to make rules —

- (a) prescribing standards of humidification;
- (b) regulating the methods used for artificially increasing the humidity of the air;
- (c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
- (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air and the workrooms.

Section 16 : 6. Overcrowding — Overcrowding in any workroom is injurious to the health of the workers engaged therein. In order to avoid overcrowding in the factory the Act lays down following rules under its Section 16 to be followed accordingly :

(1) No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of sub-section (1), there shall be in every work room of a factory in existence on the date of the commencement of this Act at least 9.9 cubic meters and of a factory built after the commencement of this Act at least 4.2 cubic meters] or space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than 4.2 metres above the level of the floor of the room.

(3) If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.

(4) The Chief Inspector may, by order in writing exempt subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

Section 17 : 7. Lighting — In order to avoid eye- strain of the workers the Act requires proper lighting arrangements. Section 17 of the Act provides as follows :

(1) In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every factory all glazed windows and skylights used for the lighting of the workroom shall be kept clean on both the inner and outer surfaces and so far as compliance with the provisions of any rules made under sub-section (3) of section 13 will allow, free from obstruction.

(3) In every factory effective provision shall, so far as is practicable, be made for the prevention of —

(a) glare, either directly from a source of light or by reflection from a smooth or polished surface;

(b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.

(4) The State Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

Section 18 : 8. Drinking water — In factories not only cool drinking water must be available but there must be proper arrangements for latrines and urinals to be used by the workers. The Factories Act, 1948, under its Section 18 requires effective and proper arrangements to be made to provide and to maintain at suitable points conveniently situated for all workers employed in the factory, a sufficient supply of wholesome drinking water.

(1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within six meters of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination unless a shorter distance is approved in writing by the Chief Inspector.

(3) In every factory wherein more than two hundred and fifty workers are ordinarily employed, provisions shall be made for cooling drinking water during hot weather by effective means and for distribution thereof.

(4) In respect of all factories or any class or description of factories the State Government may make rules for securing compliance with the provisions of sub-sections (1),(2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

Section 19 : 9. Latrines and urinals — In factories not only cool drinking water must be available but there must be proper arrangements for latrines and urinals to be used by the workers. The Factories Act, 1948, under its Section 19 contains following provisions in regards to latrines and urinals :

(1) In every factory —

(a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory;

(b) separate enclosed accommodation shall be provided for male and female workers;

(c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any work-room except through an intervening open space or ventilated passage;

(d) all such accommodation shall be maintained in a clean and sanitary condition at all times;

(e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

(2) In every factory wherein more than two hundred and fifty workers are ordinarily employed—

(a) all latrine and urinal accommodation shall be of prescribed sanitary types;

(b) the floors and internal walls, up to a height of 39 [ninety centimeters], of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a

smooth polished impervious surface;

(c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

Section 20 : 10. Spittoons — In order to ensure cleanliness, and sanitary conditions and to avoid dirty infectious atmosphere in the factor the Factories Act under its Section 20 requires a sufficient number of spittoons to be provided in convenient places and to be maintained in clean and hygienic conditions.

(1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

(2) The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.

(3) No person shall spit within the premises of a factory except in the Spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

(4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

(B) MEASURES IN REGARDS TO SAFETY

Safety is a basic and primary requirement in a factory. Unless body, mind and life of workers is secured, smooth and proper working cannot be ensured in any factory. As indicated earlier the object of this legislation was to ameliorate working conditions and to provide with the effective measures of safety of the workers from accidents, causing partial or total disablement and sudden misfortunes affecting the victims and their dependents.

The Factories Act, 1948 deals with such security and safety measures under its Chapter IV containing Section 21 to 41. There have been made significant amendments in the provisions dealing with safety so as to make the measures more effective and appropriate. It would be desirable to discuss these safety measures one by one.

Section 21 : (1) Fencing of Machinery —

(1) In every factory the following, namely :

(i) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not;

(ii) the headrace and tailrace of every water-wheel and water turbine;

(iii) any part of a stock-bar which projects beyond the head stock of a lathe; and

(iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely, —

(a) every part of an electric generator, a motor or rotary convector;

- (b) every part of transmission machinery; and
- (c) every dangerous part of any other machinery;

shall be securely fenced by safeguards of substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use :

PROVIDED that for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when —

(i) it is necessary to make an examination of any part of the machinery aforesaid while it is in motion or, as a result of such examination, to carry out lubrication or other adjusting operation while the machinery is in motion, being an examination or operation which it is necessary to be carried out while that part of the machinery is in motion, or

(ii) in the case of any part of a transmission machinery used in such process as may be prescribed (being a process of a continuous nature the carrying on of which shall be, or is likely to be, substantially interfered with by the stoppage of that part of the machinery), it is necessary to make an examination of such part of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts or lubrication or other adjusting operation while the machinery is in motion, and such examination or operation is made or carried out in accordance with the provisions of sub-section (1) of section 22.

(2) The State Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this section.

It shows that every part of machinery is required to be fenced by safeguards of substantial construction while the machinery is in motion or in use. It may be kept in mind that not only safeguards of substantial construction are to be provided but they are required to be constantly maintained and kept in position while parts of machinery, they are fencing are in motion or in use, to avoid inherent danger of accidents, which are likely to occur in absence of such safety measures.

Section 22 : (2) Work on or near machinery in motion.

It is never certain as to when the machinery or any part thereof will cease to function or cease to function properly. Similarly it is never certain as to when a particular defect in functional mechanism will come to light and it will require examination of the machinery in motion and as a result of its examination it will require lubrication or other adjusting operation. In such circumstances there must be some person appointed for such processes and the manner must be fixed in which such person has to perform such operations or adjustments.

In order to deal with such day-to-day problems, the Factories Act, 1948 under its Section 22 contains measures to be complied with if such processes are necessary to be carried out. Section 22 of the Act provides that —

(1) Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or, as a result of such examination, to carry out —

(a) in a case referred to in clause (i) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation; or

(b) in a case referred to in clause (ii) of the proviso aforesaid, any mounting or shipping of belts

or lubrication or other adjusting operation, while the machinery is in motion, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of this appointment, and while he is so engaged —

(a) such worker shall not handle a belt at a moving pulley unless —

(i) the belt is not more than fifteen centimeters in width;

(ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case a belt is not permissible);

(iii) the belt joint is either laced or flush with the belt;

(iv) the belt, including the joint and the pulley rim, are in good repair;

(v) there is reasonable clearance between the pulley and any fixed plant or structure;

(vi) secure foothold and, where necessary, secure handhold, are provided for the operator; and

(vii) any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person.

(b) without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinion, and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

(2) No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.

(3) The State Government may, by notification in the Official Gazette, prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when those parts are in motion.

It is required that such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing which shall be supplied by the occupier of the factory whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of this appointment.

Section 23 : (3) Employment of young persons on dangerous machines —

Section 23 of the Act prohibits young person to work any machine which is of dangerous character. Section 22 of the Act provides that —

(1) No young person shall be required or allowed to work at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and —

(a) has received sufficient training in work at the machine, or

(b) is under adequate supervision by a person who has a through knowledge and experience of the machine.

(2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

Sub-section (1) of Section 23 provides that no young person (shall be required or allowed to work) at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine. However, the section itself contains certain conditions in which he may be allowed to work on dangerous machines.

In view of these specified conditions in Section 23 of the Act young person may be allowed to work at any dangerous machine if —

- (i) he has been fully instructed as to dangers arising in connection with the machine;
- (ii) he has been fully instructed as to the precautions to be observed;
- (iii) he has received sufficient training in work at such machine; or
- (iv) he is under adequate supervision by a person who has a through knowledge and experience of the machine.

Section 23(2) empowers the State Government to prescribe machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with. Thus the question whether a machine is of dangerous character or not is to be determined on the basis of the order of the State Government in which it specifies machines on which Section 23(1) is to apply.

Section 24 : (4) Striking gear and devices for cutting of power —

In order to minimize chances of accidents and to ensure safety of workers suitable striking gear and devices are required to be provided, maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery.

Section 24 provides that —

- (1) In every factory —
 - (a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on to the fast pulley;
 - (b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.
- (2) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom:

PROVIDED that in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to workrooms in which electricity is used as power.

- (3) When a device, which can inadvertently shift from "off " to "on" position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted.

Section 25 : (5) Self-acting machines —

In order to ensure safety it has been provided that no traversing part of a self-acting machine in any factory and no material carried thereon shall be allowed to run on its outward or inward traverse within a distance of (forty-five centimeters) from any fixed structure which is not part of the machine. But the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the above requirements on such conditions for ensuring safety as he may think fit to impose.

Section 25 provides that —

No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of 46[forty-five centimeters] from any fixed structure which is not part of the machine :

PROVIDED that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

Section 26 : (6) Casing of new machinery —

In order that chances of accidents and risks may be reduced, this section is provided.

Section 26 provides that —

(1) In all machinery driven by power and installed in any factory after the commencement of this Act, —

(a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;

(b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

(2) Whoever sells or lets on hire or, as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (1) or any rules made under sub-section (3)], shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(3) The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.

Section 27 : (7) Prohibition of employment of women and children near cotton-openers —

The Factories Act under its Section 27 prohibits employment of any woman or child in any part of a factory for pressing cotton in which a cotton-opener is at work. However, there is one exception provided in the proviso to section 27.

Section 27 provides that —

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work:

PROVIDED that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

It provides that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

It has been held that provisions of this section are not fulfilled if there is a door made in a

partition between the two portions of the room and that the door is known to be open at a particular time, or even although it is shut, yet it is not locked or other effective measures have been taken to prevent its being opened by a woman or child wishing to get into the press room or prohibited area.

Thus this section is intended to safeguard women and children against the risks which are likely to be caused by cotton pressing. If they are employed under the specified conditions it is required that effective measures are to be taken to ban entry of such women and children in the prohibited area.

Section 28 : (8) Hoists and lifts —

Generally hoists and lifts are used for carrying on load and persons in the factories. In use of such mechanism there is danger of accidents if they are not of good construction, sound material and adequate strength and they are not properly used and maintained and checked at regular intervals. In order to minimize chances of accidents Section 28 of the Act speaks of different safety measures to be adopted in regard to hoists and lifts used for carrying on load and persons in factory.

Section 28 provides that—

(1) In every factory —

(a) every hoist and lift shall be —

(i) of good mechanical construction, sound material and adequate strength;

(ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination;

(b) every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part;

(c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon;

(d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;

(e) every gate referred to in clause (b) or clause (d) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(2) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:

(a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;

(b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;

(c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(3) The Chief Inspector may permit the continued use of a hoist or lift installed in a factory

before the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safety as he may think fit to impose.

(4) The State Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections (1) and (2), by order direct such requirement shall not apply to such class or description of hoist or lift.

Explanation : For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

Section 29 : (9) Lifting machines, chains, ropes and lifting tackles —

Beside the use of hoists and lifts, lifting machines, chains, ropes and lifting tackles are used for purpose of raising or lowering persons, goods or materials in the factories. Keeping in view the safety and security of workers, Section 29 of the Factories Act requires that in every factory the required provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackles for the purpose of raising or lowering persons, goods or materials.

Section 29 provides that —

(1) In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials :

(a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be —

(i) of good construction, sound material and adequate strength and free from defects;

(ii) properly maintained; and

(iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing; and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register; and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or, chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises;

(c) while any person is employed or working on or near the wheel track of a traveling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within 49[six meters] of that place.

(2) The State Government may make rules in respect of any lifting machine or any chain, rope or lifting tackle used in factories-

(a) prescribing further requirements to be complied with in addition to those set out in this section;

(b) providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.

(3) For the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the

conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

Explanation : In this sections,

(a) "lifting machine" means a crane, crab, winch, teagle, pulley block, gin wheel, transporter or runway;

(b) "lifting tackle" means any chain, sling, rope sling, hook, shackle, swivel, coupling, socket, clamp, tray or similar appliance, whether fixed or movable, used in connection with the raising or lowering of persons, or loads by use of lifting machines.

Section 30 : (10) Revolving machinery —

It has been provided in Section 30 that in every factory in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grind-stone or abrasive wheel, the speed of the shaft or spindle upon which the to secure such safe working peripheral speed.

Section 30 provides that—

(1) In every factory in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measures shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliance driven by power is not exceeded.

Section 31 : (11) Pressure plant —

Sometimes manufacturing process is carried on using pressure plant in a factory. In order to deal with such events Section 31 lays down that if in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.

Section 31 provides that —

(1) If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.

(2) The State Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1) and prescribing such other safety measures in relation thereto as may in its opinion be necessary in any factory or class or description of factories.

(3) The State Government may, by rules, exempt, subject to such conditions as may be specified therein, any part of any plant or machinery referred to in sub-section (1) from the provisions of this section.

Section 32 : (12) Floors, stairs and means of access —

In order to ensure safety of the workers, it is not only necessary that the machinery must be securely fenced, and other precautions regarding striking gear and other devices for cutting of power, self-acting machines, hoists and lifting machines, revolving machines and pressure plants are to be complied with as required under the provisions of the Act, but it is also necessary that

safety measures in regard to floors, stairs and means of access are to be observed as required under provisions of the Act.

Section 32 provides that —

In every factory —

(a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip, and where it is necessary to ensure safety, steps, stairs, passages, and gangways shall be provided with substantial handrails;

(b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work.

(c) When any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working.

Section 33 : (13) Pits, sumps, opening in floors, etc. —

In every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which by reason of its depth, situation, construction or contents is or may be a source of danger are required to be securely covered or fenced. However, the State Government may, by order in writing, exempt subject to prescribed conditions, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

Section 33 provides that —

(1) In every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which by reason of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

(2) The State Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

Section 34 : (14) Excessive weights —

The Factories Act, 1948, under its Section 34 provides that no person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury. The State Government has been given power to make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

Section 34 provides that —

(1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

(2) The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specific process.

Section 35 : (15) Protection of eyes —

For the safety and protection of eyes of the workers engaged in any manufacturing process effective security measures are to be taken under Section 35.

Section 35 provides that—

In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves-

(a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or

(b) risk to the eyes by reason of exposure to excessive light, the State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediately vicinity of, the process.

Section 36 : (16) Precautions against dangerous fumes, gases, etc.—

Dangerous fumes may cause risk to life of workers, if they are allowed to enter such places where such dangerous fumes are likely to be present. It is, therefore provided under section 36(1) that no person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole or adequate size or other effective means of egress.

Section 36 provides that —

(1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapor or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapor or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapor or dust and unless-

(a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapor or dust; or

(b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.

Section 36A : (17) Precautions regarding the use of portable electric light —

W.e.f. 1.12.1987, the Factories Act under Section 36-A requires measures to be adopted regarding the use of portable electric light. It provides that no portable electric light or any other electric appliance of voltage exceeding 24 volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space (unless adequate safety devices are provided). It further provides that if any inflammable gas, fume or dust is likely to present in such chamber, tank, vat, pit, pipe, flue or other confined space, no lamp or light other than that of flame-proof construction shall be permitted to be used therein.

Section 36-A provides that —

In any factory —

(a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space, unless adequate safety devices are provided; and

(b) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space no lamp or light other than that of flame-proof construction shall be permitted to be used therein.

Section 37 : (18) Explosive or inflammable dust, gas, etc. —

In order to avoid chances of explosions wherein any manufacturing process produces gas, dust, fume or vapour Section 37 expressly contains required measures.

Section 37 provides that —

(1) Where in any factory any manufacturing process produces dust, gas, fume or vapor of such character and to such extent as to be likely to explode to ignition, all practicable measures shall be taken to prevent any such explosion by —

- (a) effective enclosure of the plant or machinery used in the process;
- (b) removal or prevention of the accumulation of such dust, gas, fume or vapor;
- (c) exclusion or effective enclosure of all possible sources of ignition.

(2) Where in any factory the plant or machinery used in a process such as is referred to in sub-section (1) is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the provisions in the plant or machinery of chokes, baffles, vents or other effective appliances.

(3) Where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapor under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely :

(a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapor into the part of any such pipe shall be effectively stopped by a stop-valve or other means;

(b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapor in the part or pipe to atmospheric pressure;

(c) where any such fastening as aforesaid has been loosened or removed effective measures shall be taken to prevent any explosive or inflammable gas or vapor from entering the part of pipe until the fastening has been secured, or, as the case may be, securely replaced:

PROVIDED that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.

(4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any factory to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising there from or to render such substance and fumes non-explosive or non-inflammable, and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(5) The State Government may by rules exempt, subject to such conditions as may be prescribed any factory or class or description of factories from compliance with all or any of the provisions of this section.

Section 38 : (19) Precautions in case of fire —

Section 38 deals with precautions against the consequences of fire by providing means of escape. It generally happens that proper and appropriate means of escape are not provided in the factories in case of fire incidents. It has thus been required under Section 38 that proper means of escape be provided for the safety of the worker in case of fire incidents.

Section 38 provides that —

(1) In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain —

- (a) safe means of escape for all persons in the event of a fire, and
- (b) the necessary equipment and facilities for extinguishing fire.

(2) Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases.

(3) The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the provisions of sub-sections (1) and (2).

(4) Notwithstanding anything contained in clause (a) of sub-section (1) or sub-section (2), if the Chief Inspector, having regard to the nature of the work carried on in any factory, the construction of such factory, special risk to life or safety, or any other circumstances, is of the opinion that the measures provided in the factory, whether as prescribed or not, for the purposes of clause (a) of sub-section (1) or sub-section (2), are inadequate, he may, by order in writing, require that such additional measures as he may consider reasonable and necessary, be provided in the factory before such date as is specified in the order.

(C) MEASURES IN REGARDS TO WELFARE

Welfare is the broad concept. It connotes a condition of well-being, happiness, satisfaction, conservation and development of human resources. The term welfare applied to labor, therefore, refers to adoption of measures which aim at promoting the physical, psychological and general well-being of the working population. The basic aim of welfare services in an industry is to improve the living and working conditions of workers and their families because the worker's well-being cannot be achieved in isolation of his family. The concept of welfare is necessarily dynamic, bearing a different interpretation from country to country and from time to time and even in the same country, according to its value system, social institution, degree of industrialization and general level of social and economic development. According to ILO classification welfare amenities are (i) latrines and urinals, (ii) washing and bathing facilities, (iii) crèches, (iv) rest shelters and canteens, (v) arrangements for drinking water, (vi) arrangements for prevention of Fatigue, (vii) health services including occupational safety, (viii) administrative arrangement within a plant or establishment to look after welfare, (ix) uniforms and protective cooling and (x) shift allowance.

The welfare measures are contained in Chapter V of the Factories Act. The whole of the Chapter, containing nine sections, relates to the long desired provision of a uniform standard of welfare order for industrial labour. Sections 42 to 48 deal with washing facilities, facilities for storing and drying clothing, facilities for sitting, first-aid appliances, canteens, shelter, rest rooms, lunch rooms and crèches. Section 49 deals with appointment of Welfare Officer in the factory. Section 50 empowers the State Government to make rules to supplement Chapter V of the Act.

It is quite natural that if the facilities are provided to the workers in the factories they may be carefree and mentally satisfied and so they would be in a position to work in the factory without worry, mental disturbance, and in high spirit. It has been therefore thought fit to make it imperative to adopt measures in regard to welfare of workers in factories. This Chapter contains following measures in regard to welfare of the workers :

Section 42 : (1) Washing facilities —

The Royal Commission in its report recommended : "The provision of suitable washing faci-

ties for all employees is even desirable, and here many factories are deficient. The workers who live in crowded areas have inadequate facilities for washing at their homes and bathing facilities would add to their comfort, health and efficiency. We recommend that for workers engaged in dirty processes, the provision for washing place and water should be made obligatory." It would be correct to say that the present provision of the law relating to welfare is more or less recognition of the various recommendations of the Royal Commission of Labour.

Section 42 provides that —

(1) In every factory, —

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

(b) separate and adequately screened facilities shall be provided for the use of male and female workers;

(c) such facilities shall be conveniently accessible and shall be kept clean.

(2) The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

Section 43 : (2) Facilities for storing and drying clothing.

Section 43 provides that — The State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

Section 44 : (3) Facilities for sitting.

Comfortable sitting arrangements are always necessary in the factories for workers so that they may sit and take rest and regain energy for further work. The Factories Act under its Section 44 provides that —

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

(2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.

(3) The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

Section 45 : (4) First-aid appliances.

Section 45 (as amended by Act No. 94 of 1976) of the Factories Act contains the following measures in respect of first-aid appliances :—

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

(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

(3) Each first-aid box or cupboard shall be kept in the charge of a separate responsible person who holds a certificate in first-aid treatment recognized by the State Government and who shall always be readily available during the working hours of the factory.

(4) In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

It shows that the first-aid boxes or other first-aid boxes or other first-aid appliances are required not only to be provided but maintained so as to be readily accessible during all working hours.

Section 46 : (5) Canteens.

The Factories Act, 1948 under its Section provides that-

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

(2) Without prejudice to the generality of the foregoing power, such rules may provide for —

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefore;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(dd) the items of expenditure in the running of the canteen which are not to be taken in account in fixing the cost of foodstuffs and which shall be borne by the employer;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

It makes clear that the State Government has power not only to ask to provide and maintain canteen or canteens in a factory wherein more than two hundred and fifty workers are ordinarily engaged in the work but it has power to lay down standards in respect of construction, accommodation, furniture and other equipment of the canteen, foodstuffs to be served therein and the charges may be made thereof. It may also rules regarding constitution of the managing committee for the canteen and representation of the workers in the management of the canteen and many other rules regarding items mentioned above.

Section 47 : (6) Shelters, rest rooms and lunch rooms.

Section 47 provides that —

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

PROVIDED that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section :

PROVIDED FURTHER that where a lunch room exists no worker shall eat any food in the work room.

(2) The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) The State Government may —

(a) prescribe the standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this section;

(b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

Section 48 : (7) Creches.

The report of the Royal Commission of Labor remarked that crèches are not uncommon in factories employing women, and some we saw were admirably staffed and equipped; others, if better than nothing, still left must be desired yet others were both dirty and inadequately furnished. In many of the Bengal Jute Mills, where caste feeling and the reluctance of women to leave their young children were stated by some witnesses to create serious difficulties. As a result of their absence infants are taken into the mills and can be found lying on sacking, in bobbin, laden atmosphere, and no year passes without a certain number of serious and minor accidents, and sometimes even of deaths, occurring among such children. The report emphasized the opening of crèches for the children of the female workers in the factories. It remarked that crèches should be provided in all places where women are employed in considerable numbers and we should make this obligation a statutory one in all factories employing not less than 250 women.

Under the circumstances the necessity of opening crèches was felt and in the course of time the minimum number of women workers necessary for opening the crèches has been reduced. Now the Factories Act, 1948 under its Section 48 provides for establishment of crèches in factories. In 1976 the minimum number of women workers for opening crèches has been reduced from 50 to 30 women workers.

Section 48 of the Factories Act as amended in 1976 contains following provisions regarding crèches—

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

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The State Government may make rules

(a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section;

(b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;

(c) requiring the provision in any factory of free milk or refreshment or both for such children;

(d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

Section 49 : (8) Welfare officers.

The occupier of every factory wherein five hundred or more workers are ordinarily employed is

under statutory duty to employ in factory such number of welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications of service of such officers.

Section 49 provides that —

(1) In every factory wherein five hundred or more workers are ordinarily employed, the occupier shall employ in the factory such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

In *Shyam Vinayals Ltd. v. T. Prasad and others, 1993 II LLJ 650*, where the respondent was appointed as an Astt. Personnel Officer of the company and not as a Welfare Officer. It was held by the Supreme Court that simply because as a Personnel Officer he was also looking after the problems of the labourers and for that matter the welfare of the labourers. It cannot be held that he was in fact appointed as Labour Welfare Officer.

Section 50 : (9) Power to make rules to supplement this Chapter.

Section 50 of the Factories Act, 1948 empowers the State Government to make rules —

The State Government may make rules —

(a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter;

(b) requiring in any factory or class or description of factories that representatives of the workers employed in the factory shall be associated with the management of the welfare arrangements of the workers.

It would be correct to say that the Act contains effective measures in respect of welfare of the workers and the State Government has been authorized to make these measures more effective and adequate. If the measures regarding health, safety and welfare of the workers as contained in the provisions of the Factories Act are properly enforced the workers will feel that they are respected citizens and they are important and necessary part of the manufacturing process and then they will be more interested in the performance their duties and with their devoted co-operation and efficient performance which would be able to raise standard of living not only of working community but the people in general and in the ultimate analyse we would be able to advance our country.

MEASURES IN REGARD TO WORKING HOURS OF ADULTS

The Factories Act not only contains measures in regard to health, safety and welfare of the workers but it also contains certain measures to be adopted in the factories in regard to working hours of the adult workers. It would be desirable to discuss these measures in detail.

Section 51 : (1) Weekly hours.

Section 51 provides that —

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

It has been provided that no adult worker shall be required or allowed to work in a factory for more than forty eight hours in any week. This provision is very clear. It prohibits the occupier to take work from any worker for more than 48 hours in any week. Sometimes it happens that the worker in order to please his employer intends to work for more than the prescribed period and

when the employer is asked, he simply replies that the worker has voluntarily worked for more than 48 hours. In order to avoid such situation the provision as contained in Section 51 of the Act says that no adult worker shall be allowed to work even if he voluntarily wants to work for more than the prescribed period.

However, Section 51 of the Act does not prohibit the employer from transferring an employee who was working 42 hours in a department to a different department in which the employee is to work 48 hours. The employees cannot on that score claim overtime wages for the extra six hours. The minimum working hours have been fixed beyond which no adult worker can be required to work but he can very well be required to work for the prescribed minimum working hours without incurring any liability as to overtime payment etc.

Section 52 : (2) Weekly holidays.

Section 52 provides that —

(1) No adult worker shall be required or allowed to work in a factory on the first day of the week (hereinafter referred to as the said day), unless —

(a) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and

(b) the manager of the factory has, before the said day or the substituted day under clause (a), whichever is earlier, —

(i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and

(ii) displayed a notice to that effect in the factory :

PROVIDED that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

(3) Where, in accordance with the provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

It has been provided that such notices given under sub-section (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or holiday to be cancelled whichever is earlier. It has been further provided that where, in accordance with the provisions of sub-section (1) any worker works on the said day and has had a holiday on the one of the three days immediately before it that said day shall, for the purpose of calculating his weekly hours of work be included in the preceding week.

The Factories Act provides for a weekly rest day. Under modern industrial conditions many thousands of wage-earners are obliged to work seven days a week, a practice which deprives of proper leisure and tends to break down their health.

Therefore, in order to maintain a balance between the public necessity and the comfort of the working community the Factories Act provides for a weekly rest day. This ordinarily falls on Sunday but employers can substitute for Sunday any of the three days preceding or following it, subject to the condition that there must not be more than 10 days continuous work.

Section 53 : (3) Compensatory holidays.

Section 53(1) provides that whereas a result of the passing of an order of the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of Section 52, if a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

The State Government has been authorized to prescribe the manner in which compensatory holidays shall be allowed.

Section 53 provides that —

(1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

Section 54 : (4) Daily hours.

Section 54 provides that —

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day:

PROVIDED that, subject to the previous approval of the Chief Inspector, the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.

That is subject to 48 hours of work per week no adult shall be required or allowed to work in a factory for more than nine hours in any day. But to previous approval of the Chief Inspector, the daily maximum specified, that is, nine hours may be exceeded in order to facilitate the change of shift.

Section 55 : (5) Intervals for rest.

Section 55 provides that —

(1) The periods of work] of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(2) The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt any factory from the provisions of sub-section (1) so however that the total number of hours worked by a worker without an interval does not exceed six.

The continuous engagement of workers in any manufacturing process results in fatigue among workers. Even with short hours the strain of modern industry with its speed, its piece work its division of labour, involving the monotonous repetition of the same process, sometimes even of the same movements, is a heavy tax on the worker. It is, therefore, necessary and desirable to provide some rest to the workers in factory where they are engaged for the whole day so that they may recover strength and interest for the job they are doing.

Section 55 makes provision for intervals for rest during the working hours. It provides that periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

It has been further provided that the State Government or, subject to the control of the State Government, the Chief Inspector may, by written order and for the reason specified therein; exempt any factory from the provisions of Section 55(1) so that the total number of hours worked by a worker without an interval does not exceed six.

It provides that workers must be given interval for rest during the working hours each day. Such rest must be of at least half an hour and no worker shall work for more than five hours unless he has been given such rest. The State Government may exempt any factory from this provision but only subject to the condition that the total number of hours worked by a worker without an interval is not in excess of six hours.

Section 56 : (6) Spreadover.

The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spread over more than ten and a half hours in any day:

PROVIDED that the Chief Inspector may, for reasons to be specified in writing, increase the spread over up to twelve hours.

Section 56 of the Act provides that the period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under Section 55, they shall be so arranged that inclusive of his intervals for rest under Section 55, they shall not spread over more than ten and half hours in any day. Thus spread-over of the period of an adult worker must not exceed 10 ½ hours in any day including his intervals of rest. But the Chief Inspector may increase it upto 12 hours for reasons to be specified in writing.

Section 57 : (7) Night shifts.

Where a worker in a factory works on a shift which extends beyond midnight, —

(a) for the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;

(b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

It shows that where a worker works in a shift extending beyond midnight, for the purposes of the provisions of weekly holidays as provided in Section 52 and compensatory holidays as provided under Section 53, a holiday for whole day shall mean a period of twenty four consecutive hours beginning when the shift ends. The following day for such worker shall be deemed to be the period of twenty four hours beginning when such shift ends and the hours he has worked after midnight shall be counted in the previous day.

Section 58 : (8) Prohibition of overlapping shifts.

(1) Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

(2) The State Government or subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section

of a factory or any category or description of workers therein from the provisions of sub-section (1).

Section 58(1) provides that work shall not be carried on in any factory by means of a system of shifts so arranged that not more than one relay of workers is engaged in work of the same kind at the same time. However, the State Government or subject to the control of the State Government, the Chief Inspector, may by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of Section 58(1). Thus the power, to exempt factories and workers from the provision of Section 58(1) is vested with the State Government.

Section 59 : (9) Extra wages for overtime.

(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

(3) Where any workers in a factory are paid on a piece-rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers:

PROVIDED that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the days on which he actually worked in the week in which the overtime work was done.

Explanation: For the purposes of this sub-section in computing the earnings for the days on which the worker actually worked such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.

(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of food grains and other articles admissible to a standard family.

Explanation 1 : "Standard family" means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2 : "Adult consumption unit" means the consumption unit of a male above the age of fourteen years, and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of .8 and .6 respectively of one adult consumption unit.

(5) The State Government may make rules prescribing —

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and

(6) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

Section 59 of the Act makes provisions for extra wages for overtime work, Section 59(1) provides that where a worker works in a factory for more than nine hours in any day or for more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

For the purposes of this sub-section (1) of Section 59, "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the occasional sale to workers of food-grains and other articles, as the worker is for time being entitled to, but does not include a bonus and wages for overtime work. This provision has been added in 1976 to make clear the expression "wages at the rate of twice his ordinary rate of wages" used in sub-section (1) of Section 59.

In *Govind Babu Salvi and others v. Vishwanath Janardhan Joshi and others* 1995 SCC(L&S) 308, where the employees claimed under Section 33C(2) of the Industrial Disputes Act, 1947 overtime wages contending that overtime wages should be calculated on the basis of their basic wages plus the house rent allowance, although occupying official accommodation, since under the rules they were entitled to house rent allowance when no official accommodation, was given to them. It was held that Section 59(2) contemplates eligibility to the payment of house rent allowance. The service conditions envisage employees who are and who are not provided with the official accommodation. The mere fact, therefore, that the service rules provide for house rent allowance when no accommodation is given, will not entitle the employees to succeed in the present claim. However, if the appellants are entitled to the calculation of the overtime wages by including H.R.A. otherwise than under Section 59(2) of the Factories Act, they are free to pursue that claim.

In the *Clothing Factory, National Workers' Union Avadi, Madras v. Union of India* and others, AIR 1990 SC 1383, the appellant union contended that the daily normal working hours of the workmen are 8 during the week except Saturday when the working hours are 4¾ only. Thus the total working hours during the week come to 44¾ hours. If the piece-rated workers are required to work beyond the aforesaid normal working hours they are entitled to over-time wages under section 59 of the Factories Act, 1948. Supreme Court ruled that in the present case the grant of overtime wages for the period in excess of the normal working hours of 44¾ per week and upto 48 hours is governed by the relevant departmental rules and section 59(1) of the Factories Act comes into play only if a piece worker has worked beyond nine hours in a day or 48 hours in week and not otherwise.

Section 60 : (10) Restriction on double employment.

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

Section 60 of the Act provides that no adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed. It is within the authority of the Inspector to sanction the employment of adult workers in more than one factory on the same day on being satisfied that such adult worker is allowed to work not more than 48 hours in any week and is allowed weekly holidays. A note shall be made under the initials of the Inspector, in the remarks column of a Register of such workers permitted to work in more than one factory.

Section 61 : (11) Notice of periods of work for adults.

Section 61 of the Act contains detailed provisions regarding notice of periods of work for adult workers as follows-

(1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 55, 56 and 58.

(3) Where all the adult workers in a factory are required to work during the same, periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in each group.

(5) For each group which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work.

(6) Where any group is required to work on a system of shifts and the relays are not to be subject to predetermined periodical changes of shifts, the manager of the factory shall fix the periods during which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts where under the periods during which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The State Government may prescribe forms of the notice required by sub-section (1) and the manner in which it shall be maintained.

(9) In the case of a factory beginning work after the commencement of this Act, a copy of the notice referred to in sub-section (1) shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

(10) Any proposed change in the system of work in any factory which will necessitate a change in the notice referred to in sub-section (1) shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

Section 62 : (12) Register of adult workers.

The Manager of every factory is required to maintain a register of adult workers to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory.

(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing —

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shifts, the relay to which he is allotted; and
- (e) such other particulars as may be prescribed:

PROVIDED that, if the Inspector is of opinion that any muster roll or register maintained as

part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this sections, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

(1A) No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.

(2) The State Government may prescribe the form of the register of adult workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Section 63 : (13) Hours of work to correspond with notice under section 61 and register under section 62.

No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

It has been provided in Section 63 of the Act that no adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

Section 64 : (14) Power to make exempting rules.

Section 64(1) authorizes the State Government to make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory.

(1) The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the Chief Inspector to declare any person, other than a person defined by such rules, as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed], and the provisions of this Chapter, other than the provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared:

PROVIDED that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed the wage limits specified in sub-section (6) of section 1 of the Payment of Wages Act, 1936 (4 of 1936), as amended from time to time], be entitled to extra wages in respect of overtime work under section 59..

(2) The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed —

(a) of workers engaged on urgent repairs, from the provisions of sections 51, 52, 54, 55 and 56;

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of sections 51, 54, 55, and 56;

(c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required by or under section 55, from the provisions of sections 51, 54, 55 and 56;

(d) of workers engaged in any work which for technical reasons must be carried on continuously from the provisions of sections 51, 52, 54, 55, and 56;

(e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of section 51 and section 52;

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons, from the provisions of section 51, section 52 and section 54;

(g) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces, from the provisions of sections 52 and 55;

(h) of workers engaged in engine-rooms or boiler-houses or in attending to power-plant or transmission machinery, from the provisions of section 51 and section 52;

(i) of workers engaged in the printing of newspapers, who are held up on account of the break-down of machinery, from the provisions of sections 51, 54 and 56.

Explanation : In this clause the expression "newspapers" has the meaning assigned to it in the Press and Registration of Books Act, 1867 (25 of 1867);

(j) of workers engaged in the loading or unloading of railway wagons, 7 [or lorries or trucks], from the provisions of sections 51, 52, 54, 55 and 56;

(k) of workers engaged in any work, which is notified by the State Government in the Official Gazette as a work of national importance, from the provisions of section 51, section 52, section 54, section 55 and section 56.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of section 61 which the State Government may deem to be expedient, subject to such conditions as it may prescribe.

(4) In making rules under this section, the State Government shall not exceed, except in respect of exemption under clause (a) of sub-section (2), the following limits of work inclusive of overtime:

(i) the total number of hours of work in any day shall not exceed ten;

(ii) the spread over, inclusive of intervals for rest, shall not exceed twelve hours in any one day:

PROVIDED that the State Government may, in respect of any or all of the categories of workers referred to in clause (d) of sub-section (2), make rules prescribing the circumstances in which, and the conditions subject to which, the restrictions imposed by clause (i) and clause (ii) shall not apply in order to enable a shift worker to work the whole or part of a subsequent shift in the absence of a worker who has failed to report for duty;

(iii) the total number of hours of work in a week, including overtime, shall not exceed sixty;

(iv)] the total number of hours of overtime shall not exceed fifty for any one quarter.

Explanation : "Quarter" means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October.

(5) Rules made under this section shall remain in force for not more than five years.

Section 65 : (15) Power to make exempting orders.

The State Government can relax or modify the provisions relating to the notice of periods of work for adult workers in case of factories where owing to nature of work carried on or to other circumstances, it is unreasonable to require that periods of work should be fixed beforehand.

(1) Where the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult worker in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The State Government or, subject to the control of the State Government, the Chief Inspector may, by written order exempt, on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or a class or description of factories from any or all of the provisions of section 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption granted under sub-section (2) shall be subject to the following conditions, namely —

(i) the total number of hours of work in any day shall not exceed twelve;

(ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;

(iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;

(iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

Explanation: In this sub-section "quarter" has the same meaning as in sub-section (4) of section 64.

Section 66 : (16) Further restrictions on employment of women.

There are additional restrictions on the employment of women workers. section 66 of the Act lays down that provisions of this Chapter VI concerning hours of adults shall, in their application to women in factories, be supplemented by the following further restrictions, namely,

(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely :

(a) no exemption from the provisions of section 54 may be granted in respect of any woman;

(b) no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M. :

But the State Government may, by notification in official Gazette, in respect of any factory or group or class or description of factories vary these limits laid down in clause (b) of Section 66 in such a way that no such variation shall authorize the employment of any woman between the hours of 10 P.M. and 5 A.M. Thus in no case any woman may be required or allowed to work between the hours 10 P.M. and 5 P.M. in the night.

MEASURES IN REGARD TO EMPLOYMENT OF YOUNG PERSONS

Chapter- VII Section 67 to 77.

Article 24 of the Constitution of India lays down that "no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment". The Directive Principles of State policy embodied in the Constitution of India reaffirm the policy of protection of children against exploitation in these terms: "The State shall, in particular, direct its policy of towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength that children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, that childhood and youth are protected against the exploitation against moral and material abandonment".

The pace of labour legislation in this country including protective legislation for children has been influenced by the various conventions and recommendations adopted by the International Labour Organization, the pressure of public opinion, and the findings of the various commissions and com-

mittees. In India, as in other industrial countries, including those in West, the present structure of labour legislation was developed from attempts to provide legal protection for the children, who, so to say, constitute the section of wage earning population, least able to defend itself.

The minimum age of employment of children has varied from time to time due to the pressure of public opinion. The minimum age of employment of children has raised from 7 in the first Factories Act passed in 1881 to 9 in the Act of 1891, to 12 in 1922, and 14 in 1948.

The Factories Act, 1948 after several amendments has provided protection to the children in respect of their employment in factories. It contains different measures for their safety and security which are being dealt with one by one.

Section 67 : (1) Prohibition of employment of young children.

Section 67 Provides that —

No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

Section 67 lays down that no child who has not completed his fourteenth year shall be required or allowed to work in any factory. It means no child below the age of 14 years can be asked to work or if he himself wants to work can be permitted to work in any factory. The provision is intended to safeguard the needy children who may like to work at the cost of their health and life.

Section 68 : (2) Non-adult workers to carry tokens.

Section 68 Provides that —

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless —

(a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and

(b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

It may thus, be pointed out that the children below the age of 14 years are not allowed at all to work in any factory and the children who are of 14 years but they are below 18 years can be allowed to work in any factory if the child concerned has been given certificate of fitness by a certifying surgeon and the said certificate is in the custody of the manager of the factory and the child so employed carries a token with him while he is at work in which a reference of such certificate has been made.

Section 69 : (3) Certificates of fitness.

Section 69 of the Act deals with the manner in which the fitness certificate is issued and it deals with procedure to be followed by a certifying surgeon in case the certificate is to be issued, renewed or revoked.

Section 69 Provides that —

(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

(2) The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew —

(a) a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work;

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year, and is fit for a full day's work in a factory:

PROVIDED that unless the certifying surgeon has a personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

(3) A certificate of fitness granted or renewed under sub-section (2) —

(a) shall be valid only for a period of twelve months from the date thereof;

(b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

(4) A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

(5) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

(6) Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.

(7) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Section 70 : (4) Effect of certificate of fitness granted to adolescent.

Section 70 Provides that —

(1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VIII.

(1A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.

PROVIDED that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,-

(i) vary the limits laid down in this sub-section so, however, that no such section shall authorize the employment of any female adolescent between 10 P.M. and 5 A.M.

(ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.]

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child or all the purposes of this Act.

Section 71 : (5) Working hours for children.

As indicated above the young persons who have completed the age of fourteen years may be permitted to work in any factory provided a certificate of fitness has been granted to them by the certifying surgeon in accordance with the procedure laid down in Section 69 of the Act. But Section 71 puts two conditions regarding hours of work.

Section 71 Provides that —

- (1) No child shall be employed or permitted to work in any factory
 - (a) for more than four and a half hours in any day;
 - (b) during the night.

Explanation : For the purpose of this sub-section "night" shall mean a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M.

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(3) The provisions of section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

Section 72 : (6) Notice of period of work for children.

A notice of periods of work for children, showing clearly for every day and periods during which children may be required or allowed to work is to be displayed as provided at Section 72.

Section 72 Provides that —

(1) There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (2) of section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.

(3) The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

Section 73 : (7) Register of child workers.

The manager of every factory in which children are employed is under statutory duty to maintain a register of child workers to be available to the Inspector at all times during working hours as provided in Section 73.

Section 73 Provides that —

(1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work

is being carried on in a factory, showing, —

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted, and
- (e) the number of his certificate of fitness granted under section 69.

(1A) No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.

(2) The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Section 74 : (8) Hours of work to correspond with notice under section 72 and register under section 73.

Section 74 Provides that —

No child shall be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

Section 75 : (9) Power to require medical examination.

Section 75 Provides that —

Where an Inspector is of opinion —

- (a) that any person working in a factory without a certificate of fitness is a young person, or
- (b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, —

he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

Where an Inspector is of opinion that any person working in a factory without a certificate of fitness is a young person, or that young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, the Inspector is empowered to serve on the manager of the factory a notice requiring that such person, or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs be employed or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under Section 69, or has been certified by the certifying surgeon examining him not to be a young person.

Section 76 : (10) Power to make rules.

Section 76 Provides that —

The State Government may make rules —

- (a) prescribing the forms of certificates of fitness to be granted under section 69, providing for

the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;

(b) prescribing the physical standards to be attained by children and adolescents working in factories;

(c) regulating the procedure of certifying surgeons under this Chapter;

(d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

Section 77 : (11) Certain other provisions of law not barred.

Section 77 of the Act expressly lays down the provisions of Chapter-VII pro governing employment of young persons in factories shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938 (26 of 1938).

MEASURES IN REGARDS TO ANNUAL LEAVE WITH WAGES

Chapter - VIII Section 78 to 84.

There are certain provisions contained in Chapter-VIII of the Factories Act, 1948 which govern the matters relating to annual leave with wages of the workers in the factories to which the provisions of this Act apply. It would be desirable to deal with these provisions one by one.

Section 78 : (1) Application of Chapter.

Section 78 provides that —

(1) The provisions of this Chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, 89[agreement (including settlement)] or contract of service :

PROVIDED that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favorably therein, the provisions of sections 79 to 82, so far as may be, shall apply.

(2) The provisions of this Chapter shall not apply to workers 91[in any factory]of any railway administered by the government, who are governed by leave rules approved by the Central Government.

Section 78 of the Act provides that the provisions of this Chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law, or under the terms of any award, agreement including settlement or contract of service provides for a longer annual leave with wages that provided under the provisions of this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement of contract of service or matters which are provided for less favourably therein, the provisions of Section 79 to 82, so far as may be, shall apply. Thus the matters in respect of which the provision is made under any award, agreement or contract of service shall be governed by such provision made therein and the matters for which no provision is made under such award, agreement or contract of service or matters in respect of which provision made therein is less favourable, shall be governed by the provisions of this Chapter. The proviso is intended to give better terms of service to the workers engaged in the factories.

However, sub-section (2) of Section 78 excludes workers in any factory of any railway administered by the Government, who are governed by leave rules approved by the Central Government, from the application of the provisions of this Chapter governing annual leave with wages.

Section 79 : (2) Annual leave with wages.

Section 79 provides that —

(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of —

(i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;

(ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

Explanation 1 : For the purpose of this sub-section —

(a) any days of lay-off, by agreement or contract or as permissible under the standing orders;

(b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and

(c) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but shall not earn leave for these days.

Explanation 2 : The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

(2) A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (i) or, as the case may be, clause (ii) of sub-section (1) if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

(3) If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in sub-section (1) or sub-section (2) making him eligible to avail of such leave, and such payment shall be made —

(i) where the worker is discharged or dismissed or quits employment, before the expiry of the second working day from the date of such discharge, dismissal, or quitting; and

(ii) where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

(4) In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.

(5) If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year :

PROVIDED that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child :

PROVIDED FURTHER that a worker, who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down in sub-section (8) and (9) 92[or in contravention of sub-section (10)] shall be entitled to carry forward the 93[leave refused] without any limit.

(6) A worker may at any time apply in writing to the manager of a factory not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year :

PROVIDED that the application shall be made not less than thirty days before the date on which the worker wishes his leave to begin, if he is employed in a public utility service as defined in clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947) :

PROVIDED FURTHER that the number of times in which leave may be taken during any year shall not exceed three.

(7) If a worker wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (6); and in such a case wages as admissible under section 81 shall be paid not later than fifteen days, or in the case of a public utility service not later than thirty days from the date of the application for leave.

(8) For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee of the factory constituted under section 3 of the Industrial Disputes Act, 1947 (14 of 1947), or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the grant of leave allowable under this section may be regulated.

(9) A scheme lodged under sub-section (8) shall be displayed at some conspicuous and convenient places in the factory and shall be in force for a period of twelve months from the date on which it comes into force, and may thereafter be renewed with or without modifications for a further period of twelve months at a time, by the manager in agreement with the Works Committee or a similar Committee, or as the case may be, in agreement with the representatives of the workers as specified in sub-section (8), and a notice of renewal shall be sent to the Chief Inspector before it is renewed.

(10) An application for leave which does not contravene the provisions of sub-section (6) shall not be refused, unless refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9).

(11) If the employment of a worker who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable under section 80 in respect of the leave not taken, and such payment shall be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination, and where a worker who quits his employment, on or before the next pay day.

(12) The unavailed leave of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

The general effect of the scheme for leave under Section 79 appears to be that if a worker has put in a certain period of work he becomes entitled to be granted a specified number of days of

leave with wages, and that he should not be deprived of the said right earned by him by any wrongful act of the employer which has the effect of preventing him from enjoying the benefit of the leave earned by him, and that if the position is such that he cannot be given the benefit in its original form, he should be compensated therefore by payment in lieu of it. (D.G. Venkatramu v. Pandavapura Sahkara Sakkare Karkhane Ltd., 1969 (18) FLR 392.)

It has been observed by the Supreme Court in *Biridhi Chand Sharma v. First Civil Judge, Nagpur AIR 1961 SC 644*, that the leave provided under Section 79 arises as a matter of right when a worker has put in a minimum number of working days and he is entitled to it. The fact that the worker remained absent for a longer period than that provided in Section 79, has no bearing on his right to leave, for if he so remained absent for such period, he loses the wages for the period which he would have otherwise earned. However, it does not mean that he should also lose the leave earned by him under Section 79 of the Act.

In *Abdul Latif v. Karamat Ali 1962 (2) LLJ 335*, it has been held that Section 79(3) of the Factories Act makes a worker who has been discharged or dismissed from service entitled to leave salary. In this case services of Munim were terminated because of the transfer of the factory by the former owner. Leave salary is therefore admissible to him.

Section 80 : (3) Wages during leave period.

Section 80 provides that —

(1) For the leave allowed to him under section 78 or section 79, as the case may be, a worker shall be entitled to wages] at a rate equal to the daily average of his total full time earnings for the days on which 3[he actually worked] during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrains and other articles: Provided that in the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles.

(2) The cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family. Explanation 1. — "Standard family" means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units. Explanation 2. — "Adult consumption unit" means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 0.8 and 0.6 respectively of one adult consumption unit.

(3) The State Government may make rules prescribing —

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and

(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

Section 80(1) provides that for the leave allowed to him under Section 78 or Section 79, as the case may be, a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the day on which he actually worked during the month immediately preceding

his leave, exclusive of any over-time and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale of foodgrains and other articles to the worker.

In 1987 a proviso to Section 80(1) has been inserted in respect of a worker who has not worked on any day during the calendar month preceding his leave. It provides that in the case of worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles.

In *Shanker Balaji Waje v. State of Maharashtra, AIR 1962 SC 517*, it has been observed by the Supreme Court that when Section 79(1) provides for leave on the basis of the period of working days, it must contemplate a definite period of work per working day and not any indefinite period for which a person may like to work or any particular day.

It is necessary for the calculation of the rate of wages for leave under Section (1) to know his total full-time earnings for the days he had worked during the relevant month. The expression 'total full-time earnings' can only mean the earnings he earns in a day by working full-time on the day.

Section 80(2) provides that the cash equivalent of the advantage accruing through the concessions sale to the worker of foodgrains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

Explanation 1. — "Standard family" means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2. — "Adult consumption unit" means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 0.8 and 0.6 respectively of one adult consumption unit.

Section 81 : (4) Payment in advance in certain cases.

Section 81 provides that —

A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child, shall before his leave begins, be paid the wages due for the period of the leave allowed.

Section 82 : (5) Mode of recovery of unpaid wages.

Section 82 provides that —

Any sum required to be paid by an employer, under this Chapter but not paid by him shall be recoverable as delayed wages under the provisions of the payment of Wages Act, 1936 (4 of 1936)

Section 83 : (6) Power to make rules.

Section 83 provides that —

The State Government may make rules directing managers of factories to keep registers containing such particulars as may be prescribed and requiring the registers to be made available for examination by Inspectors.

Section 84 : (7) Power to exempt factories.

Section 78 provides that —

Where the State Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion are not less favorable than those for which this Chapter makes provision, it may, by written order, exempt the factory from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.

Explanation : For the purposes of this section, in deciding whether the benefits which are provided for by any leave rules are less favorable than those for which this Chapter makes provision, or not, the totality of the benefits shall be taken into account.

PENALTIES AND PROCEDURE

The Factories Act, 1948 deals with penalties and procedure under its Chapter X containing Section 92 to 106. There have been made significant amendments in the provisions dealing with penalties and procedure so as to make the measures more effective and appropriate. It would be desirable to discuss these safety measures one by one.

Section 92 : (1) General penalty for offences

Section 92 of the Act provides that —

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 108[two years] or with fine which may extend to one lakh rupees or with both and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees] for each day on which the contravention is so continued:

PROVIDED that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty-five thousand rupees] in the case of an accident causing death, and 112[five thousand rupees] in the case of an accident causing serious bodily injury.

Explanation : In this section and in section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.

In order to make the compliance of the provisions of the Act more effective the amount of penalty has been enhanced. Now for violation of any provision of the Act, rules made there under or an order made under the Act, the occupier and the manager both shall be guilty of an offence and shall be punished with imprisonment up to two years or with fine up to one lakh rupees or both, and with a further fine up to one thousand rupees if the violation is continued after conviction for each day thereafter. Now for contravention of any of the provisions of Chapter IV or any rule made under section 87 resulting in an accident causing death or serious bodily injury, the minimum fine shall be 25 thousand rupees for death and 5 thousand rupees in case of an accident causing serious bodily injury. Thus the enhanced penalty will effectively check the contraventions of the provisions of the Act, rules or orders made under the Act.

Section 93 : (2) Liability of owner of premises in certain circumstances.

Section 93 of the Act deals with the liability of owner of premises in the circumstances speci-

fied therein. It also deals with the powers of Chief Inspector to carry out provisions of the Act by issuing orders in this respect.

Section 93 of the Act provides that —

(1) Where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation.

(2) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (1).

(3) Where in any premises, independent or self contained, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of—

(i) latrines, urinals and washing facilities insofar as the maintenance of the common supply of water for these purposes is concerned;

(ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of occupier;

(iii) safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages;

(iv) precautions in case of fire;

(v) maintenance of hoists and lifts; and

(vi) maintenance of any other common facilities approved in the premises.

(4) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (3).

(5) The provisions of sub-section (3) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories :

PROVIDED that the owner shall be responsible also for complying with the requirements relating to the provisions and maintenance of latrines, urinals and washing facilities.

(6) The Chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 46 or section 48.

(7) Where in any premises portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of —

(i) Chapter III, except sections 14 and 15;

(ii) Chapter IV, except sections 22, 23, 27, 34, 35 and 36 :

PROVIDED that in respect of the provisions of sections 21, 24 and 32 the owner's liability shall be only in so far as such provisions relate to things under his control :

PROVIDED FURTHER that the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him;

(iii) Section 42.

(8) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (7).

(9) In respect of sub-sections (5) and (7), while computing for the purposes of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be single factory.]

Section 94 : (3) Enhanced penalty after previous conviction

Section 94 of the Act provides that —

(1) If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to 114[three years] or with fine which shall not be less than 115[ten thousand rupees] but which may extend to two lakh rupees or with both :

PROVIDED that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees :

PROVIDED FURTHER that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than thirty-five thousand rupees in the case of an accident causing death and ten thousand rupees] in the case of an accident causing serious bodily injury.

(2) For the purposes of sub-section (1), no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted.

Section 94 of the Act says that if any person who has been convicted of any offence punishable under Section 92, is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three lakh rupees or with both.

But the court may for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees. But where contravention of any of the provisions of Chapter IV or any rule made there under or under Section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than thirty-five thousand rupees in the case of an accident causing death and ten thousand rupees in the case of an accident causing serious bodily injury.

Section 95 : (4) Penalty for obstructing Inspector

Section 95 of the Act provides that —

Whoever willfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made there under, or conceals or prevents any worker in a factory from appearing before, or being examined by, an Inspector, shall be punishable with imprisonment for a term which may extend to Six months or with fine which may extend to ten thousand rupees or with both.

Section 96 : (5) Penalty for wrongfully disclosing results of analysis under section 91

Section 96 of the Act provides that —

Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

Section 96-A : (6) Penalty for contravention of the provisions of Section 41-B, 41-C and 41-H.

With effect from 1-12-1987, Section 96A relating to hazardous processes have been inserted in 1987. Section 41-B deals with the compulsory disclosure of information by the occupier. Section 41-C lays down specific responsibility of the occupier to maintain accurate and up-to-date health records of the workers and section 41-H speaks of statutory duty of the occupier etc. to take immediate remedial action if the workers bring to the notice of occupier, the imminent danger to their lives or health. Section 96-A provides —

(1) Whoever fails to comply with or contravenes any of the provisions of sections 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

Section 97 : (7) Offences by workers.

Section 97 of the Act provides that —

(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provisions of this Act or any rules or orders made there under, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.

(2) Where a worker is convicted of an offence punishable under sub-section (1), the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

Section 97 lays down that subject to provisions of Section 111 if any worker employed in a factory contravenes any provision of this Act or any rules or orders made there under, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.

However, this provision is subject to provisions of Section 111 which speaks of obligations of the workers while engaged in a manufacturing process in the factory regarding willful interference or misuse of any appliances etc., provided for the purposes of securing health, safety or welfare of the workers.

Section 97 (2) lays down that where a worker is convicted of an offence punishable under sub-section (1) of Section 97 the occupier or manager shall not be deemed to be guilty of an offence in respect of that contravention unless it is proved that he failed to take all reasonable measures for its prevention.

Section 98 : (8) Penalty for using false certificate of fitness.

Section 98 of the Act provides that —

Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under

section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to one thousand rupees or with both.

Section 99 : (9) Penalty for permitting double employment of child.

Section 99 of the Act provides that —

If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to one thousand rupees, unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

Applicability of the Act.

Unless it is provided otherwise in this Act, it shall apply to:

- (a) every factory; and
- (b) every other establishment in which 20 or more persons are employed on any day during an accounting year.
- (c) the appropriate Government may also apply the provisions of this Act with effect from such accounting year as may be notified in the official Gazette, to any establishment or class of establishments [including an establishment as defined by Section 2(m) (ii) of the Factories Act, 1948] employing persons less than 20 but not less than 10 in number [Proviso to Section 1(3)].
- (d) The provision of this Act shall also apply to certain public sector establishments [Section 20(1)].

An establishment in which 20 or more persons are employed on any day during an accounting year, must continue to be governed by this Act, in spite of the fact that the number of person employed therein falls below 20 [Section 1(5)].

A part-time employee is also an employee for the purpose of calculating the number of employees i.e., 20 or more under Section 1(3)(b). [*Automobile Karamchhari Sangh Vs. Industrial Tribunal, (1976) 38 FLR 268(All)*]

Act not to apply to certain classes of Employees (Section 32).

The following are the categories of employees who are excluded from the operation of the Act :

- (i) Employees employed by the Life Insurance Corporation of India;
- (ii) Seamen as defined under Section 3(42) of the Merchant Shipping Act, 1958;
- (iii) Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
- (iv) Employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;
- (v) Employees employed by —
 - (a) the Indian Red Cross Society or any other institution of a like nature (including its branches);
 - (b) Universities and other educational Institutions;
 - (c) Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;

- (vi) Employees employed by the Reserve Bank of India;
- (vii) Employees employed by the financial and other institutions such as;
 - (a) the Industrial Finance Corporation of India;
 - (b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A, of the State Financial Corporations Act, 1951;
 - (c) the Deposit Insurance Corporation;
 - (d) the National Bank for Agriculture and Rural Development ;
 - (e) the Unit Trust of India;
 - (f) the Industrial Development Bank of India;
 - (g) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
 - (h) the National Housing Bank ;
 - (i) any other financial institution (other than a banking company) being an establishment in public sector, which the Central Government may, by notification in the Official Gazette, specify; while so specifying the Central Government shall have regard to its capital structure, its objectives and the nature of its activities and the nature and extent of financial assistance or any concession given to it by the Government and any other relevant factor ;
- (viii) Employees employed by inland water transport establishment operating on routes passing through any other country.

Application of the Act to establishments in Public Sector in certain cases [Section 20] In following two conditions, this Act will be applied on the public sector establishments(PSEs) —

(i) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services ,in competition with an establishment in private sector, and

(ii) The income from such sale or services or both is not less than twenty percent of the gross income of the establishment in public sector for that year, then, the provisions of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector [Sub-section(1)].

Save as otherwise provided in Sub-section (1), nothing in this Act shall apply to the employees employed by any establishment in the public sector [Sub-section (2)].

Definitions : (Section 2)

Accounting year [Section 2(1) : It means, (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;

(ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;

(iii) in any other case —

(a) the year commencing on the first day of April; or

(b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced.

Provided that an option once exercised by the employer under clause (iii)(b) shall not again be

exercised except with the previous permission of the prescribed authority in writing and on such terms as the authority may think to impose.

Allocable surplus [Section 2(4)] : Allocable surplus means :

(a) In case where company is employer- Where a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act, 1961 for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act- there 67% of the allocable surplus in an accounting year shall be the allocable surplus,

(b) In any other case of employer- the allocable surplus means 60% of such available surplus.

In ***Maharashtra Veej Mandal Kamgar Sangh v. Mahastra State Electricity Board and others, (1988) II L.L.J. 134 (Bombay)***, it was held that Income Tax Officer is the competent authority to determine the correct amount of depreciation allowable under the Income Tax Act subject to any appeal or revision from his order. Therefore in the absence of any challenge to the correctness of that order and in the absence of either party contending that the correct amount of depreciation is other than that allowed by the I.T.O., one fails to see why that amount should not be regarded as correct. Therefore the Tribunal would be correct in accepting the amount of depreciation allowed by I.T.O. in calculating the allowable surplus under the Payment of Bonus Act.

Appropriate Government [Section 2(5)] : In relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government, the Appropriate Government means the Central Government. But in relation to any other establishment, the expression means the Government of the State in which the other establishment is situated.

Available Surplus [Section 2(6)] : It means the available surplus in an accounting year as defined and computed under Section 5 of the Act. Available surplus shall be the gross profit for that year after deduction of prior charges (mentioned in Section 6) and by addition of the amount equal to the difference of certain items (mentioned in section 7).

Therefore, available surplus can be calculated with the following equation :

Gross profit for the purpose of bonus – Amount of prior charges + Amount equal to the differences between the amount of direct taxes on the gross profit [for the immediately preceding accounting year and of the immediate preceding accounting year after deduction of the amount of bonus which the employer has paid/liable to pay for that year (as calculated in accordance with the provisions of section 7)] = available surplus.

Award [Section 2(7)] : It means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal, or National Tribunal constituted under the Industrial Disputes Act, 1947, or by any other authority constituted under any corresponding law, relating to investigation and settlement of industrial disputes in force in a state and includes an arbitration award made under Section 10A of that Act or under that law.

Employee [Section 2(13)] : It means any person (other than an apprentice) employed —

- (i) On a salary or wage not exceeding Rs. 21,000 per mensem in any industry,
- (ii) To do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work,
- (iii) for hire or reward,
- (iv) Under the express /implied terms of employment.

In *UCO Bank Employees Association, Madras v. Union of India and others, (2003) 1 L.L.J. 20 (Mad.)*, due to change in ceiling limit of salary/or wage for purpose of bonus certain employees who were earlier getting bonus became ineligible for bonus and hence they sought a declaration in this petition that Section 2(13) of the Payment of Bonus Act, 1965 should be declared unconstitutional. At the time of enactment of Payment of Bonus Act, 1965 the ceiling of salary or wage was fixed at Rs. 1600. It was subsequently enhanced to Rs. 2,500 and in the year 1995 during the pendency of the writ petition it was again raised to Rs. 3,500. Some employees who were earlier eligible for bonus had become ineligible after enhancement of ceiling limit of wages. Dismissing the petition the High Court observed that the State was the better judge of what the policy should be in economic matters. Section 2(13) of the Payment of Bonus Act was held to be constitutional.

Employer [Section 2(14)] : includes —

(1) In relation to an establishment which is a factory — the owner or occupier of the factory, including the agent of such owner or such occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of that factory under Section 7(1)(f) of the Factories Act, 1948, the person so named are termed as employer.

(2) In relation to any other establishment which is not a factory — the person or the authority which, has the ultimate control over the affairs of the establishment and if the said affairs are entrusted to a manager, managing director, or managing agent then such manager, managing director or managing agent are termed as employer.

It has been held in *State of Gujarat v. Jayantilal Keshavji Mehta, 1970 Lab IC 504 (Guj HC)*, that a person in order to be an employer need not be a Manager, Chairman or Director of a company having control over the affairs of establishment is an employer.

Establishment in private sector [Section 2(15)] : This expression means any establishment other than an establishment in public Sector.

Establishment in public Sector [Section 2(16)] : It means an establishment owned, controlled or managed by —

- (a) a Government company as defined in Section 617 of the Companies Act, 1956;
- (b) a corporation in which not less than 40% of its capital is held (whether singly or taken together) by :
 - (i) the Government; or
 - (ii) the Reserve Bank of India; or
 - (iii) a corporation owned by the Government or the Reserve Bank of India.

Salary or wage [Section 2(21)] : It means — (i) all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, (ii) all remuneration which will be payable to an employee in respect of his employment or of work done, if the terms of employment, express or implied, were fulfilled, (iii) It includes dearness allowance, i.e., all cash payments by whatever name called, paid to an employee on account of a rise in the cost of living.

But the term excludes :

- (i) any other allowance which the employee is for the time being entitled to;
- (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- (iii) any travelling concession;

- (iv) any bonus (including incentive, production & attendance bonus);
- (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and
- (vii) any commission payable to the employee.

Explanation — Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee;

In *Itta Narasimha Rao vs Akula Mahalakshmyya, (1970) 1 L.L.J. 697 (AP)*, held that Bonus payable to an employee is wages and is not liable to attachment. In *Gopalan v. Angamali Chit Fund, AIR 1977 Ker. 120*, it was pointed out that it is true that the definition of wages does not include bonus, but that it is because for the purpose of relation to the wages paid to the employee. The fact that bonus is specifically excluded from the definition of wages in Section 2(21) of the Act itself signifies that but for such exclusion bonus would fall under "wages".

In *Hamdard (Walkf) Laboratories v. Dy. Labour Commissioner, (2007) 2 SCC (L&S) 166*, the Supreme Court deciding a complex matter falling within the ambit of payment of Wages Act. U. P. Industrial Disputes Act and the Payment of Bonus Act observed that different statutes, enacted by the Parliament from time to time, although beneficial in character to the workmen, seek to achieve different purposes. Different authorities have been prescribed for enforcing the provisions of the respective statutes. Authority under the Payment of Wages is one of them. In view of the fact that diverse authorities exercise jurisdiction which may be overlapping to some extent, the Courts while interpreting the provisions of the statutes must interpret them in such manner so as to give effect thereto.

THE PAYMENT OF BONUS ACT, 1965

APPLICABILITY OF BONUS

Section 8 : Eligibility for bonus — Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

Every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment-(i) for not less than thirty working days in that year, (ii) on a salary or wage not exceeding Rs. 21,000 per mensem. [Section 2(13) read with Section 8].

It was held in *H. P. State Electricity Board and Another v. Ranjeet Singh and Others, 2008 II L.L.J. 629 (SC)*, that the Labor Court under the Payment of Bonus Act, 1965 can decide only matters specified in Second Schedule of the Act. Bonus appears as item 5 in the Third Schedule. Therefore, the question of entitlement to bonus could not have been decided by the Labour Court. It could only decide the quantum of bonus and not its payability.

The payment of Bonus Act does not make any distinction as to whether an employee is daily wager, temporary, permanent, weekly paid, monthly paid etc. the only precondition he should have worked in the establishment for not less than 30 working days in an accounting year. [*Himachal Pradesh State Electricity Board and Others Vs Krishan Dutt 2010 (127) FLR 577(H.P.)*].

If an employee is prevented from working and subsequently reinstated in service, employee's statutory liability for bonus cannot be said to have been lost. Nor can the employer refuse for such bonus. [*Project Manager, Ahemdabad Project, ONGC vs. Sham Kumar Sahegal [1995] 1 LLJ 863 Guj*].

An employee in the following cases is entitled to bonus :

- (i) A temporary workman is entitled to bonus on the basis of total number of days worked by him.
- (ii) An employee of a seasonal factory is entitled to proportionate bonus and not the minimum bonus as prescribed under Section 10 of the Act.
- (iii) A part time employee as a sweeper engaged on a regular basis is entitled to bonus. [*Automobile Karmachari Sangh vs. Industrial Tribunal [1970] 38 FJR 268*].
- (iv) A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period. [*East Asiatic Co. (P.) Ltd. vs. Industrial Tribunal [1961] 1 LLJ 720*].
- (v) A probationer is an employee and as such is entitled to bonus. [*Bank of Madurai Ltd. vs. Employees' Union, 1970, Lab IC 1215*].
- (vi) A dismissed employee reinstated with back wages is entitled to bonus. [*Gammon India Ltd. vs. Niranjana Das [1984] 48 FLR 310*].
- (vii) A piece-rated worker is entitled to bonus. [*Mathuradas Kanji vs. L.A. Tribunal AIR, [1958], SC 899*].
- (viii) Employees employed through contractors on building operations shall be entitled to bonus [The Payment of Bonus (Amendment) Act, 2007 w.e.f 1.04.2006]

An employee in the following cases is not entitled to bonus :

Section 9:- Disqualification for bonus — Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for —

(a) fraud; or

(b) riotous or violent behaviour while on the premises of the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment.

1. An apprentice is not entitled to bonus [*Wheel & RIM Co. vs. Government of T.N. (1971) 2 LLJ 299; 40 FJR 18*].

2. An employee who is dismissed from service on any ground of misconduct as mentioned in Section 9, is disqualified for any bonus and not merely for bonus of the accounting year in which he is dismissed (*Pandian Roadways Corporation Ltd. vs. Presiding Officer [1996] 2 CLR 1175 (Mad)*)

Section-3 : Establishment to include department, undertakings and branches.

Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or indifferent places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act :

Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

The proviso to Section 3 requires a separate balance sheet and profit and loss account to be prepared and maintained in respect of a department or undertaking or branch of a company and once it is established the department, undertaking or branch will be treated as a separate establishment for the purpose of computation of proviso of section 3 does not require the accounts to be maintained on a particular footing by the parent company or under the orders of parents company. It merely provides for the maintenance of separate accounts and for maintenance of separate accounts on a specific footing.

In *Haryana State Co-operative Land Development Bank Ltd. v. Haryana State Land Development Co-operative Banks Employees Union and another, 2004 SCC (L & S) 257*, where the main question for decision in this appeal was whether the employees working with primary Agricultural Co-operative Banks were entitled to bonus at the same rate at which it was paid to employees working in the Apex Bank also described as State Bank, i.e. Haryana State Co-operative Land Development Bank Ltd. The Haryana State Co-operative Land Development Bank, the Apex Bank was governed by the Haryana Co-operative Societies Act, 1984. It transacted its business mainly through primary Agricultural Co-operative Banks (Primary Banks) which were its members and were themselves registered co-operative societies. The staff of the Primary Banks except class IV employees were drawn from the Apex Bank out of the cadre maintained by it in terms of clause 70 of the model bye laws applicable to the Primary Banks. Such employees working with the Primary Banks claimed parity in rate of bonus with the employees working in the Apex Bank. The claim was rejected by the Primary Banks but the High Court upheld that claim. Referring to Section 34-A of the Payment of Bonus Act, 1965, the High Court held that Rule framed under the Co-operative Societies Act had an overriding effect vis-s-vis Section 34. Therefore, the Apex Bank filed the instant appeal by special leave.

Section 4 : Computation of gross profits. — The gross profits derived by an employer from an establishment in respect of any accounting year shall —

- (a) in the case of a banking company, be calculated in the manner specified in the First Schedule;
- (b) in any other case, be calculated in the manner specified in the Second Schedule.

In *All India Voltas and Voltas Employees Federation v. Voltas Ltd., (1985) (1985) II L.L.J. 409 (SC)*, the company paid to its employees certain amounts during 1964-65 and 1965-66 under a "Superannuation Special Retired Gratuity Scheme". The workmen claimed that the amounts paid under the aforesaid scheme should be added back as bonus paid to its employees in respect of previous accounting years for the purpose of computing gross profits under the Act. It was held that the scheme framed by the company was a scheme for payment of bonus though named differently. The employees who have joined this scheme have expressly stated in writing not to participate in the annual bonus since the special Retiring Gratuity Scheme was in lieu of annual bonus. The scheme was devised in 1959 to reduce the liability of income-tax. Amount paid by the company under the scheme have, therefore, to be added back for the purpose of computing the gross the gross profit. The matter was, therefore, remitted back to the Tribunal for appropriate orders in the light of the judgment.

Section 6 : A Prior deduction from gross profits —

Having calculated the gross profits in terms of Section 4, the following sums shall be deducted from gross profit as prior charges :

(a) **Depreciation** : Any amount by way of depreciation admissible under Section 32(1) of the Income Tax Act or under the provisions of the agriculture income tax law. If however, any

(b) employer has been paying bonus to his employees under a settlement or an award or agreement made before the promulgation of the Bonus Ordinance, i.e., before 29 May, 1965, and subsisting on that date, after deducting from the "gross profit" notional normal depreciation, then, the amount of depreciation to be deducted as prior charge may continue to be such notional normal

(c) depreciation. This, however, is at the option of the employer who may choose either the normal depreciation or the depreciation admissible under the Bonus Act. This option has to be exercised only once and within one year from May 29, 1965.

(d) **Development Rebate or Allowance** : Any amount by way of development rebate, or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act.

(e) **Direct Taxes** : Subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year.

(f) **Return on Capital etc.** : Such further sums as are specified in respect of the employer in the Third Schedule. This schedule prescribes the categories of employer (company, banking company, corporations, cooperative society etc.) who are entitled for permissible deductions.



In *Workmen N.G. Bank v. N.G. Bank, AIR 1976 SC 611*, the Bank claimed the deduction of depreciation at a figure higher than that appearing in the profit and loss account. It was held that the burden of proving that the depreciation claimed by it was the correct amount of depreciation, admissible under Section 32(1) of the Income Tax Act was on the Bank and that burden has to be discharged by the Bank by producing proper and satisfactory evidence. There - fore, permissible deduction from the gross profits is not depreciation calculated according to any recognized method of accountancy followed by a banking company, but only such depreciation as is admissible in accordance with the provisions of Section 32(1) of the Income Tax Act. **Section 5** : Computation of available surplus.- The available surplus in respect of any ac-counting year shall be the gross profits for that year after deducting therefrom the sums referred to in Section 6 :

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of—

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 6; and

(b) an amount equal to the difference between—

(i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

According to Section 2(6), it means the available surplus Computed under Section 5.

Accordingly, the available surplus in respect of any accounting year comprises of the gross profits for that year after deducting there from certain prior charges referred to in Section 6.

Further an amount equal to the tax saved on the account of bonus in respect of the immediately preceding accounting year should be added. It is obvious that an employer can claim the amount of bonus payable as deductible expense for the purpose of his tax assessments. Such saving must also be added to the amount of gross profits for the purpose of calculation of available surplus.

In *Indian Oxygen Ltd. v. Their Workmen*, AIR 1972 SC 471, it was held that in calculation the allocable surplus the tax concession by way of rebate that an employer will get under Income-tax Act on the bonus for fund to be payable need not be taken into consideration. Account shown as doubtful debts (and not as bad debts) is to be added back to gross profits. Similarly, capital expenditures in the nature of expenses incurred on Plant Transfer Charges, Patent fees and Rent paid for godown for storing goods, for erecting a factory are to be added back to the gross profit for the purpose of determining allocable surplus.

Section 10 : Payment of minimum bonus. — Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year :

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

It was held in *State vs. Sardar Dalip Singh Majithia*, 1979, Lab. I.C. (913) (All), that 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. 3.16 Payment of Maximum Bonus (Section 11)

In *P. K. Bhadra & Co. and others v. State of Bihar and others*, (2003) 1 L.L.J. 351 (Jhar.), the petitioners were contractors providing labour for building maintenance work in TELCO Township. In June, 1992 the Labour Commissioner issued a letter in pursuance to which the Deputy Labour Commissioner directed the petitioner to pay bonus to their workmen. This order directing payment of bonus was impugned by the petitioner. The High Court observed that on a

perusal of the impugned order it appeared that the Deputy Labour Commissioner, without applying his mind and without looking into the relevant provisions of the Payment of Bonus Act, 1965 proceeded on the basis of the said letter and also on the basis of some suggestions and opinions from the Law Department of the Government. The letter issued by the respondents was illegal and without jurisdiction as it was issued without giving opportunity of hearing to the petitioners and without deciding the issue whether the operations carried on by the petitioners were building the issue whether the operations carried on by the petitioners were building operations or not. The High Court concluded that the petitioners should not have been saddled with the liability of payment of bonus under the said Act.

Section 11 : Payment of maximum bonus —

(1) 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 the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent. of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

Section 12 : Calculation of bonus with respect to certain employees —

Where the salary or wage of an employee exceeds two thousand and five hundred rupees 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 wage were two thousand and five hundred rupees per mensem.

Section 13 : Proportionate reduction in bonus in certain cases. - Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent. of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

Section 14 : Computation of number of working days. — For the purposes of section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which —

(a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947) or under any other law applicable to the establishment;

(b) he has been on leave with salary or wage;

(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(d) the employee has been on maternity leave with salary or wage, during the accounting year.

As per Section 13, where an employee has not worked for all the working days in an accounting year, the minimum bonus of Rs. 100 or, as the case may be of Rs. 60, if such bonus is higher than 8.33% of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

Suppose X is an employee with the wages of Rs. 80 per month. Here X is entitled to receive Rs. 100 as bonus for the accounting year. If however, X has worked only for half the number of the working days, there X is entitled only for half the number of working days i.e., Rs. 50 only as bonus.

Exceptions : 1. Both Sections 13 and 14 do not cover a case where an employee is prevented from working by reason of an illegal order of termination. If an employee by himself and on his violation does not work on all the working days in an accounting year, then the formula prescribed in Section 13 read with section 14 has to be applied. But where an employee was ready and willing to work, but for reasons beyond his control was unable to work and gain the eligibility for bonus under Section 8 of the Act, it cannot be said that Section 14 is a bar for such a claim.

2. The section 13 as to proportionate reduction in bonus shall not apply on the employee of seasonal factory. Here the word ' working days in any accounting year' mean those days of the year during which the employee concerned is actually allowed to work [*Sakhkar Mills Mazdoor Sangh V. Gwalior Sugar Co. Ltd.(1985) 2SCC 134*]

Section 15 : Set On and Set Off of Allocable Surplus : The scheme of providing minimum and maximum bonus is based on the device of the set-on and set-off of the allocable surplus of a particular year. The amount of set-on and set-off has to be taken into account for the payment of bonus with the allocable surplus.

The available allocable surplus for the relevant accounting year has to be arrived at after taking into account the figures of set-on and set-off in the previous year.

Following is the method of set-off of available surplus :

(1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of 20% of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the 4th accounting year. This excess is to be utilised for the purpose of payment of bonus, in the manner illustrated in the Fourth Schedule. [Section 15(1)]

(2) There may be a case where there is no available surplus or where the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employee in the establishment under Section 10 and there is no amount or sufficient amount carried forward and set on under Section 15(1) which could be utilised for the purpose of payment of minimum bonus. In such a situation minimum amount or the deficiency as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on in the manner illustrated in the Fourth Schedule. [Section 15(2)]

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by Sub-section (1) or (2) for the purpose of payment of bonus under this Act [Section 15(3)].

(4) Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account [Section 15(4)].

MISCELLANEOUS

A. Adjustment of customary or interim bonus against bonus payable under the Act (Section 17) : (i) If in any accounting year, an employer has paid any puja bonus or other customary bonus to any employee, then the former shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year. The employee shall be entitled to receive only the balance.

(ii) The employer can do the same thing even in a case where he has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable.

B. Deduction of certain amounts (in the case of misconduct) from bonus payable under the Act (Section 18) : where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then the employer can lawfully deduct the amount of loss from the amount of bonus payable by him to the employee in respect of that accounting year only. In this case, the employee shall get only the balance, if there be any.

C. Time-Limit for payment of bonus (Section 19) : All amounts payable to an employee by way of bonus shall be paid by the employer within a period of 8 months from the closing of the accounting year. But this period of 8 months may be extended up to a maximum of 2 years by the appropriate Government or by any authority specified by the appropriate Government. This extension is to be granted on the application of the employer and only for sufficient reasons.

But where there is a dispute regarding the payment of bonus pending before any authority the same must be paid within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of a dispute mentioned under Section 22.

D. Recovery of the bonus due from an employer (Section 21) : It may so happen that an amount of bonus is due to an employee from his employer under a settlement or an award or agreement and it is not paid. In such a case following procedure may be followed to recover the due bonus :

(i) the employee may make an application for the recovery of the amount due to him to the appropriate Government.

(ii) The application can be made by any other person authorized by the employee in writing to act on his behalf. It can be made even by his assignee or heirs when the employee is dead.

(iii) The application is to be made within one year from the date on which the money (bonus) became due but it may be entertained even after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(iv) On receipt of the aforesaid application for the recovery of the bonus amount, if the appropriate Government or such authority as it may specify in this connection is satisfied that the money is so due, it shall issue a certificate for that amount to the Collector.

(v) Thereupon, Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

Section 27 : Inspectors —

(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

(2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with —

(a) require an employer to furnish such information as he may consider necessary;

(b) at any reasonable time and with such assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;

(c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;

(d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;

(e) exercise such other powers as may be prescribed.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(4) Any person required to produce any accounts, book, register or other document or to give information by an Inspector under subsection (1) shall be legally bound to do so.

(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of, any of its books of account or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of section 34A of the Banking Regulation Act, 1949 (10 of 1949)].

Section 28 : Penalty —

If any person —

(a) contravenes any of the provisions of this Act or any rule made there under; or

(b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 29 : Offences by Companies.

Liabilities of persons: If an offence under this Act is committed by a Company, then every person who, at the time of committing the offence was in charge of and responsible to the company for the conduct of its business, shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly.

Exemption : Any such person who is liable for punishment, shall be exonerated from liabilities and incidental punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Punishment where the liability is proved : Where an offence has been committed by a company and it is proved that the offence has been committed by a company with the consent and connivance of, or is attributable to any neglect on the part of any director ('director' in relation to a firm means a partner in the firm), manager, secretary, or other officer of the company (meaning any body corporate and including a firm or other association of individuals), such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 36 : Power of Exemption.

Though the Act creates liability on the part of employer to pay the minimum bonus and confers a right to the workmen, as mentioned in Section 10, the obligation and right is subject to exemption under Section 36. The appropriate Government may, having regard to the financial position and other relevant circumstances of an establishment or class of establishment, exempt by notification in the official Gazette, such establishment or class of establishments from all or any provision of the Payment of Bonus Act. It may do so if it is of opinion that it will not be in public interest to apply all or any of the provision of this Act to such establishment or class of establishment. It may exempt such establishment or class of establishment from the application of the provision of this Act for such period as may be specified in the notification and impose such conditions as it may think fit to impose.

Section 38 : Power to make Rules.

The Central Government may make rules for the purpose of carrying into effect the provisions of this Act. In particular, and without prejudice to the generality to the said rule-making power, such rules may provide for :

- (i) the authority for granting permission under the proviso to Section 2(1) (iii) relating to "accounting year",
- (ii) the preparation of registers, records and other documents and the form and manner in which such registers, records and documents may be maintained under Section 26;
- (iii) the powers which may be exercised by an Inspector under Section 27(2)(e);
- (iv) any other matter which is to be, or may be, prescribed.

Every rule thus made has to be laid before each House of Parliament while it is in session for a total period of 30 days, which may be comprised in one session or in two or more successive sessions. If before the expiry of the session immediately following the session or the successive sessions aforesaid, both House agree in making any modification in the rule, the modified version of the rule shall be operative; but if both Houses agree that the rule should not be made, it will not be operative. Such modification, or as the case may be annulment shall be without prejudice to the validity of anything previously done under that rule. In other words, any previously done act under that rule will remain unaffected by the said modification or annulment.



TABLE OF CONTENTS

CHAPTER: THE EMPLOYEES' STATE INSURANCE ACT, 1948

- A. Constitution Of Employees State Insurance Corporation**
- B. Constitution Of Medical Benefit Council**
- C. Matters Which Can Be Decided By The Employees State Insurance Court**
- D. Penalties Under E.S.I Act, 1948**
- E. Occupational Disease**
- F. Employee**
- G. Law Relating To Sickness Benefit**
- H. Law Relating To Maternity Benefit**
- I. Accidents Under ESI Act, 1948**

CHAPTER: THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

- A. Powers Of Inspectors And Appointment**
- B. Employee**
- C. Exempted Establishment**
- D. Priority Of Payment Of Contributions Over Other Debts**
- E. Liability Of The Employer To Pay Contributions**
- F. Employer**

CHAPTER: THE EMPLOYEES' STATE INSURANCE ACT, 1948

A. Constitution Of Employees State Insurance Corporation

The "Employees' State Insurance Corporation" shall consist of the following members who are as follows:-

- a) a Chairman to be appointed by the Central Government ;
- b) a Vice-Chairman to be appointed by the Central Government ;
- c) not more than five persons to be 2 appointed by the Central Government.
- d) one person each representing each of the States in which this Act is in force to be appointed by the State Government concerned ;
- e) one person to be appointed by the Central Government to represent the Union territories;
- f) ten persons representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government ;
- g) ten persons representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government ;
- h) two persons representing the medical profession to be appointed by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government,
- i) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States ; and
- j) the Director-General of the Corporation, ex-officio.

B. Constitution Of Medical Benefit Council

Medical Benefit Council shall consist of the following persons namely:-

- a) the Director General, the Employees' State Insurance Corporation, ex-officio as Chairman ;
- b) the Director General, Health Services, ex-officio as Co-Chairman ;
- c) the Medical Commissioner of the Corporation, ex-officio ;
- d) one member each representing each of the States (other than Union territories) in which this Act is in force to be appointed by the State Government concerned ;
- e) three members representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government,
- f) three members representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government ; and
- g) three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government.

C. Matters Which Can Be Decided By The Employees State Insurance Court

Employees' Insurance Court in accordance with the provisions of this Act can decide :-

- a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
- b) the rate of wages or average daily wages of an employee for the purposes of this Act, or
- c) the rate of contribution payable by a principal employer in respect of any employee, or
- d) the person who is or was the principal employer in respect of any employee, or
- e) the right of any person to any benefit and as to the amount and duration thereof, or

- f) any direction issued by the Corporation under section 55A on a review of any payment of dependant's benefits, or

D. Penalties Under E.S.I Act, 1948

The following are the penalties as per the Act:-

1. Section – 84: This section deals with penalties for making wrong / false statements made by the Insured Persons with a view to take any benefit which is not admissible to him under the Act. Under Act with imprisonment for a term which may extend to six months or with fine which may extend to Two thousand rupees or with both.
2. Section 85: This section deals with penalties for non – compliance with the various provisions of the ESI Act and Regulations made there under. Such non- compliance with any of the provisions of the Act constitutes an offence committed by the employer of a covered Factory / Establishment which is punishable under Section 85(a) to 85(g) of the Act.
3. Section – 85(a): Envisages that if an employer fails to pay any contribution payable under the Act within the prescribed time-limit, he thus commits an offence u/s 85(a) of the Act, which is punishable with imprisonment for a term which may extend to three years u/s 85(i) of the Act, provided it shall not be less than One year and fine of Ten thousand rupees u/s 85(i)(a) of the Act where employees' share of contribution is deducted by the employer from their wages but not paid. In other case where term of imprisonment shall not be less than 6 months and fine of Five thousand rupees u/s 85(i) (b).
4. Section 85(b) to 85(g): Says that if an employer commits an offence under this section for noncompliance with any other provisions of the Act, which is punishable with imprisonment for a term which may extends to One year or with fine up to Four thousand rupees or with both.
5. Section 85A: This section deals with enhanced punishment in certain cases after previous conviction. If any employer convicted by a Court for an offence punishable under the Act, committing the same offence, shall, for every such subsequent offence, be punished with imprisonment for a term which may extend to Two years and with fine of Five thousand rupees.

6. Section 85 B: Provides that the corporation may recover damages from the employer by way of penalty under this section if any employer fails to pay contribution payable under the Act within the specified time-limit or pays contribution belatedly provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard.

The amount of damages may not exceed the amount of contribution paid / payable.

There is also a provision to reduce or waive damages recoverable under this section in respect of a Factory/Establishment which is a Sick Industrial Unit and in respect of which Rehabilitation Scheme has been sanctioned by BIFR, under Regulation 31-C, of ESI (General) Regulations, 1950.

- i. In case of change of Management including transfer of undertaking to worker's Co-operative or in case of merger or amalgamation of Sick Industrial Unit with a healthy company, damages levied/ leviable can be waived completely.
 - ii. In other cases, depending on merits, damages levied/leviable can be waived up to 50%.
 - iii. In exceptional hard cases, the damages levied/leviable can be waived either partially/totally.
7. Section 85C: Provides that where an employer is convicted for an offence of non-payment of contribution under this Act, the Court in addition to giving any punishment by order, direct him to pay the amount of contribution for which he was convicted within a time period. The Court can also extend the time given periodically. If the employer still fails to pay the contribution and submit returns within the time given by the court or within the extended time period given, the employer is deemed to have committed a further offence and shall be punishable with imprisonment under Section-85 and is also liable to pay a fine which may extend to one thousand rupees for every day of default.
8. Section 86: Provides that no prosecution under this Act shall be instituted without previous sanction of the Insurance Commissioner or of such other officer of the corporation as may be authorized in this behalf by the Director General of the Corporation. It is also provided that No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try

any offence under this Act. And No Court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof.

9. Section 86A mentioning Offences by companies- If a company commits an offense, it can become difficult to fix the blame on the concerned person in default. This section says that in such cases the person responsible for the running of the company should face punishment.

E. Occupational Disease

Section 52A of the E.S.I. Act, 1948 provides the provisions regarding occupational disease under the E.S.I. Act, 1948. According to this section if an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an "employment injury" arising out of and in the course of employment.

Lastly section 52A mentions that no benefit shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment. The provisions of section 51A shall not apply to the cases to which this section applies.

F. Employee

Section 2(9) of The Employees' State Insurance Act, 1948 explains the term "employee". "Employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and:-

- i. Who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or

- establishment, whether such work is done by the employee in the factory or establishment or elsewhere ; or
- ii. Who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment ; or
 - iii. Whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment.
 - iv. Any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time.

The term “employee” does not include the following:-

- a) Any member of the Indian naval, military or air forces ; or
- b) Any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government. However an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

G. Law Relating To Sickness Benefit

Section 46 mentions about the different benefits available to the employees under the E.S.I. Act. According to this section the insured persons, their dependants or the persons hereinafter mentioned, shall be entitled to sickness benefit amongst others. Sickness benefit can be described as periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf.

Section 49 states the qualification of a person to claim sickness benefit. The conditions subject to which such benefit may be given, the rate and period thereof shall be such as may be prescribed by the Central Government.

H. Law Relating To Maternity Benefit

Section 46 mentions about the different benefits available to the employees under the E.S.I. Act. According to this section the insured persons, their dependants or the persons hereinafter mentioned, shall be entitled to maternity benefit amongst others. Maternity benefit can be termed as periodical payments to an insured woman in case of confinement or mis-carriage or sickness arising out of pregnancy, confinement, premature birth of child or mis-carriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations.

Section 50 states the qualification of an insured woman to claim maternity benefit.

I. Accidents Under ESI Act, 1948

The types of Accident which will be claimed in the course of employment under the Employees State Insurance Act, 1948 are:-

1. **Accidents happening while acting in breach of regulations, etc.** (Section 51B)- An accident shall be deemed to arise out of and in the course of an employee's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if-
 - a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and
 - b) the act is done for the purpose of and in connection with the employer's trade or business.
2. **Accidents happening while travelling in employer's transport (section 51C)**- An accident happening while an employee is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no

obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if-

- a) the accident would have been deemed so to have arisen had he been under such obligation; and
- b) at the time of the accident, the vehicle-
 - i. is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and
 - ii. is not being operated in the ordinary course of public transport service.

In this section "vehicle" includes a vessel and an aircraft.

CHAPTER: THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

A. Powers Of Inspectors And Appointment

Section 13 of E.P.F. Act, 1952 relates to powers and functions of inspectors and their appointments. According to this section, the appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, the Scheme, the Pension Scheme or the Insurance Scheme, and may define their jurisdiction.

Any Inspector so appointed may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any Scheme or the Insurance Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of any Scheme or the Insurance Scheme have been complied with in respect of an establishment to which any Scheme or the Insurance Scheme applies or for the purpose of ascertaining whether the provisions of this Act or any Scheme or the Insurance Scheme are applicable to any establishment to which the Scheme or the Insurance Scheme has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted establishment:-

- a) require an employer or any contractor from whom any amount is recoverable under section 8A to furnish such information as he may consider necessary

- b) at any reasonable time and with such assistance, if any, as he may think fit, enter and search any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment.
- c) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer or any contractor from whom any amount is
- d) recoverable under section 8A, his agent or servant or any other person found in charge of the establishment of any premises connected therewith or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the establishment.
- e) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;
- f) exercise such other powers as the Scheme or the Insurance Scheme may provide.

The section further provides that any Inspector so appointed may, for the purpose of inquiring into the correctness of any information furnished in connection with the Pension Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the Pension Scheme have been complied with in respect of an establishment to which the Pension Scheme applies, exercise all or any of the powers conferred, on him under clause (a), clause (b), clause (c) or clause (d) of sub-section (2).

The provisions of the Code of Criminal Procedure, 1898 shall, so far as may be, be, apply to any search or seizure under sub-section (2), or under sub-section (2A), as the case may be, as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

B. Employee

Section 2(f) of E.P.F. Act, 1952 provides the definition of the term "**employee**". According to this section "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person-

- i. employed by or through a contractor in or in connection with the work of the establishment;
- ii. engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment.

Section 2(ff) states that "Exempted employee" means an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under section 17, have applied.

C. Exempted Establishment

According to section 17, the appropriate Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, from the operation of all or any of the provisions of any Scheme:-

- a) any establishment to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other 3 establishment of a similar character; or
- b) any establishment if the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other 3 establishment of a similar character.

D. Priority Of Payment Of Contributions Over Other Debts

where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due-

- a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme or
- b) from the employer in relation to an exempted establishment in respect of any contribution to the Provident Fund or any Insurance Fund (in so far it relates to exempted employees), under the rules of the Provident Fund or any Insurance Fund, any contribution payable by him towards the Family Pension Fund under sub-section (6) of section 17, damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17,

E. Liability Of The Employer To Pay Contributions

Section 17B provides for liability of the employer to pay contributions and other due under the Act in case of transfer of establishments. According to this section, where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision Of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer.

It is further provided that the liability of the transferee shall be limited to the value

of the assets obtained by him by such transfer.

F. Employer

Section 2(e) of E.P.F. Act, 1952 provides the definition of the term "**employer**".

According to this section employer means-

- i. in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named; and
- ii. in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.