Factories Act, 1948 (Chart 1.1)

Object

- To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.
- The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.

Processes no to be held as manufacturing processes:

- Exhibition of films
- Industrial school or Institute or Institute imparting training, producing cloth, not with a view to its sale.
- Receiving of news from various sources and print as newspaper
- Preliminary packing of raw material for delivering it to the factory
- Finished goods and packing thereof
- Transforming and transmitting electricity generated at one power station to another substation.

Applicability

- The Act extends to whole of India including Jammu & Kashmir Covers all manufacturing
- processes and establishments falling within the definition of 'factory'.
- Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Manufacturing Process [S. 2(k)]

It means any process for

- Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- Pumping oil, water or sewage or any other substance; or
- Generating, transforming, transmitting power; or
- Composing types for printing, printing by letter press, lithography, photogravure or other similar process, or book binding; or
- Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
- Preserving or storing any article in cold storage.

Important Definitions

- Adult [Section 2(a)] -Completed 18 years
- Adolescent [Section 2(b)]
 15 18 years.
- Child [Section 2(c)] -Completed 15 years.
- Young Person [Section 2(d)] means a person who is either a child or an adolescent.
- Calendar Year [Section 2(bb)] means the period of 12 months beginning from 01st January in any year.
- Day means [Section 2(e)] means a period of 24 hours beginning at midnight.
- Week [Section 2(f)] means a period of 7 days beginning at mid-night on Saturday night or such other night as may be approved by the Chief Inspector of Factories.
- Power [Section 2(g)] means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.
- Prime Mover [Section 2(h)] means any engine, motor or other appliance which generates or otherwise provides power.

Machinery [S. 2(j)] includes

- Prime-movers,
- Transmission machinery and
- All other appliances whereby power is
- ✓ Generated
- ✓ Transformed
- ✓ Transmitted
- ✓ Applied.

Processes held as

manufacturing processes:

- Manufacturing cigarette from sun-cured tobacco leaves
- The operation of peeling, washing of prawns for putting them in cold storage
- Stitching old gunny bags
- Converting sea water into salt.
- A process employed for the purpose of pumping water.
- Preparation of soap in soap works.
- Making of bidies.
- Preparation of food & beverages and its sale to members of a club
- Receiving products in bulk, in packing & packing as per clients requirements
- Construction of railway use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying down railway line
- Transforming of raw cinematographic films into finished products

Factory [Section 2(m)] includes any premises including the precincts thereof where

- ✓ Ten or more workers are working, or were working on any day of the preceding twelve months, to carry any manufacturing process with the aid of power
- Twenty or more workers are working, or were working on a day of the preceding twelve months, to carry any manufacturing process without the aid of power.

<u>Excludes</u>

- a mine,
- unit belonging to the armed forces,
- railway running shed,
- hotel,
- restaurant or eating place.

<u>Includes</u>

- Company engaged in construction of railway line
- seasonal factories or factories carrying on intermittent manufacturing processes
- The salt works, in which the work done is of conversion of sea water into crystals of salt
- Premises where manufacturing process is carried on with 7 persons permanent and 3 persons are temporary
- The cutting of the woods or converting the wood into planks

Explanation

- 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.

- An Electronic Data Processing 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.

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FACTORIES ACT, 1948 (Chart 1.2)

Worker [Section 2(I)]

The definition of the worker has the following ingredients

Person should be employed

- There should exist an employer employee relationship
- Employer not just to control what work to be done but also the manner in which the same shall be done
- Relationship of master and servant not necessary
- Piece rated workers who work on regular basis shall be treated as workers
- Partner or independent contractor cannot be regarded as worker
- Employment should be direct or through some agency
- Employment should be directly by the management or through employment agency
- There should exist a privity of Contract
- Employment should be in any manufacturing process Includes
- People who are involved in incidental to or connected with not only the manufacturing process itself but also the subject of the manufacturing process.
- Munim in a factory
- Workmen in canteen attached to a factory

Employment may be for remuneration or not Includes

- A person who receives wages as remuneration for his services
- Person who receives remuneration on piecework basis
- Apprentice
- Honorary worker
- Person employed for no wages
- ✓ Any member of the armed forces of the Union is excluded from the definition of worker
- ✓ All workers are employees but all employees are not workers.
- All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act

Occupier [Section 2(n)]

- A person who has ultimate control over the affairs of the factory
- ✤In case of:
- Firm Any Partner
- Company Director
- Factory owned or controlled by the Central Government or State Government or Local Authority - person appointed to manage the affairs of the factory
- In case of a ship which is being repaired in a dry dock which is available for hire, deemed occupiers are
- (i) The owner of the dock
- (ii) The owner of the ship or his agent or master or other officer-in-charge of the ship to carry out the repair
 - Occupier of the factory needs to give a notice to Chief Inspector
 - 30 days before date of resumption of seasonal factories
 - 15 days before date of use of premises by occupier
 - Where new manager is appointed, occupier to intimate within 7 days of appointment
 - Contents of Notice
 - Name & situation of factory
 - Name & address of occupier
 - Name & address of owner
 - Name of Manager
 - Address of communication
 - Number of workers
 - Nature of manufacturing process
 - Total power installed
 - *Occupier should ensure workers
 - Health
 - Safety
 - Welfare

GENERAL DUTIES OF THE OCCUPIER (Section 7A)

- Proper maintenance of the plants as to ensure that they are safe and without risks to health
- Ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- To ensure the health and safety of all workers, information, instruction, training and supervision
- Safe access to all places of work in the factory

WORKING HOURS

- An adult worker shall be allowed to work only for 48 hours in any week.
- there shall be holiday for the whole day in every week
- adult worker shall not be allowed to work for more than 9 hours in any day.
- No adult worker shall work continuously for more than 5 hours unless a rest interval of at least half an hour is given to him
- Spreadover should not be more than 10.5 hours on any day and can be extended upto 12 hours by Chief Inspector
- No adult worker shall work for consecutively 10 days
- Child who has not completed 14 years of age shall not be employed in factory
- Where a worker has worked for 240 days, adult worker shall be entitled to leave for 20 days

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Applicability Act is applicable to

whole of India

Employer [S. 2(e)]

Who employs, whether directly or indirectly, employees in any scheduled employment, in which minimum rates of wages have been fixed. Manager of a Factory, Person or authority appointed by any Government for the supervision and control of employees, A person appointed as Chief Executive Officer by the local authority, In any other case, a person responsible to the owner or for the payment of wages.

Composition

Employers & employees who shall be **equal** in number and Independent persons **not exceeding 1/3rd of** its total number of members, Independent person to be **chairman** of the board by central

Objectives and Scope of the Act(i) The Act provides for fixationand revision of minimumwages of the workers engagedin the scheduledemployments.(ii) To safeguard the interests of
the workers.

(iii) Both central and State
 Governments are responsible,
 in respect of scheduled
 employments within their
 jurisdictions to fix and revise

Scheduled employment [S. 2{g)] Employment specified in the Schedule. Part I relates to <u>various</u> employment in establishments. Part II relates to employment in Agriculture

Manner of Fixation/Revision of Minimum Wages

Appropriate Government may fix minimum rate of wages for Time work, Piece work, Guaranteed Time Rate & Over Time Rate Section 3(3) provides that **different minimum rates** of wages may be fixed for Different scheduled employments, different classes of work in the same scheduled employments, adults, adolescents, children and apprentices, Different localities.

Minimum rates of wages may be fixed by any one or more of the wage periods such as by the <u>hour, day, month</u>, or by such other <u>large wage periods</u> as may be prescribed.

Appropriate Government [S. 2(b)]

<u>Central Government</u> - When any employment is carried out under Central Authority, mine, oilfield and where major part of organization is established by a Central Act <u>State Government</u> - Any other scheduled employment

Wages [S. 2(h)]

All remunerations capable of being expressed in terms of money, where terms of the contract of employment are express or implied. <u>Includes</u>- House rent allowance <u>Excludes</u>- House accommodation, Supply of light / water / medical, Contribution by the employer to any Pension Fund or Provident Fund, Travelling allowance, Gratuity payable

Procedure for Fixing and Revising Minimum Wages (S. 5)

Committee Method [Section 5(1)(a)]

The appropriate Government may appoint as many committees and sub-committees. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the **expiry of 3 months** from the date of the issue of the notification.

Notification Method [Section 5{1}(b)] The appropriate Government shall by notification, in the Official Gazette publish its proposals and specify a date not less than 2 months from the date of notification. The representations received will be considered by the appropriate Government. It will consult the Advisory Board and thereafter fix/revise the minimum rates of wages. If no date is specified, the notification shall come into force on expiry of 3 months from the date of its issue. Minimum wage rates can be revised with retrospective effect.

MINIMUM WAGES ACT, 1948

Employee [S. 2(i)]

Any person who is employed for: Hire or reward to do any work, Skilled or unskilled, Manual or clerical. In a scheduled employment in respect of which minimum rates of wages have been fixed. <u>Includes</u>-An outworker; An employee declared to be an employee by the appropriate Government. <u>Excludes</u>-Any member of Armed Forces of the Union.

Fixation of Minimum Rates of Wages (S. 3)

Appropriate Government shall fix the minimum rate of wages. It need not be universal throughout the state. Depending upon locality it differs. <u>Revision of Minimum Wages</u>

The 'appropriate Government' may review the minimum rates at such intervals as it may think fit, such <u>intervals not exceeding 5 years</u>, and revise the minimum rate of wages, if necessary which means that minimum wages can be revised earlier than 5 years also.

Maintenance of Registers & Records (S. 18)

The <u>employer</u> is required to maintain registers and records giving particulars and is also required to exhibit notices, in the prescribed form at the place of work and maintain wage books or wage-slips.

Some noteworthy points

Payment of <u>less than the minimum</u> <u>rates of wages</u> notified is an <u>offence</u> (S. 12)

Payment for **overtime** work can be claimed only by the employees who are getting minimum rate of wages

Advisory Board (S. 7)

Constituted for the purpose of co-ordinating the work of committees & sub committees. Central Advisory Board (S. 8)

Advising the Central Government and State Governments in the matters of fixation & revision of minimum rates of wages.

Authority and Claims (S. 20-21)

The appropriate Government, may appoint any of the <u>following</u> as an authority to hear and decide any claims

Any Commissioner for Workmen's Compensation; <u>or</u> Any officer of the Central Government exercising functions as Labour Commissioner for any region; <u>or</u> Any officer of the State Government not below the rank of Labour Commissioner; <u>or</u> Any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

Offences and Penalties (S. 22)

Any employer who (a) pays to any employee less than the minimum rates of wages shall be punishable with imprisonment for a term **6 months** or with fine **Rs. 500** or with **both**. If any employer contravenes provision of this Act & if no other penalty is provided by this Act, be punishable with fine **Rs. 500**.

Some noteworthy points

An employee who is employed for less than normal working hours in a day, will receive minimum wages fixed. (S. 15) Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid at minimum time rate. (S. 17)

Chart prepared by - **CS Kalyani Shirode CS, LL.B, B.Com., Diploma in Cyber Laws** 9960 181346, 888888 17 19 INSPIRE Professional Academy, Pune

EQUAL REMUNERATION ACT, 1976

Object

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of similar nature.

nature. Authorities for hearing and deciding claims and complaints (Section 7) Appropriate Government appoint such <u>officers</u>, not

Government appoint such <u>officers</u>, <u>not</u> <u>below the rank of a</u> <u>Labour Officer</u>, to be the authorities for the purpose of hearing and deciding complaints.

<u>Maintenance of</u> <u>Registers (Section 8)</u> It is the <u>duty of every</u> <u>employer</u>, to maintain registers and other documents in relation to the workers

employed by him in the prescribed manner. <u>Applicability -</u>The Act extends to <u>whole of</u> India.

Act to have overriding effect (Section 3)

The provisions of the Act shall have <u>overriding</u> <u>effect over other acts,</u> <u>award, agreement or</u> <u>contract of service</u> whether made before or after the commencement of the Act.

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

No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment.

Both Men and women workers shall be paid equal remuneration by the Employer for same work or work of similar nature.

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<u>Man and Woman</u> [Section 2(d)] mean male and female human beings, respectively, of any age.

Remuneration [Section 2(g)] means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled.

Same work or Work of a similar nature [Section 2(h)] means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.

Advisory Committee (Section 6) To increase employment

opportunities for women, the <u>appropriate Government shall</u> <u>constitute</u> one or more advisory committee to admire it with regard to the extent to which women may be employed in an establishment. In tendering its advice, the advisory committee shall have regard to the number of women employed in such establishment, nature of work, hours of work, suitability of women for employment etc

Discrimination not to be made while recruiting men and women (Section 5)

Employer while making recruitment for the same work or work of a similar nature, shall not make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force .

However, above mentioned section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes.

Penalty

If any employer:-

(i) makes any recruitment in contravention of the provisions of this Act; or(ii) makes any payment of remuneration at unequal

rates to men and women workers for the same work or work of a similar nature; or

(iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or

(iv) omits or fails to carry out any direction made by the appropriate Government,

then he/ she shall be punishable with <u>fine</u> or with <u>imprisonment</u> or with <u>both.</u>

About CS Kalyani Shirode

- ✓ Company Secretary at age of 22
- ✓ Firm believer in hardwork, perseverance and is a great source of motivation to students and generates positive attitude in students.
- ✓ Actively involved in various activities as coordinator and has authored magazine articles addressing technical complexities of various legal aspects.
- ✓ Delivered talks at various Academic Institutions
- ✓ Teaching experience of two years

SUMMARY NOTES - CHAPTER 14

INDUSTRIAL DISPUTES ACT, 1947

I. Object and Scope

- The Act provides machinery for peaceful resolution of disputes and to promote harmonious relation between employers and workers.
- > It is the legislation for investigation and settlement of all industrial disputes.
- > This Act extends to whole of India.

In the case of Workmen of <u>Dimakuchi Tea Estate v. Dimakuchi Tea Estate</u>, the Supreme Court laid down following objectives of the Act:

- 1. Promotion of measures of securing and preserving amity and good relations between the employer and workmen.
- 2. Investigation and settlement of industrial disputes between employers and employers, employers and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade unions or an association of employers or a federation of associations of employers.
- 3. Prevention of illegal strikes and lock-outs.
- 4. Relief to workmen in the matter of lay-off and retrenchment.
- 5. Promotion of collective bargaining.

II. Industry [Section 2(j)]

- 1. It means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.
- 2. The Supreme Court carried out an in-depth study of the definition of the term industry in a comprehensive manner in the case of Bangalore Water Supply and Sewerage Board v. A Rajiappa, after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term 'industry'

III. Industrial Dispute [Section 2(k)]

It means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

IV. Workman [Section 2(s)]

It means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute

V. Wages [Section 2(rr)]

- It means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to workman in respect of his employment or of work done in such employment, and <u>includes</u>:
 - ✓ such allowance (including dearness allowance) as the workman is for the time being entitled to;
 - \checkmark the value of any house accommodation, or
 - \checkmark Value of supply of light, water, medical attendance or other facilities
 - ✓ Value of any concessional supply of foodgrains or other articles;
 - ✓ Any travelling concession,

but does not include:

- ✓ Bonus + Gratuity + Contribution of PF
- ✓ Commission

VI. Lock-out [Section 2(I)]

- 1. Lock-out means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.
- 2. Lock out is an antithesis to strike.
- 3. Strike is a weapon available to the employees for enforcing their industrial demands, a lock out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands
- 4. When lock-out is legal, no wages are payable to workmen
- 5. When lock-out is illegal, wages are payable to workmen

6. When lock-out is without notice and in violation of the provisions of the Act, it is illegal lockout.

VII. Lay-off [Section 2(kkk)]

- 1. Lay-off means the failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:
 - ✓ shortage of coal, power or raw materials
 - ✓ accumulation of stocks
 - ✓ break-down of machinery
 - ✓ natural calamity
- 2. It is temporary in nature
- 3. Financial stringency cannot be a ground for lay-off

VIII. Difference between lay-off and lock-out

- 1. In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.
- 2. In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.
- 3. In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.
- 4. Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.
- 5. Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

IX. Retrenchment [Section 2(00)]

- 1. It means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:
 - \checkmark voluntary retirement of the workman; or
 - \checkmark retirement of the workman or reaching the age of superannuation or
 - ✓ termination of the service of the workman as a result of the non-renewal of the contract of employment
 - \checkmark termination of the service of workman on the ground of continued ill-health.
- 2. Disengagement of workers of seasonal factories after season is not a retrenchment
- 3. If service of an employee who was appointed irregularly is terminated, it is case of retrenchment
- 4. Management can retrench its employees only for proper reasons
- 5. Striking of the name of a worker from the rolls on the ground of absence for a specific period, provided under Standing Orders amounts to retrenchment

X. TYPES OF STRIKE

- Stay-in, sit-down, pen-down or tool-down strike
 - ✓ Workers enter into the factory, take their seat but refuse to work
 - ✓ It is also known as primary strike
- Go-slow
 - ✓ Workers deliberately delay production and work done
 - ✓ It is not strike but serious misconduct
- Sympathetic strike
 - \checkmark Cessation of work in the support of the demands of workmen belonging to other employer.
 - ✓ The management can take disciplinary action for the absence of workmen.
- Hunger strike
 - \checkmark Some workers may resort to fast on or near the place of work or residence of the employer.
 - \checkmark If it is peaceful and does not result in cessation of work, it will not constitute a strike.
 - ✓ But if due to such an act, even those present for work, could not be given work, it will amount to strike
- Work-to-rule
 - \checkmark Since there is no cessation of work, it does not constitute a strike.

XI. AUTHORITIES UNDER THE ACT

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

- (i) Works Committee.
- (ii) Conciliation Officers.
- (iii) Boards of Conciliation.
- (iv) Court of Inquiry.
- (v) Labour Tribunals.
- (vi) Industrial Tribunals.

(vii) National Tribunal.

(i) Works Committee Section 3

- the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months
- > The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment.
- > It shall be the duty of the Works Committee to promote and maintain good relations between the employer and workmen

(ii) Conciliation Officers - Section 4

- With the duty of mediating in and promoting the settlement of industrial disputes, the appropriate Government, by notification in the Official Gazette, appoints Conciliation Officers.
- The Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries

(iii) Boards of Conciliation - Section 5

- The appropriate Government may, as occasion arises, constitute by a notification in the Official Gazette, a Board of Conciliation.
- > A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit.
- > The Board shall have duty to investigate into the dispute and bring a settlement between the employee and employer.

(iv) Courts of Inquiry - Section 6

- The appropriate Government by notification in the Official Gazette constitute a Court of Inquiry into any matter appearing to be connected with or relevant to an industrial dispute
- It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry.

(v) Labour Courts - Section 7

- It is constituted by Appropriate Government
- > It relates to matters specified in second schedule
- > It has one member as presiding officer who is or has
 - ✓ been judge of High Court for minimum period of 3 years or
 - ✓ been a district Judge or an Additional District Judge for less than 3 years
 - ✓ held any judicial office in India for not less than seven years; or
 - ✓ been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.

(vi) Industrial Tribunals (Section 7-A)

- > The appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule
- The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e., on a reference of any industrial dispute, the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriate Government.
- A Tribunal shall consist of one person only to be appointed by the appropriate Government who shall not be qualified for appointment as the presiding officer of a Tribunal unless:
 - ✓ He is, or has been, a Judge of High Court; or
 - ✓ He has, for a period of not less than three years, been a District Judges or an Additional District Judge
- The person appointed as a Presiding Officer should be an independent person and must not have attained the age of 65 years

(vii) National Tribunals (Section 7-B)

- The Central Government alone has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes which
 - \checkmark involve questions of national importance or
 - ✓ are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes.
- A National Tribunal shall consist of one person only to be appointed by the Central Government who shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless: he is, or has been, a Judge of a High Court
- > A presiding officer should be an independent person and must not have attained the age of 65 years.

XII. Legality of Strike

- 1. A strike is legal if it does not violate any provision of the statute
- 2. The justifiability of strike has no relation with its legality or illegality
- 3. The justification of strikes has to be viewed from the stand point of fairness and reasonableness of demands made by workmen and not merely from stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled.
- 4. The Supreme Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha, held that justifiability of a strike is purely a question of fact.

XIII. Arbitration and Conciliation

- 1. Arbitration is a procedure in which the parties to a contract opts for a private dispute resolution procedure instead of going to the court.
- 2. Arbitration is an alternative to the court
- 3. In case of Arbitration, the dispute is referred to independent party known as arbitrator
- 4. It is fast and less costly method
- 5. Section 10A of Industrial Disputes Act provides for arbitration
- 6. Conciliation is the process of settlement of Industrial Disputes through third party intervention
- 7. It is different from arbitration as it aims to reduce the extend of differences of parties and to arrive at an amicable solution.

Some Noteworthy Points

- 1. The industrial dispute connotes a real and substantial difference between employers and employers or between employers and workmen or between workmen and workmen, having some elements of persistency and continuity till resolved and likely to endanger industrial peace of the undertaking or the community
- 2. An individual dispute espoused by the union becomes an industrial dispute. The disputes regarding modification of standing orders, contract labour, lock out in disguise of closure have been held to be industrial disputes.
- 3. The Act provides for a special machinery of Conciliation Officers, Work Committees, Courts of Inquiry, Labour Courts, Industrial Tribunals and National Tribunals, defining their powers, functions and duties and also the procedure to be followed by them.
- 4. It also enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial establishment can be closed down and several other matters related to industrial employees and employers.
- 5. The payment of wages for the strike period will depend upon whether the strike is justified or unjustified.
- 6. No wages are payable if the strike is illegal or it is unjustified.
- 7. If the workers indulge in violence, no wages will be paid even when their strike was legal and justified

Types of Writs (1.1)

Right to Constitutional Remedies - Articles 32 and 226

Person has right to move to Supreme Court or High Court if his fundamental right is violated. For this purpose, application in writing known as writ is made.

- Writ means legal document in writing. Following are types of writ:
 - Writ of Habeas corpus
 - Writ of Mandamus
 - Writ of prohibition
 - Writ of certiorari
 - Writ of quo warranto

Writ of habeas corpus

'Habeas Corpus' literally mean "to have the body".

Writ of habeas corpus is made when person is detained or arrested without proper justification.

Writ of habeas corpus can be made by:

1. Any person on behalf of detained person

2. Detained person himself

On receipt this writ, court issue order against detaining authority for producing arrested person before court.

Types of Writs (1.2)

Writ of Mandamus

The word 'Mandamus' literally means we command.

It is a command issued by Supreme Court or High Court to any person, corporation, inferior court or government who has to perform statutory duty but who fails to do so.

Writ of Mandamus cannot be issued against

- Private person

- President and Governor of State - Article 361

Writ of Prohibition

A writ of prohibition is issued by Supreme Court or High Court to an inferior court or Tribunal to refrain from doing something which it is about to do.

It is based on principle that prevention is better than cure

It is generally issued before trial of case or during pendency of the proceeding before the order is made.

While mandamus commands activity, prohibition commands inactivity.

Types of Writs (1.3)

Writ of Certiorari

Certiorari means 'to be certified' or 'to be more fully informed of'

It can be issued by Supreme Court or High Court to the inferior Court or any authority, whenever any authority or court:

- Has abuse of jurisdiction

- Has acted without authority

- Has violated principle of natural justice

- Has committed a prima facie error on the report or decision.

- Has violated Fundamental Rights available to citizens under Part III

Supreme Court can issue a writ of certiorari to any high court correcting erroneous decisions

The object of both the writs of prohibition and of certiorari is the same, prohibition is available at an earlier stage whereas certiorari is available at a later stage.

Writ of Quo-warranto

Quo-warranto means 'What is your authority?'

This writ prevents person from continuing in public office who has wrongfully usurped the office. It calls upon the holder of a public office in question.

If on investigation, it is found that he is not entitled to public office, the court may restrain from acting and order to vacate office.

It is issued when the office is of public and of a substantive nature and is created by statute or by the Constitution itself.

Writ may be issued in respect of office of Prime Minister, Judge of High Court, Speaker of Parliament, University officials etc.

This writ can't be issued against a private person or where alternative remedy is available to person.

Right against Exploitation

(Article 23-24)

- Traffic in human beings and forced labour is prohibited.
- 'Traffic' in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose them of.
- The employment of children below the age of fourteen in any factory or mine is prohibited.

Protection of interests of Minorities (Article 29)

- Article 29 guarantees two rights:
- Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same.
- No citizen can be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language, or any of them.

Protection of interests of Minorities (Article 30)

- Traffic in human beings and forced labour is prohibited.
- 'Traffic' in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose them of.
- The employment of children below the age of fourteen in any factory or mine is prohibited.

RIGHT OF EQUALITY (Art. 14-18)

Article 14: Equality before the law and equal protection of the laws Article 14 of the Constitution says that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Equality prohibits discrimination but does not prohibit reasonable classification based on - Geographical, territorial or business differences - Difference in time	Article 15: Prohibition of discrimination on grounds of religion etc. Article 15(1) prohibits the State from discriminating against any citizen on grounds only of: religion, race, caste, sex, place of birth Article 15(2) lays down that no citizen shall be subjected to any disability, restriction or condition with regard to - access to shops, public restaurants, hotels and places of public entertainment; or - the use of wells, tanks, bathing ghats, roads and places of public	Article 16: Equality of opportunity in matters of public employment Article 16(1) guarantees to all citizens equality of opportunity in matters relating to employment or appointment of office under the State. There are certain exceptions provided in Article 16(3), 16(4) and 16(5). These are as under: Parliament can make a law that in regard to a class or classes of employment A provision can be made for the	Article 17: Abolition of untouchability Article 17 says that "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.	Article 18: Abolition of titles Acceptance of title is prohibited as it classify person into different class. Article 18 provides that No title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign State.
Permissible classification must satisfy 2 conditions, namely; The classification must be founded on an intelligible differentia which must distinguish persons/things that are grouped together from others leaving out or left out; & Such a differentia must have rational nexus to the object sought to be achieved by the statute/legislation in question"	the general public. Under Article 15(3) the State can make special provision for women and children. Article 15(4) permits the State to make special provision for the advancement of - Socially & educationally backward classes of citizens; - Scheduled castes & tribes.			

RIGHTS RELATING TO FREEDOM (Art. 19-22)

Article 19: Right to freedom of speech and expression	Article 20: Protection in respect of conviction for offences	<u>Protection of life and personal</u> liberty (Article 21)	Protection against arrest and detention (Article 22)
The freedom of speech and expression under Article 19(1)(a) means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode.	Protection against ex-post facto laws [Article 20(1)] If a particular act was not an offence	Article 21 confers on every person the fundamental right to life and personal liberty. It says that,	A person who is arrested cannot be detained in custody unless he has been informed of the grounds for such arrest. Such person shall have the right to
Permissible Restrictions	according to the law of the land at	"No person shall be deprived of his	consult and to be defended by a legal
Sovereignty and integrity of India, Security of the State, Friendly relations with foreign States,Public Order.	act, then he cannot be convicted	life or personal liberty except according to procedure established by law."	practitioner of his choice. A person who is arrested and detained must be produced before the nearest
Right of freedom is available to citizen. Corporation is citizen	declares that act as an offence.	Term personal liberty does not limit only to body or prison. It includes	magistrate within a period of 24 hours of such arrest, excluding the time of
Right to assemble peacefully & without arms [Art. 19(1)(b)]	Protection against double jeopardy	- Right to sleep	journey and shall not be detained in custody beyond 24 hours without the
Indian citizens has right to assemble	[Article 20(2)]	- Right to travel foreign	authority of magistrate.
peacefully Freedom of association [Art. 19(1)(c)]	No person shall be prosecuted and punished for the same offence more	- Right to bail and legal help	Above safeguards are not available
The freedom of association includes freedom	than once.	Article 21A: Right to Education	To alien enemy
to hold meeting and to takeout processions without arms.		This was introduced by the Constitution (Eighty sixth	When person is arrested and detained under 'preventive detention'. which
Freedom of movement [Article 19(1)(d)]	Protection against self-incrimination	Amendment) Act, 2002. According to	means detention of person without trial.
Right to move freely throughout the territory	[Article 20(3)]	this, the State shall provide free and	Safeguard against preventive detention:
of India is another right. Freedom of residence [Article [19(1)(e)]	No person accused of any offence shall be compelled to be a witness	compulsory education to all children of the age of six to fourteen years in	Such a person cannot be detained for a longer period than 3 months
Right to reside and settle in any part of the territory of India	against himself.	such manner as the State may, by law, determine.	The authority ordering the detention of a person shall communicate to him the
Freedom to trade & occu. [Art.19(1)(g)]			grounds on which the order for his
All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.			detention has been made and afford him the opportunity of making the representation against the order.

Right to Freedom of Religion (Article 25-28)

Freedom of conscience and free profession, practice and propagation of religion (Article 25)It grants to every religious denomination right - To establish and maintain institutions of religious and charitable purposes; - To manage its own affairs in matters of religion; - To own & acquire movable and minister such propagate religion.Freedom to manage religious affairs (Article 26)Freedom as to payment of tax for the promotion of any particular religion (Article 27)Freedom as to payment of tax for the promotion of any particular religion (Article 27)Freedom as to attendance at religiou instruction or religious institutions (Article 28)It gives to every person the: (i) freedom of conscience, and (ii) the right freely to profess, practice and propagate religion To own & acquire movable and immovable property; & - To administer such property in accordance with law.No person can be compelled to pay any taxes, the proceeds of which are specially appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.It prohibits religious instruction in certain educational institution and gives freedom to a person to participate in such religious instructions.

1	In the case of Ravi Shankar Sharma v. State of Rajasthan, Court held that Factories Act is a social legislation and it provides for the health, safety, welfare and
T	other aspects of the workers in the factories.
2	The Supreme Court in Ardeshir H. Bhiwandiwala v. State of Bombay , observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word 'premises'.
3	The word ordinarily came up for interpretation in the case of Employers Association of Northern India v. Secretary for Labour U.P. Govt. Seasonal factories or factories carrying on intermittent manufacturing process, do not cease to be factories within the meaning of the Act.
4	Sun-cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to company's main factory for their use in manufacturing cigarette (V.P. Gopala Rao v. Public Prosecutor).
5	The cutting of the woods or converting the wood into planks is essentially a part of the manufacturing activity (Bharati Udyog v. Regional Director ESI Corpn.).
6	Supreme Court has held that the process undertaken in zonal and sub-stations and electricity generating stations, transforming and transmitting electricity generated at the power station does not fall within the definition of manufacturing process and could not be said to be factories. (Workmen of Delhi Electric Supply Undertaking v. Management of D.E.S.U.).
7	The prima facie test for determination of the relationship between the employer and employee is the existence of the <u>right of the employer to supervise and</u> <u>control the work done by the employee</u> not only in the matter of directing what work the employee is to do but also the manner in which he shall do his work (Chintaman Rao v. State of M.P.)
8	Piece-rate workers can be workers within the definition of 'worker' in the Act, but they must be regular workers and not workers who come and work according to their sweet will (Shankar Balaji Waje v. State of Maharashtra).
9	Whatever method may be adopted for the payment of wages, the important thing to see is whether the <u>workers work under supervision and control of the</u> <u>employer</u> . It makes no difference whether the worker employed in the manufacturing process is paid time rate wages or piece rate wages. (Birdhi Chand Sharma v. First Civil Judge, Nagpur).
10	In Shinde v. Bombay Telephones, 1968, it was held that whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, he is really employed in the factory and in connection with the factory.
11	Under Section 2(n)(iii), for the purpose of deciding who is an occupier of the factory, the test to be applied is <u>who has ultimate control over its affairs in a</u> <u>government company</u> , in fact the ultimate control lies with government though the company is separate legal entity by having right to manage its affairs. Persons appointed by central government to manage its affairs of factories (of government companies) were therefore deemed to be appointed as occupiers under the Act (IOC v. CIF).
12	The Supreme Court in the case of J.K. Industries Ltd. v. Chief Inspector of Factories (1997), has held that <u>only a member of Board of Directors of the Company</u> can be occupier of the factory of the Company. The ultimate control of factory owned by company vests in Board of Directors. Company owing factory cannot nominate its employees or officers except Director of the company as occupier of its factory.
13	Madras High Court in the case of In re. Seshadrinatha Sarma, held that to constitute a manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable.

14	Division Bench of A.P. High Court held that to determine where certain premises is factory, it is necessary that it should carry on manufacturing process and it
14	does not require that the process should end in a substance being manufactured (Alkali Metals (P) Ltd. v. ESI Corpn.)
	The constitutional validity of Section 3 was challenged in Bijoy Cotton Mills v. State of Ajmer. The Supreme Court held that the restrictions imposed upon the
15	freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article
	19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public. Act is valid and not against the Right of freedom.
16	The definitions of "employees" and "employer" are quite wide. Person who engages workers through another like a contractor would also be an employer. (1998 LLJ I Bom. 629).
17	It was held in Nathu Ram Shukla v. State of Madhya Pradesh that if minimum wages have not been fixed for any branch of work of any scheduled
1/	employment, the person employing workers in such branch is not an employer with the meaning of the Act.
18	In case of Loknath Nathu Lal v. State of Madhya Pradesh an out-worker who prepared goods at his residence, and then supplied them to his employer was
10	held as employee for the purpose of this Act.
19	Different rates of Minimum Wages can be fixed for different zones or localities. Basti Ram v. State of A.P.
20	There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely
20	48 hours a week; Benode Bihari Shah v. State of W.B.
21	The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and
21	employment. The place or time of accident should not be totally unrelated to the employment Regional Director, E.S.I. Corpn. v. L. Ranga Rao.
22	Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory
	Regional Director ESI v. Francis de Costa
23	In E.S.I. Corpn. Indore v. Babulal, the M.P. High Court held that injury arose out of employment where a workman attending duty in spite of threats by persons
	giving call for strike and was assaulted by them while returning after his duty was over.
24	A worker was injured while knocking the belt of the moving pulley, though the injury caused was to his negligence, yet such an injury amounts to an
	employment injury Jayanthilal Dhanji Co. v. E.S.I.C.
	The ESI Act has been extended by many State Governments to shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments,
25	road transport undertakings, etc., employing 20 or more persons. It is not sufficient that 20 persons are employed in the shop. They should be employee as per Section 2(9) of the Act, getting the wages prescribed therein ESIC v. M.M. Suri & Associates Pvt. Ltd.
	The word employee would include not only persons employed in a factory but also persons connected with the work of the factory. The persons employed in
26	zonal offices and branch offices of a factory and concerned with the administrative work would be covered by the provisions of the Act, even though the offices
20	are located in different towns Hyderabad Asbestos Cement Products, etc. v. ESIC.
	Managing director could be an employee of the company. There could be dual capacity i.e. as managing director as well as a servant of the company ESIC v.
27	Apex Engg. Pvt. Ltd.
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28	In the case of Royal Talkies Hyderabad v. E.S.I.C., AIR 1978 SC 1476, there was a canteen and cycle stand run by private contractors in a theatre premises. On the question of whether the theatre owner will be liable as principal employer for the payment of E.S.I. contributions, the Supreme Court held that the two operations namely keeping a cycle stand and running a canteen are incidental to the primary purpose of the theatre and the workers engaged therein are covered by the definition of employee as given in E.S.I. Act.
29	On the question whether casual or temporary workmen should be included for the purpose of ascertaining the strength of workmen in terms of Section 1(3) it was held by the Rajasthan High Court in Bikaner Cold Storage Co. Ltd. v. Regional P.F. Commissioner, Rajasthan , that persons employed in the normal course of the business of the establishment should be considered as the persons employed for the purposes of Section 1(3)(a) and persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular feature of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to the applicability of Section 1(3)(a).
30	In the case of P.F. Inspector v. Hariharan. the Supreme Court held that casual workers are not covered under Section 1(3).
31	A mere change in the partnership deed, does not mean that a new business has come into existence for the purpose of Section 16(1) P.G. Textile Mills v. Union of India.
32	The definition of "employee", includes a part-time employee, who is engaged for any work in the establishment, a sweeper working twice or thrice in a week, a night watchman keeping watch on the shops in the locality, a gardener working for ten days in a month, etc. Railway Employees Co-operative Banking Society Ltd. v. The Union of India.
33	When members of cooperative society do work in connection with that of society and when wages are paid to them, there would be employer-employee relationship and such member-workers would be covered under the definition (1998 LLJ I Mad. 827).
34	The Government of India, by certain notification extended the application of Act and EPF scheme to beedi industry. It was held that the workers engaged by beedi manufacturers directly or through contractors for rolling beedi at home subject to rejection of defective beedies by manufacturers, were employees (1986 1 SCC 32).
35	The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exception under which a specified employer can avoid his mandatory liability (State v. S.P. Chandani)
36	The dominant factor in the definition of 'employee in Section 2(f) of the Act is that a person should be employed in or in connection with the work of the establishment. Sons being paid wages are employees (Goverdhanlal v. REPC).
37	In case of doubt whether a particular person is an employee or not, both the parties should be heard by the Commissioner before deciding the issue (1976-II Labour Law Journal, 309).
38	It was observed by the Supreme Court in Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai, that "bonus" is a word of many generous connotations. There is profit based bonus which is the most common one. There is customary or traditional bonus. There is attendance bonus. The Bonus Act speaks on the sole subject of profit based bonus but is silent about other distinct and different kinds of bonuses, such as the one oriented on custom. Thus the Act does not bar customary or other bonuses.
39	The definition of Salary or Wage is wide enough to cover the payment of retaining allowance and also dearness allowance paid to the workmen. It is nothing but remuneration (Chalthan Vibhag Sahakari Khand Udyog v. Government Labour Officer. Subsistence allowance given during suspension is not wages. However lay-off compensation is wages

40	An employee suspended but subsequently reinstated with full back wages cannot be treated to be ineligible for bonus for the period of suspension. Project Manager, Ahmedabad Project, ONGC v. Sham Kumar Sahegal
41	If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place Pandian Roadways Corpn. Ltd. v. Preseding Officer, Principal Labour Court .
42	Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 (State v. Sardar Singh Majithia)
43	Teacher was held to be not an employee (LAB 1C Pat 365) under the Act. The teachers are clearly not intended to be covered by the definition of 'employee'. (Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer)
44	Gratuity cannot be claimed on the basis of continuous service on being taken back in service after break in service of one and a half year on account of termination of service for taking part in an illegal strike, where the employee had accepted gratuity for previous service and later withdrawn from the industrial dispute (Baluram v. Phoenix Mills Ltd.)
45	A General Manager of a Railway is an employer (Baijnath Singh v. O.T. Railway)
46	The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement (Ball v. William Hunt & Sons Ltd.). It is immaterial that the workman is physically fit to perform some work. Thus, where a workman, though physically capable of doing the work cannot get employment in spite of his best efforts, he becomes incapacitated for all work and hence entitled to compensation for total disablement.
47	Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, e.g. getting pain in his left hand and experiencing difficulty in lifting weights, it was held that workman can be said to have lost his earning capacity even though getting same amount of wages as before (Mangru Palji v. Robinsons)
48	A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation (Naima Bibi v. Lodhne Colliery)
49	If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment (TNCS Corporation v. Poonamalai)
50	In the case of Mackenzie v. I.M. Issak , it was observed that the words arising out of employment means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment.
51	Time of payment of compensation: Section 4A of the Act provides that compensation under Section 4 shall be paid as soon as it falls due. Compensation becomes due on the date of death of employee and not when Commissioner decides it (Smt. Jayamma v. Executive Engineer, P.W.D. Madhugiri Division)
52	The expression "arising out of employment" suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause. Thus, where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment (Laxmibai Atma Ram v. Bombay Port Trust).

53	In Steel Authority of India v. National Union of Water Front Workers and others, the Supreme Court overruled the judgement delivered in the Air India
55	Statutory Corporation case. The principal employer cannot be required to order absorption of contract labour working in the concerned establishment.
	It has been held by the Supreme Court in Vegolis Private Ltd. v. The Workmen, (1971)II-LLJ p. 567, that after enforcement of the Contract Labour (Regulation
54	and Abolition) Act, 1970, the sole jurisdiction for abolition of contract labour in any particular operation vested with the appropriate Government and
54	thereafter the Tribunals have no jurisdiction to abolish contract labour. Supreme Court cannot under Article 32 of the Constitution order for abolition of
	Contract Labour System in any establishment (1985 1 SCC 630).
55	The appellate authority has no power to set aside the order of Certifying Officer. It can confirm or amend the Standing Orders (Khadi Gram Udyog Sangh v. Jit
55	Ram)
56	Workmen are entitled to apply for modification of the Standing Orders. (1977-II Labour Law Journal 503). Section 10(2) does not contain any time limit for
50	making modification application. It can be made at any time. [Indian Express Employees Union v. Indian Express (Madurai) Ltd.]
	Where there are two categories of workers, daily rated and monthly rated but the certified Standing Orders are in respect of daily rated workmen only, then
57	Model Standing Orders can be applied to monthly rated workmen (Indian Iron and Steel Co. Ltd. v. Ninth Industrial Tribunal)
	The object of the Act is to have uniform standing orders in respect of matters enumerated in the Schedule to the Act, applicable to all workers irrespective of
58	their time of appointment (Barauni Refinery Pragati Sheel Parishad v. Indian Oil Corporation Ltd.)
	Certified standing orders become part of the statutory and not contractual terms and conditions of service and are binding on both the employer and the
59	employees (Derby Textiles Ltd. v. Karamchari and Shramik Union)
	The Industrial Disputes Act applies to an existing and not to a dead industry. It is to ensure fair wages and to prevent disputes so that production might not be
60	adversely affected. It applies to all industries irrespective of religion or caste of parties. It applies to the industries owned by Central and State Governments
	too (Hospital Employees Union v. Christian Medical College)
61	In the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. L.A.T. the Supreme Court held that 'malis' looking after the garden attached to bungalows
01	provided by the company to its officers and directors, are engaged in operations incidentally connected with the main industry carried on by the employer.
	The Supreme Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha, held that justifiability of a strike is purely a question of fact. Therefore, if
62	the strike was resorted to by the workers in support of their reasonable, fair and bona fide demands in peaceful manner, then the strike will be justified.
	Where it was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be unjustified.
63	Just as "strike" is a weapon available to the employees for enforcing their industrial demands, a "lock out" is a weapon available to the employer to persuade
05	by a coercive process the employees to see his point of view and to accept his demands (Express Newspapers (P) Ltd. v. Their Workers
	It is well settled that in order to entitle the workmen to wages for the period of strike, strike should be legal as well as justified. A strike is legal if it does not
64	violate any provision of the statute. Whether a particular strike is justified or not is a question of fact which has to be judged in the light of the facts and
04	circumstances of each case, it is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitled
	them to wages for the strike period Crompton Greaves Limited v. Workmen
	The Supreme Court in the case of J.K. Industries Ltd. v. Chief Inspector of Factories, has held that only a member of Board of Directors of the Company can be
65	occupier of the factory of the Company. The ultimate control of factory owned by company vests in Board of Directors. Ultimate control which vests in Board of
	Directors cannot be vested in any one else. Company owing factory cannot nominate its employees or officers except Director of the company as occupier of
	its factory.

66	Employees working in canteens in industrial establishments run by Managing Committee are not employees of the Managing committee, but are employees of occupier Kanpur Suraksha Karmachari Union v. Union of India
67	In Hukam Chand Jute Mills Ltd. v. Second Industrial Tribunal, West Bengal, the Supreme Court held that the claim for customary bonus is not affected by 1976 Amendment Act. In fact, it has left Section 17 intact which refers to puja bonus or other customary bonus.
68	In the case of Sukhai v. Hukam Chand Jute Mills Ltd ., it was observed: "If a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsaleable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch. He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away on account of the results of the accident visible on his person."
69	In thiscase the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident Divisional Manager KSRTC v. Bhimaiah
70	In the case of Smt. Sunderbai v. The General Manager, Ordinance Factory Khamaria, Jabalpur , the Madhya Pradesh High Court has clarified the difference between accident and injury. Accident means an untoward mishap which is not expected or designed by workman, 'Injury' means physiological injury. Accident and injury are distinct in cases where accident is an event happening externally to a man. The burden of proof is on applicant to prove the connection of employment and injury.
71	In the case of Bharat Sugar Mills Ltd. v. Jai Singh, the Supreme Court explained the legality of go-slow in the following words: "Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory. Thus, while delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. Apart from this, 'go-slow' is likely to be much more harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, 'go-slow' has always been considered a serious type of misconduct."
72	In Parry & Co. Ltd. v. P.C. Pal, the Supreme Court observed that the management has a right to determine the volume of its labour force consistent with its business or anticipated business and its organisation. If for instance a scheme of reorganisation of the business of the employer results in surplusage of employees, no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however, unfortunate it be.
73	In the case of Chandramalai Estate v. Its Workmen , the Supreme Court observed: "While on the one hand it be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made, will be justified".
74	The Supreme Court in an unprecedented judgement in T.K. Rangarajan v. Government of Tamil Nadu and Others , held that the government employees have no fundamental right, statutory or equitable or moral to resort to strike and they cannot take the society at ransom by going on strike, even if there is injustice to some extent.

75	In Ajay Hasia v. Khalid Mujib , the Supreme Court has enunciated the following test for determining whether an entity is an instrumentality or agency of the State: (1) If the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government. (2) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation it would afford some indication of the corporation being impregnated with government character. (3) Whether the corporation enjoys a monopoly status which is conferred or protected by the State. (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or an instrumentality. (5) If the functions of the corporation are of public importance and closely related to government functions, it would be a relevant factor in classifying a corporation as an instrumentality or agency of government. (6) If a department of government is transferred to a corporation, it would be a strong factor supporting an inference of the corporation being an instrumentality or agency of government.
76	The Supreme Court in Union of India v. Naveen Jindal, has held that right to fly the National Flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1)(a) of the Constitution being an expression and manifestation of his allegiance and feelings and sentiments of pride for the nation.
77	The Supreme Court's decision in Chintamana Rao v. State of M.P ., is a leading case on the point where the constitutionality of Madhya Pradesh Act was challenged. The State law prohibited the manufacture of bidis in the villages during the agricultural season. The object of the provision was to ensure adequate supply of labour for agricultural purposes. Even villagers incapable of engaging in agriculture, like old people, women and children, etc., who supplemented their income by engaging themselves manufacturing bidis were prohibited without any reason. The prohibition was held to be unreasonable.
78	That the expression 'personal liberty' is not limited to bodily restraint or to confinement to prison, only is well illustrated in Kharak Singh v. State of U.P , AIR 1963 SC 1295. In that case the question raised was of the validity of the police regulations authorising the police to conduct what are called as domiciliary visits against bad characters and to have surveillance over them. The court held that such visits were an invasion, on the part of the police, of the sanctity of a man's home and an intrusion into his personal security and his right to sleep, and therefore violative of the personal liberty of the individual, unless authorised by a valid law.
79	It was stated in Maneka Gandhi v. Union of India , that 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad, and no person can be deprived of this right except according to procedure prescribed by law. In this case, it was clearly laid down that the fundamental rights conferred by Part III of the Constitution are not distinct and mutually exclusive. Thus, a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has still to stand the test of one or more of fundamental rights conferred by Article 19 which may be applicable to a given situation.
80	"The word 'denomination' has been defined in the Oxford Dictionary to mean a collection of individuals classed together under the same name: a religious sect or body having a common faith & organisation & designated by a distinctive name. It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya & was followed by various teachers since then. After Sankaracharya, came a galaxy of religious teachers & philosophers who founded the different sects & sub-sects of the Hindu religion that we find in India at the present day. The followers of Ramanuja, who are known by the name of Shri Vaishnavas, undoubtedly constitute a religious denomination, & so do the followers of Madhavacharya & other religious teachers" H.R.E., Madras v. Sirur Mutt.

	In T.M.A. Pai Foundation v. State of Karnataka, is an eleven Bench decision dealing with right of minorities to establish & administer educational institutions &
81	correctness of the decision in St. Stephen's College case. While interpreting Article 30, the Supreme Court held that minority includes both linguistic & religious minorities & for determination of minority status, the unit would be the State & not whole of India. Right of minorities included right to determine the method
	of admission & selection of students, which should be fair & transparent & based on merit.
82	While discussing rules of literal construction the Supreme Court in State of H.P v. Pawan Kumar held: (i) One of the basic principles of interpretation of statutes is to construe them according to plain, literal & grammatical meaning of the words. (ii) If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended, abridged, so far as to avoid such an inconvenience, but no further. (iii) The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. (iv) He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.
83	Supreme Court in Kamalpura Kochunni v. State of Madras, pointed out that the preamble may be legitimately consulted in case any ambiguity arises in the construction of an Act & it may be useful to fix the meaning of words used to keep the effect of the statute within its real scope.
84	The Privy Council in Balraj Kumar v. Jagatpal Singh, has held that the marginal notes to the sections are not to be referred to for the purpose of construction. The Supreme Court in Western India Theatres Ltd. v. Municipal Corporation of Poona, (1959) S.C.J. 390, has also held, that a marginal note cannot be invoked for construction where the meaning is clear.
85	The very foundation of specific performance of a contract is that an award for damages does not afford the aggrieved party a complete remedy. If in the opinion of the Court damages will be an adequate remedy, specific performance of the contract cannot be decreed Ramji Patel v. Rao Kishore
86	A Court may not, therefore, grant to a plaintiff who has failed to to prove that he has performed or has always been ready & willing to perform his part of the agreement, the specific performance whereof he seeks Ram Awadh v. Achhaibar Dubey
87	The Supreme Court in State of Madhya Pradesh v. Mangilal Sharma , held that a declaratory decree merely declares the right of the decreeholder vis-a-vis the judgement debtor & does not in terms direct the judgement debtor to do or refrain from doing any particular act or thing. It cannot be executed as it only declares the rights of the decree-holder qua the judgement debtor and does not, in terms, direct him to do or refrain from doing any particular act or thing. It cannot be executed as it only declares the rights of the decree-holder qua the judgement debtor and does not, in terms, direct him to do or refrain from doing any particular act or thing.
88	This Section is based upon an English case viz., Lumley v. Wagner. In this case Miss W, a singer agreed to sing at L's theatre for a certain period and not to sing anywhere else during that period. Afterwards, she entered into a contract to sing at another theatre and refused to perform her contract with L. The Court refused to enforce her positive agreement to sing at L's theatre (by specific performance since it is based on personal volition) but granted an injunction restraining her from singing at any other theatre thereby preventing breach of the negative part of the agreement though the positive part of it, being a contract for the personal service, could not be specifically enforced.
89	The rule in Rylands v. Fletcher is that a man acts at his peril and is the insurer of the safety of his neighbor against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants. It was held in that case that: "If a person brings or accumulates on his land anything which, if it should escape may cause damage to his neighbors', he does so at his own peril. If it does not escape and cause damage he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent damage."

90	The test of "sufficient course" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of sufficient cause' delightfully undefined thereby leaving to the court a well-intended discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such. R B Ramlingam v. R B Bhvansewari
91	Civil Courts have jurisdiction to entertain a suit of civil nature unless barred by law. Every person has an inherent right to bring a suit of a civil nature. Civil Court has jurisdiction to decide the question of its jurisdiction although as a result of the enquiry it may be found that it has no jurisdiction over the matter. Jurisdiction depends not on the truth or falsehood of facts, but upon their nature. Jurisdiction is determinable at the commencement not at the conclusion of the inquiry Rex v. Boltan
92	A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of medicine and selling the same in wrapper and carton of identical design with same colour combination etc. as that of plaintiff company. A subsequent suit was instituted in different Court by the defendant company against the plaintiff company with same allegation. The Court held that subsequent suit should be stayed as simultaneous trial of the suits in different Courts might result in conflicting decisions as issue involved in two suits was totally identical M/s. Wings Pharmaceuticals (P) Ltd. and another v. M/s. Swan Pharmaceuticals and others
93	The principle of Res Judicata applies where an issue which has been raised in a subsequent suit was directly and substantially in issue in a former suit between the same parties and was heard and decided finally. Findings incidentally recorded do not operate as res judicata Madhvi Amma Bhawani Amma v. Kunjikutty P.M. Pillai
94	The Privy Council in Durga Choudharain v. Jawaher Singh, observed that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be where there is no error or defect in procedure, the finding of the first appellate Court upon a question of fact is final, if that Court had before it evidence proper for its consideration in support of the finding.

LEGAL TERMS AND MAXIMS

	LEGAL TERIVIS AIND IVIAXIIVIS
1	A priori - From the antecedent to the consequent.
2	Ab initio - From the beginning.
3	Absolute sententia expositore non indiget - Plain words require no explanation.
4	Actio mixta - Mixed action.
5	Actio personalis moritur cum persona - A personal right of action dies with the person.
6	Actionable per se - The very act is punishable and no proof of damage is required.
7	Actus Curiae Neminem Gravabit - Act of the Court shall prejudice no one.
8	Actus non facit reumnisi mens sit rea - An act does not make a man guilty unless there be guilty intention.
9	Actus reus - Wrongful act.
10	Ad hoc - For the particular end or case at hand.
11	Ad idem - At the same point.
12	Ad valorem - According to value.
13	Aliunde - From another source.
14	Amicus Curiae - A friend of court member of the bar who is appointed to assist the Court.
15	Animus possidendi - Intention to possess
16	Audi alteram partem - Hear the other side.
17	Benami - Nameless.
18	Bona fide - Good faith; genuine.
19	Caveat - A caution registered with the public court to indicate to the officials that they are not to act in the matter mentioned in the caveat without first giving notice to the caveator.
20	Caveat emptor - Let the buyer beware.
21	Caveat actor - Let the doer beware.
22	Caveat venditor - Let the seller beware.
23	Certiorari - A writ by which records of proceeding are removed from inferior courts to High Court and to quash decision that goes beyond its jurisdiction.
24	Cestui que trust - The person who has the equitable right to property in India he is known as beneficiaries.
25	Consensus ad idem - Common consent necessary for a binding contract.
26	Contemporanea expositio est optima et fortissima lege - A contemporaneous exposition or language is the best and strongest in Law.
27	Corpus delicti - Body/gist of the offence.
28	Cy pres - As nearly as may be practicable.
29	Damnum sine injuria - Damage without injury.
30	De facto - In fact.
31	De jure - By right (opposed to de facto) in Law
32	Dehors - Outside; foreign to (French term).
33	De novo - To make something new; To alter.
34	Dies non - Day on which work is not performed.
35	Deceit - Anything intended to mislead another.
36	Del credre agent - Is a mercantile agent who in consideration of extra remuneration called a del credre commission undertakes to indemnify his employer against loss arising from the failure of persons with whom he contracts to carry out their contracts.
37	Delegate potestas non-potest delegari - A delegated power cannot be delegated further.
38	Delegatus non potest delegare - A delegate cannot delegate.
39	Dictum - Statement of law made by judge in the course of the decision but not necessary to the decision itself.
40	Dispono - Convey legally.
41	Ejusdem generis - Where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.
42	Estoppel - Stopped from denying
43	Ex parte - Proceedings in the absence of the other party.
44	Expressio unius est exclusio alterius-Express mention of one thing implies the exclusion of another or which is shortly put
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45	Eutumi seuse nen eritur estie. Ne estien erices from en illegel er immersel seuse
45	Ex turpi causa non oritur actio - No action arises from an illegal or immoral cause.
46	Fatum - Beyond human foresight.
47	Fait accompli - Things done and no longer worth arguing against; an accomplished act.
48	Factum probandum - Fact in issue which is to be proved.
49	Factum probans - Relevant fact.
50	Ferae naturae - Dangerous by nature.
51	Force majeure - Circumstance beyond one's control, irresistible force or compulsion
52	Generalia specialibus non derogant - General things do not derogate from special.
53	Habeas corpus - A writ to have the body to be brought up before the judge.
54	Ignorantia legis neminem excusat - Ignorance of law excuses no one.
55	Injuria sine damno - Injury without damage.
56	Interest reipublicae ut sit finis litium - State or public interest requires that there should be a limit to litigation.
57	Ipso facto - By the very nature of the case.
58	In promptu - In readiness.
59	In posse - In a state of possibility.
60	In limine - Initial stage; at the outset.
61	In lieu of - Instead of.
62	Inter alia - Among other things.
63	Inter se - Among themselves.
64	In specie - In kind.
65	Inter vivos - Between living persons.
66	Intra vires - Within the powers.
67	In personam - A proceeding in which relief is sought against a specific person.
68	Indicia - A symbol; token; mark.
69	Innuendo - Allusive remark.
70	Jus in personam - Right against a person.
71	Jus in rem - Right against the world at large.
72	Jus non scriptum - Unwritten law; Customary Law.
73	Jus scriptum - Written Law.
74	Lex Marcatoria - The law merchant, is a body of legal principles founded on the customs of merchants in their dealings with each other, and though at first distinct from the common law, afterwards became incorporated into it.
75	Lex fori - The law of the forum of court.
76	Lis - A suit cause of action.
77	Lis pendens - A pending suit.
78	Locus standi - Right of a party to an action to appear and be heard on the question before any tribunal.
79	Mala fide - In bad faith.
80	Mandamus - A writ of command issued by a Higher Court to a Lower Court/Government/Public Authority.
81	Mens rea - Guilty mind.
82	Manesuetae natureae - Harmless by nature.
83	Mesne profits - The rents and profits which a trespasser has received/made during his occupation of premises.
84	Misnomer - A wrong name.
85	Mutatis-mutandis - With necessary changes in points of detail.
86	Noscitur a sociis - A word is known by its associates, one is known by his companions.
87	Obiter dictum - An incidental opinion by a judge which is not binding.
88	Onus Probandi - Burden of proof.
89	Pari passu - On equal footing or proportionately.
90	Per se - By itself taken alone.
91	Persona non-grata - Person not wanted.

92	Per incuriam - Through want of care; through inadvertance.
92	Prima facie - At first sight; on the face of it.
93	Profit a prendre - A right for a man in respect of his tenement.
-	Pro bono publico - For the public good.
95	
96	Pro forma - As a matter of form.
97	Pro rata - In proportion.
98	Posteriori - From the consequences to the antecendent.
99	Puisne mortgage - Second mortgage.
100	Pari causa - Similar circumstances, with equal right.
101	Pari materia - Relating to same person or thing.
102	Qui facit per alium facit per se- He who acts through another is acting by himself.
103	Quo warranto - A writ calling upon one to show under what authority he holds or claims an office.
104	Quia timet - Protective justice for fear. It is an action brought to prevent a wrong that is apprehended.
105	Quid pro quo- Something for something.
106	Ratio decidendi - Principle or reason underlying a decision.
107	Res judicata - A decision once rendered by a competent court on a matter in issue between the parties after a full enquiry
108	should not be permitted to be agitated again. Res ipsa loquitur - The things speak for itself.
108	Respondent superior - Let the principal be liable.
110	Res sub judice - Matter under consideration.
111	Res gestae - Facts relevant to a case and admissible in evidence.
112	Rule nisi - A rule which will become imperative and final unless cause to be shown against it.
113	Scire facias - Your cause to know.
114	Status quo - The existing state of things at any given date.
115	Scientiet volenti non fit injuria - Injury is not done to one who knows and wills it.
116	Spes successionis - Chance of a person to succeed as heir on the death of another.
117	Supra - Above; this word occurring by itself in a book refers the reader to a previous part of the book.
118	Suppressio veri - Suppression of previous knowledge.
119	Sui juris - Of his own right.
120	Simpliciter - Simply; without any addition.
121	Scienter - Being aware of circumstances, the knowledge of which is necessary to make one liable, as applied to the keeper of a vicious dog, means no more than reasonable cause to apprehend that he might commit the injury complained of.
122	Sine qua non - An indispensable condition.
123	Situs - Position; situation; location.
124	Suo motu - On its own motion.
125	Stare decisis - Precedent. Literally let the decision stand
126	Sine die - Without a day being appointed.
127	Travaux preparatotries - Preparatory records.
128	Tortum - Civil wrong actionable without contract.
129	Uberrimae fide - Of utmost good faith.
130	Ubi jus ibi remedium - Where there is a right there is remedy.
131	Ultra vires - Beyond the scope, power or authority.
132	Ut lite pendente nihil innovertur - Nothing new to be introduced during ligitation.
133	Usufructuary - One who has the use and reaps the profits of property, but not ownership.
134	Ut res magis valeat quam pereat - The words of a statue must be construed so as to give a sensible or reasonable meaning to them.
135	Vis major - Act of God.
136	Vice versa - The order being reversed; other way round.
137	Volenti non fit injuria - Damage suffered by consent gives no cause of action.
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