AL-AMEEN COLLEGE OF LAW
LABOUR LAW II
***(III semester 3years LL.B course*.)**

Model Answer Paper

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Q1. Explain the constitutional provisions in support of social & labour welfare.

Over the years, labour laws have undergone change with regard to their object and scope. Early labour legislations were enacted to safeguard the interest of employers. They were governed by the doctrine of laissez-faire. Modern labour legislations, on the other hand, aims to protect workers against exploitation by employers. The advent of doctrine of welfare state is based on the notion of progressive social philosophy which has rendered the old doctrine of laissez-faire obsolete. The theory of 'hire and fire' as well as the theory of 'supply and demand' which found free scope under the old doctrine of laissez-faire no longer hold good.
The growth of industrial jurisprudence can significantly be noticed not only from increase in labour and industrial legislation but also from a large number of industrial law matters decided by Supreme Court and High Courts. It affects directly a considerable population of our country consisting of industrialists, workmen and their families. Those who are the affected indirectly constitute a still larger bulk of the country's population.
After India became independent, it adopted a Constitution on the 26 April 1949. Indian Constitution is a unique basic national document. Besides providing basic principles for governance, it presents the aspirations of the Weaker Section of Society, specially the working classes. It has conferred innumerable rights on the protection of labour. It is also a strange phenomenon of history that national freedom-struggle and struggle of working class emancipation coincided and our leaders fought for both- the betterment of worker's lots and India's freedom. During this period, they made some promises and pledges to

the working classes, which were to be redeemed after independence. The redemption of all those promises and pledges get expression in our Constitution.

Constitution is the supreme law of a nation and all legislations draw their inspiration from it. Constitution is a document of social revolution casting an obligation on every instrumentality including the judiciary to transform the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life and there should be equality of status and opportunity to all.

The Indian Constitution, the Preamble, the Fundamental Rights and the Directive Principles of State Policy, embody the fundamental principles, which provide guide to all legislations, including the labour legislations. This constitutional trinity assures its citizens to provide "Socialistic Pattern of Society" and create "Welfare State" and all legislations, specially the Labour legislations, are deeply influenced by them.

Article 14 commands State to treat any person equally before the law.

Article (19) (1) (c) grants citizens the right to form association or unions.

Article 21 promises protection of life and personal liberty.

Article 23 prohibits forced labour he Committee on Labour Welfare, 1969, noted that "labour welfare includes such services, as facilities and amenities as adequate canteen, rest and recreational facilities, sanitary and medical facilities, arrangement for travel to and from work and for the accommodation of the workers employed at a distance from their homes and such other services amenities and facilities as contribute to improve the condition under which workers are employed."

Q2. Define bonded labour explain the international conventions in support of bonded labour.

Under this system when an elder of an Indian family took a loan mostly for agriculture and fails to repay the same, his descendants or dependents have to work for the creditor without reasonable wages until the loan is repaid. This system is commonly known as "Bandhua Mazdoori". Also it is to be mentioned here that because of illiteracy

and backwardness the loan structure was made in a way that the interest over a small period of time will be greater than the principal sum and then there was interest charged on the already existing interest. Hence the loans were made in a way that they cannot be repaid. Several generations are made to work in degradable condition and extreme poverty under this system. Even after India got independence and Indian Constitution came to power that enshrines the principal of Equality and Dignity the practice of Bandhua Mazdoori continued. With an aim to end this practice, Indian Parliament enacted Bonded Labour System (Abolition) Act, 1976.
Bonded labour has been defined in the Bonded Labour System (Abolision) Act, 1976, under Sec 2(e) "bonded labour" means any labour or service rendered under the bonded labour system;
Sec 2 (f) "bonded labourer" means a labourer who incurs, or has, or is presumed to have, incurred a bonded debt;

Bonded labour has been defined as well as addressed as a prohibited practice in several international conventions as well as a many Indian legislations.
As per ILO's Forced Labour Convention, 1930 (No. 29) [Article 2(i)] — The term forced or compulsory labour shall mean all work or service, which is exacted, from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Universal Declaration of Human Rights — On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Article 4 says: "No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms."

UN Supplementary Convention on the Abolition of Slavery (1956) — Under this Convention debt bondage is defined as "the status or condition arising from a pledge by a debtor of his personal service or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied toward the

liquidation of the debt or the length and nature of those services are not respectively limited and defined."

As per ILO Report on Stopping Forced Labour (2001) — The term (Bonded Labour) refers to a worker who rendered service under condition of bondage arising from economic consideration, notably indebtedness through a loan or an advance. Where debt is the root cause of bondage, the implication is that the worker (or dependents or heirs) is tied to a particular creditor for a specified or unspecified period until the loan is repaid.

The ILO & Bonded Labour,

Through various conventions the ILO protects bonded Labour some of the conventions are,

1. Forced Labour convention 1930
2. The Universal declaration of HR
3. Un Supplementary Convention on the Abolition of Slavery 1956

The ILO report on Stopping Forced Labour (2001):
It defines Bonded Labour as, workers who render services under the condition of the bondage arising from the economic consideration, like indebtness through a loan or an advance, where the debt is the root cause of the bondage, the implementation is that the worker is tied to a particular creditor for a specified or an unspecified period until the loan is repaid.
The ILO conventions have prohibited the bonded labour, child labour & implemented with compulsory education with a view to provide appropriate facilities for all round development of the child labour.

The right to education is provided in the UDHR (universal Declaration of Human Rights), the ICESCR (International Covenant on Economic, Social, & Cultural Rights), ICCPR (international Covenant on civil & political rights) & the Universal Declaration forms the bill of Human Rights.

These instruments specify education must be compulsory & free to all, secondary education; including vocational education must be available & accessible to all children. These conventions further states that, the states must make education, vocational information & guidance available & accessible to all children & take measures to encourage regular attendance & reduction of drop outs rates .

Q3. Define bonded labour explain the constitutional provisions relating to bonded labour.

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Forced Labour: It is widely defined, whenever a person is compelled to give his labour or service, even though remuneration is paid for it. The same would be the result where the labourer is obliged to work at wages less than the minimum wages.

Labour Rights and Indian Constitution

Indian constitution provides numerous safeguards for the protection of labour rights. These safeguards are in the form of fundamental rights and the Directive principle of State policy.

Articles 14,19,21,23 and 24 comprise of fundamental rights promised under part III of the Constitution. Articles 38, 39, 39A, 41, 42, 43,43A and 47 form part of the Directive Principles of State Policy under Part IV of the Constitution, but they are not enforceable in a court of law.

Article 39, 39A, 41, 42, 43 and 43A collectively can be termed "Magna Carta of working class in India."
Article 14 commands State to treat any person equally before the law.
Article (19) (1) (c) grants citizens the right to form association or unions.
Article 21 promises protection of life and personal liberty.
Article 23 prohibits forced labour.
Article 24 prohibits employment of children below the age of fourteen years.
Article 39(a) provides that the State shall secure to its citizens equal right to an adequate means of livelihood.
Article 39A provides that the State shall secure the equal opportunities for access to justice to its citizens and ensure that such opportunities are not denied by reason of economic or other disabilities.
Article 41 provides that within the limits of its economic capacity the State shall secure for the Right to work and education.
Article 42 instructs State to make provisions for securing just and humane conditions of work and for maternity relief.
Article 43 orders the State to secure a living wage, decent condition of work and social and cultural opportunities to all workers through legislation or economic organisation. And
Article 43A provides for the participation of workers in Management of Industries through legislation.

1. **Article 21 of the Indian Constitution** – This is the most important and foremost safeguard against any exploitation of human lives and their liberty. It is part of the Basic Structure of the Constitution and cannot be amended. It secures the right to life and right to live with human dignity to every person in India. So, any practice of bonded labour would be in contravention of this Constitutional provision since bonded labour deprives a person of numerous liberties.
2. **Article 23 of the Indian Constitution** – As discussed above, the Constitution of India expressly provides for the abolition of forced labour and prohibits this form of forced labour in the territory of India. This not only prohibits bonded labour but also covers the practice of Begar and other forms of human trafficking in India.

3. **Article 39 of the Constitution** – This is covered in Part IV of the Indian Constitution which deals with the Directive Principles of State Policy is albeit not enforceable but are considered irrefutable for the purpose of governance. This constitutional provision directs the State to secure the right to an adequate livelihood. It also directs the state to formulate its policies with an object that no citizen is forced out of economic necessity to enter into avocations which are not suited to them.
4. **Article 42 of the Constitution** – This is also a Directive Principle of State Policy which states "The State shall make provision for securing just and humane conditions of work" This means that the state must ensure that every person has a working condition which are just and humane for them. However, since it is part of Part IV, it cannot be enforced.
5. **Article 43 of the Constitution** – This directive directs the State to secure i.e. conditions for work ensuring a decent standard of life.

Indian judiciary has played significant role in the implementation of the Act. The Court has tried to expand the scope of forced labour and protect the rights of citizens time and again.
There have been cases in India even after the enactment of the Act which the Apex Court has dealt.

An-interesting custom of Manipur State came to the notice of the Court **in Kahaosan Thangkhul v. Simirei Shaileis (AIR 1961 Mani 1).** There appears to have been a custom for each of the householders in the village to offer one day's free labour to the headman of the village. The appellant in that case refused to offer such free labour and challenged the custom as being opposed to the provisions of Article 23(1) of the Constitution, which prohibits begar and other forms of forced labour. The court held the custom as violative of Article 23(1) of the Constitution.

In the case of Neerja Chaudhury v. State of Madhya Pradesh (1984 3 SCC 243),

The Supreme Court held – "It is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated. Any failure of action on the part of the State Government in implementing the provisions of [the Bonded Labour System (Abolition) Act would be the clearest violation of Article 21 and Article 23of the Constitution."

As mentioned above, there are a few constitutional provisions that safeguard the system of bonded labour from being practised. In this case, the Apex Court did very well by relating the issue of bonded labour system with the person's fundamental right enshrined in Article 21 of the Constitution and gave a clear thrust to the State to implement Article 21 and Article 23 of the Constitution.

Also, **in the case of People's Union for Democratic Rights v. Union of India (AIR 1982 SC 1473),**

The Supreme Court of India delivered the judgement stating – "Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word `forced labour' "

As seen, the Court has tried to expand the scope of forced labour and protect the rights of citizens time and again.

In Sathyajit Rai V/S State of Rajasthan (AIR 1983 SC 328), the court invalidated that provision of Rajasthan Famine Relief Wok Employees Act 1964 which exempted the application of Minimum wages Act 1948 to the employment of famine relief works. The law laid down in the Asiad workers case & followed in Stahyajit Rays case has been fully endorsed.

In Bandhu Muckthi Morcha V/S Union of India (1984 3 SCC 161),

Where the Sc declared bonded labour as a crude form of forced labour, which is prohibited u/Art 23 of the constitution. SC further held that failure of the state to identify the bonded labour, to release them from

they bondage & to rehabilate them as envisaged by the Bonded Labour Act 1976 violates Art 21 of the constitution.

In Bandhua Mukti Morcha v. Union of India, the main issue concerned the existence of bonded labour in the Faridabad stone quarries near the city of Delhi. It was alleged that majority of the workers were compelled to migrate from other states, and turned into bonded labourers. The workers were living in sub-human and miserable conditions. A violation of various labour laws and the Bonded Labour System (Abolition) Act 1976 was alleged. The SC stated that before a bonded labour can be regarded as a bonded labourer, he must not only be forced to provide labour to the employer but he must have also received an advance or other economic consideration from the employer, unless he is made to provide forced labour in pursuance of any custom or social obligation or by reason of his birth in any particular caste or community.

Begar is a form of forced labour under which a person is compelled to work without receiving any remuneration. Other similar forms of forced labour were interpreted the Supreme Court when it ruled **in the Asiad Workers Case** that both unpaid and paid labour were prohibited by Article 23, so long as the element of force or compulsion was present in the worker's ongoing services to the employer.
Thus the Supreme Court set a new constitutional standard at a time when State on its part had completely neglected the human values. The court further remarked that the state government is under the constitutional scheme, charged with the mission of bringing about a new socio-economic order where there will be socio-economic justice for everyone and equality of status and opportunity for all.

Q4. Explain the provisions regarding prohibition & abolition of bonded labour.

Abolition of bonded labour system

Sec 4 of the bonded Labour Act deals with Abolition of bonded labour system , according to sub-sec (1), the bonded labour system shall stand

abolished, any & every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.

According to sub-sec(2) no person shall- (a) make any advance under, or in pursuance of, the bonded labour system, or (b) compel any person to render any bonded labour or other form of forced labour.

The bonded labour system has been abolished from 25th October, 1975 and every bonded labourer has been set free and has been discharged from any obligation to render any bonded labour from this date. No person is allowed to make an advance under, or in pursuance of the bonded labour system. No one can compel any person to render any bonded labour or other form of forced labour.

Sec 5. Agreement, custom, etc., to be void.-On the commencement of this Act, any custom or tradition or any contract, agreement or other instrument, whether entered into or executed before or after the commencement of this Act, by virtue of which any person, or any member of the family or dependent of such person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.

From 25th October, 1975 any custom or tradition or any agreement or other instrument, whether entered into or executed before or after 25th October, 1975 by virtue of which any person or any member of his family or dependent is required to do any work or rendor any service as a bonded labourer, shall be void and it shall not be operative.

Under section 6 of the Act every obligation of a bonded labourer to repay any bonded debt have been extinguished no suit or other proceeding shall lie for the recovery of any such debt. Every decree or order for the recovery of bonded debt shall be deemed to have been fully satisfied. Every attach made for the recovery of bonded debt shall stand vacated. If possession of any property belonging to a bonded labourer or a member of his family or other dependent was forcibly taken over by any creditor for the recovery of the bonded debt, such property shall be restored.

Sec 7. Property of bonded labourer to be freed from mortgage, etc.-

(1) All property vested in a bonded labourer which was, immediately before the commencement of this Act under any mortgage, charge, lien or other encumbrances in connection with any bonded debt shall, in so

far as it is relatable to the bonded debt, stand freed and discharged from such mortgage, charge, lien or other encumbrances, and where any such property was, immediately before the commencement of this Act, in the possession of the mortgagee or the holder of the charge, lien or incumbrance, such property shall except where it was subject to any other charge, on such commencement, be restored to the possession of the bonded labourer .

(2) If any delay is made in restoring any property referred to in sub-section (1) to the possession of the bonded labourer, such labourer shall be entitled, on and from the date of such commencement, to recover from the mortgagee or holder of the lien, charge or incumbrance, such mesne profits as may be determined by the civil court of the lowest pecuniary jurisdiction within the local limits of whose jurisdiction such property is situated.

Any property vested in a bonded labourer which was under any mortgage, charge, lien or other encumbrances in connection with any bonded debt stands freed and discharged and if the possession of the said property was with the mortgagee or other holder of the charge, lien or incumberance will be restored to the possession of the bonded labourer.

Sec 8. Freed bonded labourer not to be evicted from homestead, etc.-

(1) No person who has been freed and discharged under this Act from any obligation, to render any bonded labour, shall be evicted from any homestead or other residential premises which he was occupying immediately before the commencement of this Act as part of the consideration for the bonded labour. (2) If, after the commencement of this Act, any such person is evicted by the creditor from any homestead or other residential premises, referred to in sub-section (1), the Executive Magistrate in charge of the Sub-Division within which such homestead or residential premises is situated shall, as early as practicable, restore the bonded labourer to the possession of such homestead or other residential premises.

No person who has been freed and discharged from any obligation to render any bonded labour will be evicted from any homestead or other residential premises as part of the consideration for the bonded labour.

Sec 9. Creditor not to accept payment against extinguished debt.-

(1) No creditor shall accept any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.
No person who has been freed and discharged from any obligation to render any bonded labour will be evicted from any homestead or other residential premises as part of the consideration for the bonded labour.
(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years and also with fine.
(3) The court, convicting any person under sub-section (2) may, in addition to the penalties which may be imposed under that sub-section, direct the person to deposit, in court, the amount accepted in contravention of the provisions of sub-section (1), within such per as may be specified in the order for being refunded to the bonded labourer.

Q5. Explain the authorities under the Bonded Labour Act.

The authorities under the Bonded Labour Act are the, vigilance committee**,** under sec 13 of the act.
Sec 13. Vigilance Committees.-(1) Every State Government shall, by notification in the Official Gazette, constitute such number of Vigilance Committees in each district and each Sub-Division as it may think fit.
(2) Each Vigilance Committee, constituted for a district, shall consist of the following members, namely:-
(a) The District Magistrate, or a person nominated by him, who shall be the Chairman;
(b) Three persons belonging to the Scheduled Castes or Scheduled Tribes and residing in the district, to be nominated by the District Magistrate;
(c) Two social workers, resident in the district, to be nominated by the District Magistrate;
(d) Not more than three persons to represent the official or non-official agencies in the district connected with rural development, to be nominated by the State Government;
(e) One person to represent the financial and credit institutions in the district, to be nominated by the District Magistrate. (3) Each Vigilance Committee, constituted for a Sub-Division, shall consist of the

following members, namely (a) the Sub-Divisional Magistrate, or person nominated by him, who shall be the Chairman;
(b) three persons belonging to the Scheduled Castes or Scheduled Tribes and residing in the Sub-Division, to be nominated by the Sub-Divisional Magistrate; (c) two social workers, resident in the Sub-Division, to be nominated by the Sub- Divisional Magistrate;
(d) Not more than three persons to represent the official or non-official agencies in the Sub-Division connected with rural development to be nominated by the District Magistrate;
(e) One person to represent the financial and credit institutions in the Sub-Division, to be nominated by the Sub-Divisional Magistrate;
(f) One officer specified under section 10 and functioning in the Sub-Division. (4) Each Vigilance Committee shall regulate its own procedure and secretarial-assistance, as may be necessary, shall be provided by- (a) the District Magistrate, in the case of a Vigilance Committee constituted for the district; (b) the Sub-Divisional Magistrate, in the case of a Vigilance Committee constituted for the Sub-Division. (5) No proceeding of a Vigilance Committee shall be invalid merely by reason of any defect in the constitution, or the proceedings, of the Vigilance Committee.
Functions of the vigilance committee are described under sec 14 of the act .
Sec 14. Functions of Vigilance Committees - (1) The functions of each Vigilance Committee shall be,-
(a) To advise the District Magistrate or any officer authorised by him as to the efforts made, and action taken, to ensure that the provisions of this Act or of any rule made there under are properly implemented;
(b) To provide for the economic and social rehabilitation of the freed bonded labourers;
(c) To co-ordinate the functions of rural banks and co-operative societies with a view to analysing adequate credit to the freed bonded labourer;
(d) To keep an eye on the number of offences of which cognizance has been taken under this Act;
(e) To make a survey as to whether there is any offence of which cognizance ought to be taken under this Act;

(f) to defend any suit instituted against a freed bonded labourer or a number of his family or any other person dependent on him for the recovery of the whole or part of any bonded debt or any other debt which is claimed by such person to be bonded debt. (2) A Vigilance Committee may authorise one of its members to defend a suit against a freed bonded labourer and the member so authorised shall be deemed, for the purpose of such suit, to be the authorised agent of the freed bonded labourer.

Sec 15. Burden of proof.-Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.

The burden of proving that a particular debt is not a bonded debt will be on the creditor.

Q6. Explain the features of Equal pay for equal wages Act

In order to ensure this, the Government of India has taken several steps for creating a congenial work environment for women workers. A number of protective provisions have been incorporated in the various Labour Laws. Article 39 of Constitution of India envisages that the State shall direct its policy, among other things, towards securing that there is equal pay of equal work for both men and women.

To give effect to this Constitutional provision and also to ensure the enforcement of ILO Convention the Equal Remuneration Act, 1976 was enacted by the Parliament.

Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

As the Constitution of India, 1950 is the basic law of land which enshrines number of provisions of prohibit gender discrimination and protect the interest of women, whether it is political field or industrial field. The State under its constitutional power had formulated number of legislations pertaining to women engaged in industrial activities.

Generally speaking, the wages of women have traditionally tended to lag behind those of men, except in a very few cases. Moreover, the net earnings of women invariably happen to be lower than those of men. Women all over the world, had till recently been very much inarticulate and were prepared to accept lower wages even when they were employed on the same jobs as men. Even in the economically and socially advanced countries while remarkable progress has been made, discrimination still exists. The principle of equal value has not been always fully implemented. In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and social handicaps of the poorer classes, recruited women on a large scale at lower wages and made them work under inhuman conditions .

There are various reasons, why the employment of women has not been up to the mark. In a developing country like India the income, by and large, is low but social conventions weigh against employment of women. Due to labour surplus the unemployment and under employment problems, many men are available; hence, the problem of participation of women, economic activity becomes serious.

Secondly, technological changes, fixation of minimum work load and standardisation of wages, rationalisation and mechanisation schemes and certain occupations being found hazardous, they have necessitated retrenchment of women workers.

The economic reasons involving additional cost is an impediment to women employment. Some employers recruit unmarried women only. on condition to resign their post on getting married. This has been discriminatory, unfair and unjust.

SALIENT FEATURES OF THE ACT

1. This act is a central act & is applicable to the whole of India.
2. Restrict the employer to create the terms &conditions of work in contract of services or work of labour in contrary to equal pay for equal work doctrine & provision for equal remuneration Act.
3. The act applies to all workers even if engaged for a day or few days.
4. When the employer does not comply with the act he will be liable to pay fine, imprisonment or both as per sec 10 of the act .

5. Any settlement or any agreement with the employee that is harmful to the employee isn't allowed.

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

Q7. Discuss the duties of the employers under the Equal Remuneration act of 1976.

Duties of Employer,

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

As per Sec. 4 of the Act, no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature. Further no employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.
In M/s. Mackinnon Mackenzie and Co. Ltd. v. Andrey D'Costa and another, a female confidential stenographer after the termination of her services filed a petition under sub-section (1) of Section 7 of the Equal

Remuneration Act, 1976 complaining that during the period of her service she was paid remuneration at lesser rates than those of male stenographers who were also performing same or similar work. The employer contended that the lady was working as a Confidential Stenographer and is part of a different class. The court rejected the plea of the employer that the woman was in a different class. It held, 'If only women are working as Confidential Stenographers it is because the management wants them there. Women are neither specially qualified to be Confidential Stenographers nor disqualified on account of sex to do the work assigned to the male Stenographers. Even if there is a practice in the establishment to appoint women as Confidential Stenographer such practice cannot be relied on to deny them equal remuneration due to them under the Act.' Therefore, the Court applied the Equal Remuneration Act to grant equal salary to female stenographers.

Exception (Sec. 16)

Regarding the power to make declaration of differences Section 16 of the Act provides that:

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

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

In M/s. Mackinnon Mackenzie and Co. Ltd. v. Andrey D'Costa and another, It was also held that the Act does not permit the Management to pay to a section of its employees doing the same work or work of a similar nature lesser pay contrary to Section 4(1) of the Act because of its financial position which does not permit payment of equal remuneration to all. The applicability of the Act does not depend upon the financial ability of Management to pay equal remuneration as provided by the Act.

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

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

2. **No discrimination to be made while recruiting men and women workers**

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

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

3. **Duty to Maintain Registers**

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

Q8. Discuss the causes of migration of the workers under the Interstate Migrant Workmen Act.

The system of employment of Inter-State Migrant Labour (known in Orissa as Dadan Labour) is an exploitative system prevalent in Orissa and in some other States. In Orissa, Dadan Labour is recruited from various parts of the State through contractors or agents called Sardars/Khatadars for work outside the State in large construction projects. This system lends itself to various abuses. Though the Sardars

promise at the time of recruitment that wages calculated on piece-rate basis would be settled every month, the promise is not usually kept.

Once the worker comes under the clutches of the contractor, he takes him to a far-off place on payment of railway fair only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various malpractices.

The Twenty-eighth Session of the 'Labour Ministers' Conference (New Delhi, October 26, 1976) which considered the question of protection and welfare of Dadan Labour recommended the setting up of a small Compact Committee to go in to the whole question and to suggest measures for eliminating the abuses prevalent in this system. The inter-State migrant workmen are generally illiterate, unorganised and have normally to work under extremely adverse conditions and in view of these hardships, some administrative and legislative arrangements both in the State from where they are recruited and also in the State where they are engaged for work are necessary to secure effective protection against their exploitation. The Compact Committee which was constituted in February, 1977, therefore, recommended the enactment of a separate Central Legislation to regulate the employment of inter-State migrant workmen as it was felt that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, even after necessary amendments would not adequately take care of the variety of malpractices indulged in by the contractors/ Sardars/ Khatadars, etc., and the facilities required to be provided to these workmen in view of the peculiar circumstances in which they have to work.

The recommendations of Compact Committee had been examined in consultation with the State Governments and the relevant Central Ministries, Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was passed by both the houses of Parliament and President of India gave his assent on 11- 06-1979.

Causes of Migration

Basically, situations of surplus labour arising from scarcity of agricultural land, inequitable land distribution, low agricultural productivity, high population density and the concentration of rural economy almost exclusively on agriculture frequently lead to an

increase in out migration. This combination of factors creates a force that is encountered more often in fragile environments. Such as natural calamities like drought, floods, water lagging, river bank erosion etc.
Another important factor is down sizing of public sector jobs and overall stagnation in job creation strategy in India and inadequate planning. Population explosion, rapid growth of labour forces, high rate of unemployment, uneven growth and development, religious backwardness, poverty, socio-economic and educational backwardness, illiteracy and acute scarcity of livelihood resources are few more factors responsible for migration. In case of voluntary migration of unorganised work force is mostly on account of wage variations.

The major causes are as follows:

1. Better employment opportunities and higher wages in economically developed regions and non-availability of employment opportunities and consequent hardship in the under-developed regions.
2. The economic necessity, inter-regional disparity in economic growth due to uneven development and disparity between socio-economic classes is the most important reason in view of National Commission on Rural Labour.
3. Freedom of movement in any part of the territory of lndia and freedom to pursue any avocation of choice as guaranteed by Article 19 of the Constitution of lndia legally permit people to migrate for better job avenues and on account of these constitutional provisions migration cannot be prohibited, although the migrant workers are hardly aware of these provisions.Despite hardship and exploitation the income of migrant labour may be generally higher than what they would have been able to earn without migration.

4.Features of Migrant Labour

The basic features of migrant labour force may be identified. They are generally unskilled, unorganised, uneducated and have low bargaining power, rather no bargaining power, they are poor ignorant or in a socially or economically disadvantaged position belonging to the lowest strata of society. It is useful to keep an eye on labour migration patterns in India. The studies on Migrant Labour indicate that poor households participate extensively in migration in India. When the male Worker migrates with his family he is more prone to exploitation-

economic, social and otherwise. His children form part of child labour and sometimes even bonded labour without any sympathetic look towards their tender age and development. These unfortunate members of the society remain so unguarded that they become victims of crushing accidents, killings and terrorist violence the people are shocked to read in newspapers.

- Hardships and Problems Faced by Migrant Labour

Migration itself is a tough undertaking as the migrants travel with or without family and live in very hard and difficult conditions and face strategy of hire and fire. They are required to work for long hours in the harsh and unhygienic conditions. No shelters, no medical facilities, no drinking water, no welfare fund for migrant workers, no creche for their children are provided. They are low paid and the contractors generally make deductions from their wages and they face discriminatory treatment by the employers. The accidental injuries are a common feature and fall short of adequate medical assistance or compensation. Fuel, sanitation and insecurity (physical as well as job) are the major problems they face un-armed, unguarded, un-heard, un-wept and un-aware of their own rights guaranteed by their own Constitution, welfare legislation and welfare schemes launched by their own States. One may believe or not they face harassment, abuse, theft, forcible eviction or demolition of their dwellings by urban authorities or police force under beautification schemes. The sexual exploitation of women by masons, contractors and other powerful persons of the locality is a routine but unreported in fear of untold consequences (loss of employment and violence). The children are even more vulnerable to such abuse.

The labour welfare laws, Government welfare programmes and schemes are meaning less and beyond their imagination on account of ignorance, illiteracy, lack of information social and economic backwardness.

Q9. Explain the provisions relating to registration of establishments under the Interstate Migrant workmen Act.

Registration of Establishment Employing Inter-State Migrant Workmen (Secs. 3-6)

The establishment proposing to employ inter-State Migrant workmen will be required to be registered with registering officers appointed under the Central Government or the State Governments, as the case may be, depending on whether the establishment falls under the Central sphere or State sphere. Every principal employer of an establishment to which this Act applies makes an application to the registering officers for the registration of the establishment. The registration of the principal employer is compulsory if the Inter-State Migrant Workers are employed or intended to be employed in his establishment. The registering officer shall register the establishment and issue a certificate of registration within one month after the receipt of the application from the principal employer if the application for registration is complete in all respects. (Sec. 3 and 4)

The Act empowers the registering officer to revoke the registration certificate issued if he is satisfied that the registration has been obtained by misrepresentation or suppression of any material fact or it has become useless or ineffective for any other reasons, after giving the principal employer an opportunity of being heard and after obtaining prior approval of the appropriate Government. This Act also empowers the registering officer to suspend the operation of the certificate pending such revocation for such period as may be specified in the order and serve the order by the registered post to the principal employer. It must contain the reasons why such action is being taken. (Sec. 5)

The Act prohibits the principal employer to employ Inter-State Migrant Workmen without obtaining a certificate of registration. The Act does not prohibit employment of Inter-State Migrant workers if the registration application is pending before the registering officer. (Sec. 6)

Q10. Discuss sexual Harassment of Women at Workplace as a Problem .

Sexual Harassment is one of the biggest problems our women are facing today in different sectors of life. We rarely pass through a week without a reminder of these kinds of incidents which should be termed as “social problems”.

It is a growing problem and all are trying their best to combat this problem by adopting new policies and measures. The definition of sexual harassment varies from person to person and from jurisdiction to jurisdiction. The definition of Sexual Harassment in simple words is "any unwanted or inappropriate sexual attention. It includes touching, looks, comments, or gestures".

A key part of Sexual Harassment is that it is one sided and unwanted. There is a great difference between Sexual Harassment and Romance and Friendship, since those are mutual feelings of two people. Often Sexual Harassment makes the victim feel guilty, but it is important for the victim to remember that it is not her fault; the fault lies totally on the person who is a harasser. Sexual Harassment affects all women in some form or the other. Lewd remarks, touching, wolf whistles, looks are part of any women's life, so much so that it is dismissed as normal. Working women are no exception. In fact, working women most commonly face the backlash to women taking new roles, which belong to male domains within patriarchy. Sexual Harassment at work is an extension of violence in everyday life and is discriminatory, exploitative, thriving in the atmosphere of threat, terror and reprisal.
Many times fear is involved in Sexual Harassment because it isn't physical attraction, it's about power. In fact, many Sexual Harassment incidents take place when one person is in a position of power over the other; or when a woman has an untraditional job such as police officer, factory worker, business executive, or any other traditionally male job. It has also been observed that there are lots of sexual harassment incidents taking place in the workplace, but the victims fear to report the same to the higher officials or the concerned authorities. They fear to file a complaint against such offenders who does such heinous acts. The fear is due to the fear of boss, fear of guilt in the society that they might have to face, fear of being thrown out of the job or being demoted, fear that it will jeopardize their career as in it will put a blot on their resume and would render them un-hirable. Some women have lack of knowledge- they do now know what exactly qualifies a sexual harassment and fail to report the same.
Every country is facing this problem daily. No female worker is safe and the sense of security is lacking in them. There are certain

developments in laws of many countries to protect women workers from Sexual Harassment

Q11. Discuss the genesis of vishaka guidelines laid down by the SC of India.

VISHAKA v. STATE OF RAJASTHAN, 1997:
A LAND MARK JUDGEMENT.

Indian judiciary has played significant role in the evolution of industrial jurisprudence. It has not only made a distinct contribution to laws relating to industrial relations, social security and minimum standards of employment but has innovated new methods and devised new strategies for the purpose of providing access to justice to weaker sections of society who are denied their basic rights and to whom freedom and liberty have no meaning. Indeed, the court assumed the role of protectionist of the weaker by becoming the court for the poor and struggling masses of the country. Further, the courts at times played a role of legislators where law is silent or vague. Indeed, a number of legislation and legislative amendments have been made in response to the call by the judiciary. The Act is one among such legislations.

The Genesis

In 1992, a rural level change agent, Bhanwari Devi, was engaged by the state of Rajasthan as a Sathin (meaning 'friend') to work towards the prevention of the practice of child marriages. During the course of her work, she prevented the marriage of a one year old girl in the community. Her work was met with resentment and attracted harassment from men of that community. Bhanwari Devi reported this to the local authority but no action was taken. That omission came at great cost – Bhanwari was subsequently gang raped by those very men. The Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behaviour in the workplace.

Based on the facts of Bhanwari Devi's case, a Public Interest Litigation (PIL) was filed by Vishaka and other women groups against the State

of Rajasthan and Union of India before the Supreme Court of India. It proposed that sexual harassment be recognized as a violation of women's fundamental right to equality and that all workplaces/ establishments/ institutions be made accountable and responsible to uphold these rights.

In this landmark judgment, the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All ***Forms of Discrimination against Women (CEDAW).***

It included:

- A definition of sexual harassment
- Shifting accountability from individuals to institutions
- Prioritizing prevention
- Provision of an innovative redress mechanism.

The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life.

It placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses.

It directed for the establishment of redressal mechanism in the form of Complaints Committee, which will look into the matters of sexual harassment of women at workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women and provided for the involvement of a third party person/ NGO expert on the issue, to prevent any undue pressure on the complainant. The guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors.

Vishaka established that international standards/ law could serve to expand the scope of India's Constitutional guarantees and fill in the

gaps wherever they exist. India's innovative history in tackling workplace sexual harassment beginning with the Vishaka Guidelines and subsequent legislation has given critical visibility to the issue. Workplaces must now own their responsibility within this context and ensure that women can work in safe and secure spaces.

Apparel Export Promotion Council v. A.K Chopra, (1999) 1 SCC 759

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw out wide open an issue that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this respect was the case of Apparel Export Promotion Council v. A.K Chopra. In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment.

The Supreme Court asserted that in case of a non-compliance or non-adherence of the Vishaka Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.

National Legislative Frameworks

In India, the Vishaka Guidelines was the first ever legal action that provided a broad framework for preventing and addressing cases of sexual harassment of women within the workplace. It recognized that sexual harassment of women in the workplace resulted in the violation of their fundamental rights of gender equality, right to life and liberty, and the right to carry out any occupation, trade or profession.

Q12. Is sexual harassment violation of Fundamental Rights guaranteed under the Indian Constitution explain.

Sec 2 (n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely :-

(i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

Since sexual harassment of women at employment place is against the principle of gender equality, it is violation of the fundamental right, particularly Articles 14, 15 of the Constitution which enshrined principles i.e., equality before law and prohibition of discrimination on grounds of religion, race, caste, sex and place of birth. Such sexual harassment also violates Article 21 of the Constitution which deals with the protection of life and personal liberty.

As the Supreme Court observed in Vishaka v. State of Rajasthan supra that in the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for purpose of interpretation of the guarantee of gender equality, right to work within human dignity in Articles 14, 15, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof to promote the object of the constitutional guarantee. This is implicit in Article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in 7th Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil.

The power of Supreme Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirement as a logical commitment of the Constitutional scheme.

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse.

Q13. Explain the committees under sexual harassment act of 2013

Internal Complainants Committee (Sec. 4)

Section 4 provides elaborated provisions for constitution of Internal Complainants Committee (ICC) imposing statutory obligation on every employer of a workplace to constitute the said committee for the purpose of effective implementation of the object of the Act. The committee has to be constituted at each office or branch with 10 or more employees. The committee will be headed by a senior-level woman employee. Details of the committee and members must be displayed at the workplace. All employers must provide necessary facilities for the ICC to deal with the complaint and to conduct an inquiry. Each ICC is required to prepare an annual report to the employer.

The committee must have not less than two members from amongst employees who are committed to the cause of women, or have experience in social work or have a good legal knowledge. One member must be from an NGO or such Association. At least half of the committee must comprise women. In case of establishments with less than ten members and no complaints committee, the appropriate government must constitute a Local Complaints Committee in every district.

Local Complaints Committee (Sec. 5-8)

Central and State Governments are mandated to notify either of the following individuals to be a District Officer for each District to implement the requirements under the Act:

• District Magistrate • Additional District Magistrate • Collector • Deputy Collector.

Every District Officer must constitute a Local Complaints Committee (LCC) to receive complaints of sexual harassment from establishments where the Internal Complaints Committee (ICC) has not been

constituted due to having less than 10 employees or if the complaint is against the employer himself.
Each LCC is required to prepare an annual report and submit it to the District Officer. The District Officer must designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward it to the concerned LCC within 7 days.

Q14. Discuss the provisions regarding the procedure for trial under the bonded labour act.

Sec 16. Punishment for enforcement of bonded labour.-any person, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.
Punishment for compelling any person to rendor any bonded labour is imprisonment for three years and a fine of two thousand rupees-
Sec 17. Punishment for advancement of bonded debt.-Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.
Sec 18. Punishment for extracting bonded labour under the bonded labour system.- Whoever enforces after the commencement of this Act, any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependent of such person is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day for which the bonded labour was extracted from him.
Sec 19. Punishment for omission or failure to restore possession of property to bonded labourers.-Whoever, being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of thirty days from the commencement of this Act, shall be punishable with imprisonment for a term which

may extend to one year, or with fine which may extend to one thousand rupees, or with both; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of rupees five for each day during which possession of the property was not restored to him ;

Sec 20. Abetment to be an offence. Whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted.

Explanation.-For the purpose of this Act, "abetment" has the meaning assigned to it in the Indian Penal Code (45 of 1860).

Sec 21. Offences to be tried by Executive Magistrates.-(1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act; and, on such conferment of powers, the Executive Magistrate on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974), to be a Judicial Magistrate of the first class, or of the second class, as the case may be. (2) An offence under this Act may be tried summarily by a Magistrate.

Sec 22. Cognizance of offences.-Every offence under this Act shall be cognizable and bailable.

Sec 23. Offences by companies. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

According to S. 25 of the Act, no civil court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no

injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under this Act.

Q15. What is minimum wages & explain the theories & its kinds

Minimum wages means
Some of the most important theories of wages are as follows:
1. Wages Fund Theory
2. Subsistence Theory
3. The Surplus Value Theory of Wages
4. Residual Claimant Theory
5. Marginal Productivity Theory
6. The Bargaining Theory of Wages
7. Behavioural Theories of Wages.

How much and on which basis wages should be paid to the workers for services rendered by them has been a subject matter of great concern among economic thinkers for a long time This has given birth to several wage theories, i.e. how wages are determined. Out of them, some important theories of wages are discussed here.

1. Wages Fund Theory:

This theory was developed by Adam Smith (1723-1790). His theory was based on the basic assumption that workers are paid wages out of a pre-determined fund of wealth. This fund, he called, wages fund created as a result of savings. According to Adam Smith, the demand for labour and rate of wages depend on the size of the wages fund. Accordingly, if the wages fund is large, wages would be high and vice versa.

2. Subsistence Theory:

This theory was propounded by David Recardo (1772-1823). According to this theory, "The labourers are paid to enable them to subsist and perpetuate the race without increase or diminution". This payment is also called as 'subsistence wages'. The basic assumption of this theory is that if workers are paid wages more than subsistence level, workers' number will increase and, as a result wages will come down to the subsistence level.

On the contrary, if workers are paid less than subsistence wages, the number of workers will decrease as a result of starvation death; malnutrition, disease etc. and many would not prefer to marry. The subsistence wages refers to minimum wages.

3. The Surplus Value Theory of Wages:

This theory was developed by Karl Marx (1849-1883). This theory is based on the basic assumption that like other article, labour is also an article which could be purchased on payment of its price i e wages. This payment, according to Karl Marx, is at subsistence level which is less than in proportion to time labour takes to produce items. The surplus, according to him, goes to the owner. Karl Marx is well known for his advocating in the favour of labour.

4. Residual Claimant Theory:

This theory owes its development to Francis A. Walker (1840-1897). According to Walker, there are four factors of production or business activity, viz., land, labour, capital, and entrepreneurship. He views that once all other three factors are rewarded what remains left is paid as wages to workers. Thus, according to this theory, worker is the residual claimant.

5. Marginal Productivity Theory:

This theory was propounded by Phillips Henry Wick-steed (England) and John Bates Clark of U.S.A. According to this theory, wages is determined based on the production contributed by the last worker, i.e. marginal worker. His/her production is called ‘marginal production’.

6. The Bargaining Theory of Wages:

John Davidson was the propounder of this theory. According to this theory, the fixation of wages depends on the bargaining power of workers/trade unions and of employers. If workers are stronger in bargaining process, then wages tends to be high. In case, employer plays a stronger role, then wages tends to be low.

7. Behavioural Theories of Wages:

Based on research studies and action programmes conducted, some behavioural scientists have also developed theories of wages. Their theories are based on elements like employee’s acceptance to a wage level, the prevalent internal wage structure, employee’s consideration on money or’ wages and salaries as motivators.

KINDS OF WAGES

Wages can broadly be divided into three categories ie Living Wages, Minimum Wages and Fair Wages.

1. LIVING WAGES:

Living wages means the wages that may be sufficient to provide for the bare necessities as well as certain amenities for the employee. It means the level of wages that may be sufficient to provide for the bare necessities and such amenities that are considered necessary for the well-being of the employee and his family members in accordance with his social status.

Article 43 of the Constitution of India States that, the state shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise work, a living wage, conditions of work ensuring decent standard of life and full enjoyment of leisure and social and cultural opportunities.

The term Living Wages has been defined as, the Fair Wage Committee Report, "The living wage should enable the male earner to provide himself and his family not merely the base essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill health, requirements of essential social needs, and measures of insurance against the more import misfortunes against old age."

These Standards of Living are classified as Follows:

1. Minimum Subsistence Level:

When an employee gets the remuneration enough only for providing the bare necessities for himself and his family members, is called minimum subsistence level. In this situation, the remuneration of an employee can meet only the bare requirements for himself and his family members.

2. Comfortable Level:

When an employee can provide for all the bare necessities and can enjoy all the amenities, it is called comfortable level, in this case, the remuneration of an employee is so high that he can provide for all the bare necessities and meet all the requirements of comfort for himself and his family members.

3. Poverty Level:

When an employee is unable in providing for bare necessities also for himself and his family members, this situation is known as poverty. In this situation, the remuneration of an employee is less than he requires for providing food, clothes and shelter for himself and his family members.

4. Semi-Comfortable Standard of Living:

When the remuneration of an employee is sufficient for providing the bare necessities and meeting social needs, it is called Semi-comfortable level. In this case the employee can provide for the basic needs of clothes, food, and shelter for himself and his family members. Besides he can meet his social needs also such as—maintenance, education of children, travelling, insurance and recreation etc.

On the basis of above classification, the adequate wage in India can be determined easily. In the present economic conditions of our country, Semi-comfortable level can be taken as the basis of wage determination. The wages of employees should enable them to maintain their efficiency.

2. FAIR WAGES:

It is very difficult to give a precise definition of Fair Wages because it varies from country to country and from time to time. Therefore, it is possible that an amount of wages that is fair for one country at one time may not be fair for another country or for next time. Therefore, fair wages can be determined only after considering the specific circumstances of the industry for which the wages are to be determined.

The term 'Fair Wages' has been defined as under:

Encyclopaedia of Social Sciences, "Fair wages mean the remuneration which is paid to the workers for the jobs requiring equal efficiency, difficulty and pains."

On the basis of analytical study of above definitions, it can be concluded that Fair Wages is the amount of wages that may provide the basic needs and amenities to the workers according to their social status.

Fair Wage is more than minimum wages. Fair Wage is determined after considering several factors such as the wages paid for similar work in other trades and industries requiring same amount of ability and adjustment, productivity of the labour and paying capacity of the

industry. Fair Wage is determined between the lower and upper limits. The lower limit of wage is the minimum wage and the upper limit is the capacity of the industry to pay.

Norms for the Fixation of Minimum Wages:

The 15th Indian Labour Conference considered the question of minimum wage and adopted a resolution, the relevant portion of which is reproduced below:

With regard to the minimum wage fixation it was agreed that the minimum wage was need based" and should ensure the minimum human need of the industrial worker, irrespective of any other considerations. To calculate the minimum wage, the following should be taken into consideration.

(i) In calculating the minimum wage, the standard of working class family should be taken to consist of three consumption units for earners; the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirements.

(iii) Clothing requirements

(iv) In respect of housing, houses provided under the Subsidised Industrial Housing Scheme for low income groups.

(v) Fuel, lighting and other, "Miscellaneous" items of expenditure should constitute 20 per cent of the total minimum wage.

3. MINIMUM WAGES:

According to Fair Wages Committee, "Minimum Wages should provide not only for the bare necessities of a worker. It should also provide for the maintenance of efficiency of the worker. From this point of view, minimum wages must be sufficient to provide for all requirements of education, health and other essential amenities".

Minimum Wages means the minimum payment to worker so that he may be able in providing for basic needs for himself and his family members and to maintain his working efficiency only. Some other scholars are of the view that minimum wages should also provide for minimum education, medical facilities and other amenities. According to them, minimum wages should ensure a minimum standard of living considering the health, efficiency and well-being of the worker.

What should be the amount of fair wages is a question for which no specific answer can be given. It depends upon the economic, social and geographical factors of the country. Besides, it depends upon the size and paying capacity of the enterprise also.
However, it can be said that minimum wages is the amount that is enough for providing basic needs of the worker and his family and to enable him to maintain his efficiency.

Q16. Explain the procedure for fixing & revising minimum rate of wages .

Section 3: Fixation of minimum rates of wages:
Appropriate Government shall fix the minimum rates of wages in respect of the employment specified in Part-I or II of the Schedule and review at such intervals not exceeding (5) years, to revise the wages.
Section 4: Minimum rate of wages:
The Minimum rate of wage may consist of basic rate of wage and special allowance (cost of living allowance) to be notified by the commissioner of labour once in six months effective 1st April and 1st October.
Section 5: Minimum rate of wages:
Procedure for fixing and revising minimum wages
(a) Appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or
(b) By notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

Procedure for fixing and revising minimum wages.
(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either,
(a) Appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) By notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

RECOMMENDATIONS AND SUGGESTIONS REGARDING NORMS FOR FIXATION AND REVISION OF MINIMUM WAGES,

There are no norms prescribed for fixing/revising minimum rates of wages so far under Minimum Wages Act, 1948 and the Act is silent on the point of gradation of wages according to the Skill level.

The Indian labour conference in the year 1957, the Indian Labour Conference has recommended to adopt the following 5 elements while fixing minimum wages:-

1) For the purpose of fixation of minimum wages, a family is taken, as a norm, to include three units (one earner, wife and children)

2) Dr. Aykrovd's prescription of the average of 2700 calories of nutrition may be taken as the standard for calculating the minimum nutritional requirements.

3) Provision of 72 yards of cloth by considering a family as four units in connection with the requirements of 18 yards of cloth per capita, per annum.

4) For the purposes of fixation of house rent, the rates of rent granted by Industrial Housing Plan may be considered.

5) 20 per cent of the minimum wages may be ear-marked for meeting the expense on fuel, light and other ancillaries.

The Hon'ble Supreme Court in the case of **Reptakos Brett and Co. Ltd.,** while affirming the use of the five above norms prescribed in the 15th Indian Labour conference for fixation of Wage has directed that keeping in view the Socio economic aspect "25% of the Total minimum wages shall also be taken into account for Children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage etc.," The above norms are only useful for arriving the wage for the lowest category worker.

THE GUIDELINES OF GOVERNMENT OF INDIA

The Principal Advisor, Planning Commission, Government of India, New Delhi in his letter dated 18-09-2006 had informed that it is

proposed to have the wage differential at 15 per cent between unskilled to Semi- Skilled and semi-skilled to Skilled. He has also stated that in the year 1999-2000 a study on the pay differences was carried out through job Evaluation Technique and it was proposed to have pay difference 19- 20 percent between Unskilled to Semi-Skilled and 12-13 percent between Semi Skilled to Skilled.

10 NATIONAL FLOOR LEVEL WAGE FIXED BY THE GOVERNMENT OF INDIA

The Government of India has stated that while reviewing the movement of Consumer Price Index for Industrial Workers (CPI-IW) during October 2012 to March, 2013 over the period October 2010 to March 2011, it was observed that the National Floor Level Minimum Wage has been revised upwards from Rs.115/- to Rs.137/- per day w.e.f 01.07.2013. The minimum wage of the lowest categories in all scheduled employments reached the National Floor Level in Andhra Pradesh. It is, however, clarified that the National Floor Level Minimum Wage, is a non-statutory measure to ensure upward revision of minimum wages in different in States & union territories. Thus, the State Governments are persuaded to fix minimum wages such that in none of the scheduled employments, the minimum wage is less than National Floor Level Minimum Wage. This method has helped in reducing disparity among different rates of minimum wages to some extent.

Commissioners of Labour, Deputy Commissioners of Labour and Joint Commissioners of Labour as Inspectors under Section- 19 in their respective jurisdictions. The inspector under the Act is responsible to ensure payment of minimum wages by conducting regular inspections. He should verify maintenance of certain registers like muster roll and wages register and to secure to every employee a wage slip every month. Department under Payment of Wages Act, 1936 and the provisions of Payment of Wage Department to all establishments engaged in scheduled employments, all factories, all industries and all shops and establishments. It is required to pay wages to every employee by remittance in the bank account of the employee in accordance with the said and the inspectors under the Act should ensure the same towards simplification of enforcement.

Q17. What is bonus explain the provision relating to maximum amount of bonus payable.

Bonus means profit sharing. The bonus act provides for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

Sec 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.

Sec 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.

The provision for paying maximum bonus is provided under, sec 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 that accounting; year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of 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.

Q18. Explain the provision relating to determination of amount of gratuity.

Section 7 ,Duty to Pay Gratuity (Determination of the amount of gratuity)

(1) A person who is eligible for payment of gratuity under this Act orAny Person authorised, in writing to acton his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed,for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, determine the amount of gratuity and give notice in writing tothe person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity sodetermined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to theperson to whom the gratuity is payable.

(4) If the amount of gratuity payable is not paid by the employer within the period of 30 days , the employer shall pay,from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, notexceeding the rate notified by the Central Government from time to time for repayment of long-term deposits.Howeverno such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer hasobtained permission in writing from the controlling authority for the delayed payment on this ground.

(5) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility ofany claim of, or in relation to, an e

mployee for
payment of gratuity, or as to the person entitled to receive the gratuity,t he employer
shall deposit with the controlling authority such amount as he admits t o be payable by him as gratuity.

Where there is a dispute the employer or employee or any other pers on raising the dispute may make an application to the controlling authority for deciding the dispute. The controlling authority shall, after due inquiry and after giving the parties to the dispute a
reasonable opportunity of being heard, determine the matter or matter s in dispute and if, as a
result of such inquiry any amount is found to be payable to the employe e, the controlling authority shall direct theemployer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited bythe employer.
The controlling authority shall pay the amount deposited, including th e excess amount,
if any, deposited by theemployer, to the person entitled thereto.
As soon as may be after a deposit is made the controlling authority sha ll pay the amount of the deposit—

(i) To the applicant where he is the employee; or
(ii) Where the applicant is not the employee, to the nominee or, a s the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of theapplicati on to receive the amount of gratuity.

In H. Gangahanume Gowda V/S Karnataka Agro Industries Corporation Ltd , (2003, SCC 257) where the appellant was under suspension from 15/3/1999 to 21/5/1999 on attaining the age of Superannuation & he retired from the service of the respondents corporation on 1/1/2000 & payment of gratuity was not made . the court held that the employer to pay gratuity u/sec7 & 8 of the act, the employer whether any application has been made or not is obliged to make determination of gratuity & give notice to the employee, & arrange the payment of gratuity to the employee to whom the amount

is due within 30 days from the date it becomes payable till the date it is payed a simple interest as specified by the central Govt if repayment for long time due. The employer is not entitled to pay on the fault of the employee & the employer has obtained permission to do so in writing from the controlling Authority for the delayed payment.

Q19. Discuss the provisions relating to recovery of gratuity under the gratuity act.

Section 8: Recovery of gratuity.

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the personentitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector who shall recover the same, together with compound interest thereon atsuch rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time asarrears of land revenue and pay the same to the person entitled thereto.Provided that the controlling authority shall,before issuing a certificate under this section, give the employer a reasonable opportunity of showing causeagainst the issue of such certificate.

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.

Section 9: Penalties.

(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any otherperson to avoid such payment, knowingly makes or causes to be made any false statement or false representation shallbe punishable with imprisonment for a term which may extend to six months or with fine which may extend to tenthousand rupees or with both.

(2) An employer who contravenes, or make default in complying with, any of the provisions of this Act or anyrule or order made thereunder shall be punishable with imprisonment for a term which shall not be less than three monthsbut

which may
extend to one year, or with fine which shall not be less than ten thous and rupees but which may extend to twenty thousand rupees, or with both.

Provided that where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment, for a term which shall not be less than six months but which may extend to two years unless the Court trying the offence, for reasons to be recorded by it in writing, is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

Q20. Under what circumstances the employer is exempted from paying gratuity under the act.

Sec10, states about the exemption of employer from liability in certain cases.- Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court-

(a) That he has used due diligence to enforce the execution of this Act; and

(b) That the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like other punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence, Provided that in seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross examination on behalf of the person he charges as the actual offender and by the prosecutor , Provided further that, if the person charged as the actual offender by

the employer cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

Q21. Explain the constitutional provisions regarding child labour

A child is a person who is below the age of 14 yrs of age. Child is been defined under sec 2(ii) of the child labours act 1986. A "child" means a person who has not completed his fourteenth year of age ;

Legal definition of child, Section 2 (2) of Shops and Establishment act – 1948 states that child is a person who hasn't completed 15 years of his age.

Article 45 of the Constitution of India defines child as a person younger than 14 years.
Mines Act – 1952 says that a child is a person not older than 16 years.
According to the Suppression of Immoral Traffic in Women and Girls Act 1956, a child is a person who is not 21
Years old.
According to the Juvenile Justice (care and Protection of a Child) Act, a child is a person who has not completed18 years of age. LAW DEFINES CHILD LABOUR AS under the Act, „Child" means a person who has not completed his fourteenth year of age. Any such person engaged for wages, whether in cash or kind, is a child worker. According to UNICEF, all the children not being provided education at a school are considered as Child Labours.
International conventions define children as people aged 18 and under. Individual governments may define "child" according to different ages or other criteria. "Child" and "childhood" are also defined differently by different cultures. A "child" is not necessarily defined by a fixed age. Social scientists point out that children's abilities and maturities

vary so much that defining a child's maturity by calendar age can be misleading.

Constitutional provisions regarding child labour:

Several articles of Indian Constitution provide protection and provisions for child labour.

Article 15 (3) The State is empowered to make the special provisions relating to child, which will not be violative of right to equality. Article 21 No person shall be deprived of his life or personal liberty, except according to procedure established by law. The Supreme Court held that „life" includes free from exploitation and to live a dignified life.

Article 21A (Right to Education) The State shall provide free and compulsory education to all children of the age of six to fourteen years, in such manner as the State may, by law, determine. Where children are allowed to work, in such establishment, it is the duty of employer to make provisions for the education of child labourer.

Article 23 Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

Article 24 (Prohibition of Employment of Children in Factories, etc.) No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Supreme Court held that "hazardous employment" includes construction work, match boxes and fireworks therefore; no child below the age of 14 years can be employed. Positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

Article 39 (e) The State shall, in particular, direct its policy towards securing the health and strength of 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.

Article 39 (f) The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45 The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Article 51A(e) It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward as the case may be, between the age of six and fourteen years.
BandhuaMuktiMorcha Vs Union of India (AIR 1984 SC 802) In this case the Supreme Court of India stated that if no steps are taken under Bonded Labour System Act – 1976 by the Government then it would be a violation of Article 23 of the Constitution. Article 23 states that children should not be forced to work at cheap wages due to their economical or social disadvantage.
M. C. Metha Vs State of Tamil Nadu, 1991 The Supreme Court has not allowed children to work in a prohibited occupation. According to the judges, "the provisions of Article 45 in the Directive Principles of State Policy has still remained a far cry and according to this provision all children up to the age of 14 years are sponsored to be in school, economic necessity forces grown up children to seek employment.

Q22. Explain the rights available to child labour .

Rights of Children under National Laws:
India has also taken effective measure under national level. In order to eliminate child labour, India has brought constitutional, statutory development measures. The Indian constitution has consciously incorporated provisions to secure compulsory elementary education as well as the labour protection for the children. Labour commission in India have gone into the problems of child labour and have made extensive recommendations.

The constitution of India too provides certain rights to children and prohibits child labour such provisions are as follows:
1. No child below the age of 14 years shall be employed in any factory or mine or engaged in any other hazardous work.
2.state in particular shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of the children are not abused and that citizen are not forced by economic necessity to enter vocations unsuited to their age or strength.

3. Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and the dignity and that childhood and youth are protected against exploitations and against moral and material abandon.
4. The state shall endeavour to provide, within the period of 10 years from the commencement of constitution, free and compulsory education for all children until they complete the age of 14 years.
5. The state shall provide free and compulsory education to all children between the ages of 6 to 14 years as such a manner as the state may by law determine.
6. Who is parent or guardian to provide opportunities for education to his child or the case may be, ward between the age of six and fourteen years.
There are wide range of laws, which guarantee the substantial extent the rights and entitlement as provided in the constitution and in the UN convention.
Some of them are given below:
1. The apprentices Act 1861
2. The child labour Act 1986
3. The child marriage restraint act 1929
4. The children (pledging of labour) Act 1929
5. Children Act 1960
6. The guardian and wards Act 1890
7 .The Hindu minority and guardianship Act 1956
8 .The Hindu Adoption and maintenance Act 1956
9. The Immoral Traffic (prevention) Act 1956
10. Juvenile justice Act 1986
11. The Orphanages and other charitable Homes (supervision and control) Act 1960
12. Probation and offenders Act 1958
13. Reformatory schools Act 1857
14. The women's and children's institutions (licensing) Act 1956
15. The young persons (harmful publications) Act 1956

Q23. Discuss the provisions regarding prohibition of appointment of Child Labour under the Child Labour Act 1986.

Section 3-6 of the act deals with the provisions of prohibition of appointment of Child Labour .

Sec 3. Prohibition of employment of children in certain occupations and processes.

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on :

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

Sec 4of the act states about the Power to amend the Schedule.

The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.

Sec 5 of the act states about Child Labour Technical Advisory Committee**,** constructed under the act ,

(1) The Central Government may, by notification in the Official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereafter in this section referred to as the Committee) to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.

(2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.

(3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed.

Q24. Liability on employing child labour.

Section 14 of the child labour act talks about penalties on appointment of children at work under the legislation.

(1) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under Section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever, (a) fails to give notice as required by Section 9, or

(b) Fails to maintain a register as required by Section 11 or makes any false entry in any such register ; or
(c) Fails to display a notice containing an abstract of Section 3 and this section as required by Section 12 ; or
(d) fails to comply with or contravenes any other provisions of this Act or the rules made there under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

Under sec 15, it consists modified application of certain laws in relation to penalties**.**

(1)Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub-section (2), he shall be liable to penalties as provided in sub-sections (1) and (2) of Section 14 of this Act and not under the Acts in which those provisions are contained.

(2) The provisions referred to in sub-section (1) are the provisions mentioned below:

(a) Section 67 of the Factories Act, 1948 (63 of 1948) ;
(b) Section 40 of the Mines Act, 1952 (35 of 1952) ;
(c) Section 109 of the Merchant Shipping Act, 1958 (44 of 1958) ; and
(d) Section 21 of the Motor Transport Workers Act, 1961 (27 of 1961).

Sec 16 provides for procedure relating to offences**.**

(1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.

(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

(3) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

Q25. Explain contract labour & provisions relating to registration of establishments under the contract labour act.

The present day and age of extensive globalisation has resulted in people and corporate increasing their pace of production in order to maximise their profits. This has resulted in careful cost cutting by companies thus promoting contract labour.

Contract workers form a large part of the total workforce in India. Most of these workers are engaged in seasonal or occasional employment as and when they are called for. The primary sectors that mainly function through contract labour are loading and unloading of goods and materials; catering including canteen services; security services; civil and construction works; electrical/ air conditioning/ painting/whitewashing; house-keeping services; computer maintenance, etc.

Contract labourers are usually recruited through contractors who work as a link between the actual employers and the workers.

For the purpose of securing the rights and address the welfare of contract labourers, the Government deemed it fit to pass the Contract Labour (Regulation and Abolition) Act 1970.

Contract Labour (Regulation and Abolition) Act, 1970 defines contract labour as under:

"A workman shall be deemed to be employed as contract labour in or in connection with the work of an establishment when he is hired on or in connection with such work by or through a contractor, with or without the knowledge of the principal employer."

Based on the above definitions, the ingredients of contract labour may be inferred as follows:

- That the person concerned must be a workman;
- That he must be employed in or in connection with the work of an establishment;
- That the employment may be by or through a contractor; and
- That the employment as such may be with or without the knowledge of the principal employer.

Registration of establishments and licensing of contractors

Section 6 provides for the appointment of registering officers by the appropriate Government for the purposes of this Act. If a principal employer falls within the vicinity of this Act then, such principal employer and the contractor will have to apply for registration of the establishment and license respectively with the appropriate authorities. The Act also provides for temporary registration in case the contract labour is hired for a period not more than 15 days. Any change occurring in the particulars specified in the Registration or Licensing

Certificate needs to be informed to the concerned Registering Officer within 30 days of such change.
From a combined reading of Section 7 and Rules 17 & 18 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 (hereinafter referred to as the Rules), it appears that the Principal Employer has to apply for registration in respect of each establishment. Another important point to note is that a License issued for one contract cannot be used for an entirely different contractual work even though there is no change in the Establishment. The law mandates that every establishment to which the Act applies has to register with the registering officer. The government also has the power to prohibit employment of contract labour in any process, operation or other work in any establishment. The Act further stipulates that no Contractor to whom the Act applies can undertake or execute any work through contract labour without having a license issued by the licensing officer. Failure to obtain a licence amounts to a criminal offence under Sections 16 to 21 of the Act read with Rules 41 to 62 of the Rules.
Sec 8, states abput Revocation of registration in certain cases.- If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration. 9. Effect of non-registration.- No principal employer of an establishment, to which this Act applies, shall-- (a) in the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section, (b) in the case of an establishment the registration in respect of which has been revoked under section 8, employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be.

Q26 discuss the concept of payment of wages to the contract labours under the contract labour act 1970.

Every contractor has been made responsible for payment of wages to each worker employed by him as contract labour. For ensuring the regular payment of the minimum wages to the contract labour, the Act provides that the wages to the contract labour are to be paid in the presence of the authorized representative of the principal employer, who has to certify that the wages as per the stipulation have really been paid to the contract labour. If the Contractor fails to make payment of wages within the prescribed period or makes short payment, then the Principal Employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the Contractor but he can recover the amount so paid from the Contractor. A Principal Employer is liable to compensate underpaid contract labour. The contract labour that performs same or similar kind of work as regular workmen will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971. This issue has been dealt with extensively in the next section of the paper.

The basic provisions regarding the payment of wages have been discussed in the previous chapter. This section deals with certain landmark cases pertaining to this issue.

In ***Senior Regional Manager, Food Corporation of India, Calcutta v. Tulsi Das Bauri,*** the employer contended that arrears of wages are not wages within the meaning of Section 21 of the Act, therefore, the employer is not liable to make the payment to the respondent of the same. The Supreme Court held that the principal employer is statutorily responsible to ensure payment of wages in case of default by the contractor, and the term 'wages' includes the arrears of wages.

In *B.H.E.L. Workers' Association Haridwar and Ors. v. Union of India,* there was arbitrariness in classifying 1000 workers out of the 16,000 odd workers as contract labourers and thereby receiving salary lesser than that of the directly employed workmen. Although they all did the same work as the regular workers directly employed by the undertaking, under the same conditions of service, their wages bore no comparison to those paid to the regular workers. They were paid their salary after deducting a large commission out of it. The Court held that no particular distinction should be made on the basis of contract labour.

Contract labourers are entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to the directly employed workmen by the principal employer. They are entitled to recover their wages and their conditions of service in a manner akin to the workers employed by the principal employer under the appropriate industrial and labour laws.

In spite of the steps taken by the Parliament to promote the well being of contract labourers, there exist certain problems in the industrial sector, which haven't been overcome yet. These problems have been enumerated in this section.

Derisory Wages- According to the Act, the companies are supposed to adhere to the minimum wage norms. However, it has been found that there are workers earning less than Rs 1000 per month, which evidently does not satisfy the minimum wage criterion. A category of firms that largely comprises small private firms prefer employing uneducated workers who can be paid even less than minimum wages. Much of the migrant labourers from rural areas, especially the eastern and north-eastern regions of India and also from Nepal, fall in this category, who migrate to urban establishments in search of jobs and a better standard of living but are eventually exploited due to lack of awareness.

Q27. Discuss the provisions relating to prohibition of employment of women under to the meternity Benefit Act 1961 .

No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, or miscarriage, nor shall any woman work during this period.

Besides, no pregnant woman shall, on a request made by her in this behalf, be required by her employer to do any work of arduous nature, or that which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus; or is likely to cause her miscarriage or otherwise to adversely

affect her health, during the one month immediately preceding the six weeks before the date of her expected delivery.
Section 4 absolutely prohibits any women from working in an establishment during the six weeks after her delivery or miscarriage. Employers are forbidden to knowingly employ women during this period and employed women are required to take paid six-weeks leave. Pregnant women have the further option of taking paid leave of absence up to six weeks before their expected date of delivery under Section 6(2). All working women are thus eligible for a total of 12 weeks of paid maternity leave, 6 weeks before and 6 weeks after delivery. A woman worker is entitled to maternity protection, as per the mandate of the Act she must receive at least 12 weeks of leave with pay .

The period referred to in sub-section (3) shall be – (a) at the period of one month immediately preceding the period of six weeks, before the date of her expected delivery; (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6. Every woman shall be entitled to, and her employer shall be liable for, the payment of Maternity benefits at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day, says the provision under Section 5.

However no woman shall be entitled to these benefits unless she has actually worked in an establishment of the employer from whom she claims them, for a period of not less than 80 days in the twelve months immediately preceding the date of her expected delivery.
The maximum period for which any woman shall be entitled to Maternity benefits shall be 84 days. In case a woman dies during this period, then the Maternity benefit shall be payable only for the days up to, and including, the day of her death. Similarly, if a woman dies during her delivery, or during the period of Implementation of Maternity Benefit Act of six weeks immediately following the date of delivery, leaving behind in either case the child, the employer shall be liable for the Maternity benefits for the entire period of six weeks immediately following the day of her delivery.

Besides a woman suffering from illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall be entitled to an additional leave with wages at the rate of Maternity benefit for a maximum period of one month under Section 10. Regarding nursing breaks Section 11 provides for two additional breaks of the prescribed duration for nursing the child until the child attains the age of 15 months. Moreover, deduction of wages in certain cases has been made unlawful. A woman cannot be discharged or dismissed by the employer when she absents herself from work in accordance with the provisions of this Act.

Q28. Discuss the Impact of globalisation on industry and labour.

Concept of Globalisation

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

Effects of Globalisation on Industry and Labour

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

Soon after independence, the period was known as License Raj. As a result of the restriction in the past, India’s performance in the global market has been very dismal; it never reached even the 1% in the

worldwide market. India has vast natural resources with high-efficiency labor, but after all this, it was still contributing with 0.53% till 1992.

The Government of India announced a New Economic Policy on July 24, 1991.After liberalization, India became the second world of development and became the 7th largest economies. It contributed 1.3 trillion in the world's GDP. Dr. Manmohan Singh, the former finance minister, opened the way for a free economy in the country which led to the significant development of the country.

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

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

• **Organized workforce**

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

• **Trade unions**

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

• **Wages and employment**

The increase in international competition and rapid changes in the technology has led to a fall in real wages of unskilled workers and increased inequalities in the developed countries. Worst employment crisis is being faced by the world after 1930s. About one-third of the

earth's 2.8 billion workers are either jobless or underemployed and many of those employed receive low wages and the working condition is poor. New labour saving technologies have increased the woes of the workers. The process has gained momentum due to global competition and financial squeeze on governments. Growing income inequality, job insecurity and unemployment have resulted due to globalisation.

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

• **Indian Scenario**

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

weakening trade unions. Links between the trade unions and political party is weakening which is reducing their economic strength and political influence.

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

Q29. Explain the duties of the employers under the Karnataka Shop & Establishment Act.

Section 2(i) of the act defines establishment,
"Establishment" means a shop or a commercial establishment;
Section 2(u) of the act shop,
"shop" means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948.

Duties of Employer

Employment and Regulation:
• Every employer, employing any person in or in connection with his establishment shall issue an appointment order in form 'P'. • Every day, employee attendance shall be registered in form 'T. • The organizations having weekly holiday exemption, after taking continuous service of 6 days from any employee, shall give 7thday as mandatory holiday for him. In special cases 7th day can not be given as holiday, 11th day should be given as mandatory holiday. • After each month salary shall be paid before 7th date of next month. • Working period of any employee should not exceed 48 hours and 58 hours including extra

working hours. • End of the year, counting the working day of the employees for present year; 1 day per 20 days as earned leave and 1 day per 30 days as sick leave shall be calculated. This leave account shall be recorded in the format ‘F’. • Any employee who has completed 180 days service to the establishment can not be dismissed without prior notice.

Records management:

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

Submission of annual report:

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

SHORT NOTES

1. Who to approach in case of bondage?

According to S. 25 of the Act, no civil court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under this Act.

The aggrieved person or any person on his behalf can approach to the District Magistrate who is chairman of the Vigilance Committee constitute under the Act and has been entrusted with certain duties and responsibilities for implementing the provisions of the Act. Matter can also be brought to the notice of the Sub Divisional Magistrate of the area or any other person who is a member of the Vigilance Committee of District or Sub-division.

Relief available to the victim

The bonded labour is to immediately release from the bondage. His liability to repay bonded debt is deemed to have been extinguished. Freed bonded labour shall not be evicted from his homesteads or other residential premises which he was occupying as part of consideration for the bonded labour. A rehabilitation grant of Rs. 20,000/- to each of

the bonded labour is to be granted and assistance for his rehabilitation provided.

2. Liability of the employer under Equal Remuneration Act of 1976

Sec. 10, of the act imposes penalty in cases where the employer violates the provisions of this act he is liable for punishment under this section.
A) If any employer after the commencement of this Act omits or fails to maintain or fails to produce any register or other documents etc. shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.
B) If any employer –
(a) Makes any recruitment in contravention of the provisions of his Act, or
(b) Makes any payment or remuneration at unequal rates to men and women worker, for the same work or work of a similar nature, or
(c) Makes any discrimination between men and women workers in contravention of the provisions of this Act, or
(d) omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of Section 6, he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.
C) Omitting or refusal to produce any register or other documents to an Inspector or to give any information shall be punishable with fine which may extend to five hundred rupees.

3. Doctrine of ‘Equal Pay for equal work’

The Doctrine of ‘equal pay for equal work’ is not a fundamental right but a Constitutional right. Equal remuneration for men and women is the right of an employee without any qualification. The Act of Equal Remuneration, 1976 was enacted to comply with the provisions of Directive Principle of State Policy under Article 39. The Act, being a

beneficial legislation, ensures adequate payment or remuneration to be made irrespective of the physical strength of employee and removing the scope of social and economic injustice merely on the ground of sex, thereby working to establish a just society in the country.
As provided under Section 5 of the Act, no employer shall be allowed to make discrimination while making recruitment for the same work or work of a similar nature or make any discrimination on the basis of sex unless that particular employment of women or men is restricted or prohibited by any statute. Therefore, in matter of recruitment policy and condition of service such as promotions, training or transfer, the employer is not authorised to make discrimination against women only on the basis of sex. This provision is similar to the provision contained in Article 16(1) of the Constitution of India, 1950.

4. Licences of contractors under the Interstate Migrant Workmen under the Act.

Licensing of Contractors (Secs. 7-11)
Every contractor who proposes to recruit or employ inter-State migrant workmen will be required to obtain a licence from the specified authority both of the State to which the workman belongs (home State) and the State in which he is proposed to be employed (host State).
The license under the Act may contain the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities to be provided to the Inter-State Migrant Workmen as deemed fit by the appropriate Government in accordance with the rules and shall be issued on payment of prescribed fees.
The Act lays down the conditions under which the license issued may be revoked or suspended or the security or any part thereof furnished by the contractor may be forfeited and also procedure for filing an appeal.

5. IPC & sexual harrasment.

Sec 2(n) defines sexual harassment under the act , “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely :-

(i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

Conduct that may be construed as sexual harassment not only violates the Prevention of Workplace Sexual Harassment Act, but also could constitute an offence under the IPC. In 2013, substantial changes were made in the way sexual harassment was viewed within the criminal justice system in India. The Criminal Law Amendment Act of 2013, which commenced on April 3, 2013, included Section 354A of the Indian Penal Code, 1860 that defined sexual harassment. The India Penal Code, 1860 has also defined the term sexual harassment and related offences and put forth punishments for the same:

Section 354A- Sexual harassment is:

A man committing any of the following acts—

(a) physical contact and advances involving unwelcome and explicit sexual overtures; or (b) a demand or request for sexual favours; or (c) showing pornography against the will of a woman; or (d) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

The provisions are:

• Sec. 354. Outraging the modesty of a woman • Sec. 354A. Sexual harassment by a man • Sec. 354B. Assault or use of criminal force to woman with intent to disrobe • Sec. 354C. Voyeurism • Sec. 354D. Stalking • Sec. 509. Insulting the modesty of a woman

6. Duties of the employers under the sexual harassment act of 2013.

Section 3 makes provision for prevention of sexual harassment. It provides that no woman shall be subjected to sexual harassment at any workplace. The harassment may include, but is not limited to-

(i) Implied or overt promise of preferential treatment in her employment; or

(ii) Implied or overt threat of detrimental treatment in her employment; or

(iii) Implied or overt threat about her present or future employment status; or

(iv) Conduct of any person which interferes with her work or creates an intimidating or offensive or hostile work environment for her; or
(v) Humiliating conduct constituting health and safety problems for her.

Duties of Employer (Sec. 19)

This section deals with the duties of the employer. These are as under-

(i) Provide a safe working environment;
(ii) Display penal consequence of sexual harassment;
(iii) Organise workshop and awareness programme;
(iv) Provide necessary facilities to Internal Complaints Committee/ Local Complaints Committee;
(v) Ensure attendance / appearance of the respondent and witness before the committee;
(vi) Provide relevant information to the committee;
(vii) Provide assistance to the aggrieved woman;
(viii) Cause to initiate action under the Indian Penal Code, 1860;
(ix) Treat the cases of sexual harassment as a misconduct;
(x) Ensure timely submission of Internal Complaints Committee's report.

7. Period for payment of bonus:

The provision dealing with payment of bonus within the time duration is specified under, Sec 19. Time-limit for payment of bonus.

All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer .

(a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.

(b) In any other case, within a period of eight months from the close of the accounting year,

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by

order, extended the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

8. Health & safety measures of child Labour.

Sec 13 of the act deals with the health and safety of the child labour guaranteed under the act.

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

(2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely :

(a) Cleanliness in the place of work and its freedom from nuisance
(b) Disposal of wastes and effluents;
(c) Ventilation and temperature;
(d) Dust and fume;
(e) Artificial humidification;
(f) Lighting;
(g) Drinking water;
(h) Latrine and urinals;
(i) Spittoons;
(j) Fencing of machinery;
(k) Work at or near machinery in motion;
(l) Employment of children on dangerous machines;
(m) Instructions, training and supervision in relation to employment of children on dangerous machines;
(n) Device for cutting off power;
(o) Self-acting machines;
(p) Easing of new machinery;
(q) Floor, stairs and means of access;
(r) Pits, sumps, openings in floors, etc.
(s) Excessive weights;
(t) Protection of eyes;
(u) Explosive or inflammable dust, gas, etc. ;

(v) Precautions in case of fire;
(w) Maintenance of buildings; and
(x) Safety of buildings and machinery.

9. Contract labour and judicial intervention

Judiciary plays an extremely important role in developing the law and in shaping and influencing its course by way of its interpretations of the various provisions of the law. Before the enactment of this Act, there was no specific legislation which comprehensively dealt with the predicament of contract labour in India. Although there were laws such as the Industrial Disputes Act, 1947 and Payment of Wages Act, 1936, *inter alia*, none of them was exclusively designed to regulate contract labour. This restricted the Courts from formulating the basic guidelines in order to abolish or restrict contract labour. Therefore in order to ease the process of adjudication of industrial disputes that were related primarily to contract labour, the Courts required an Act which completely dealt with the regulations of contract labour.

After the enactment of the Act in 1970, the Courts did not have to face impediments in granting relief to the wronged party in disputes regarding the facilities which should be provided to contract labourers for, those guidelines had unambiguously been enumerated in Sections 16, 17, 18 and 19 of the Act. The definitions of employer, contractor and workmen had also been provided by the Act in Section 2 which helped the court interpret the meaning of these words which under normal circumstances seem too broad and vague. The Courts can now also construe as to when certain labourers are to be considered as contract labourers and to what rights they are lawfully entitled. Some landmark judgments which have thrown light upon the provisions of the Act and have acted as precedents in determining similar questions of law that were placed before the Courts have been discussed in this section of the paper. Some renowned decisions among the plethora of cases that came up before the Courts have been grouped under the issues or the questions of law that governed them. The judgments may be discussed as follows:

The Courts have had to construe the significance of ‘appropriate government’ time and again. The criteria for deciding the issue of appropriate government under the Act is that the industry must be

carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central Government for purposes of Article 12 of the Constitution. Such an authority may be conferred either by a statute or by virtue of relationship of principal employer and agent or delegation of power and this fact has to be ascertained on the facts and circumstances of each case.

Heavy Engineering Mazdoor Union v. State of Bihar was one of the first cases wherein the expression 'appropriate government' was elucidated upon by the Court. It was asserted in this case that the phrase 'under the Authority of' must be interpreted in detail and that 'Authority' must be construed according to its ordinary meaning which means legal power given by one person to another to perform an act. A person is said to be 'authorized' or to have 'authority' when he is in such a position as to produce the same effect as if the person granting the 'authority' had for himself done by the act. The Court critically examined the phrase 'under the Authority of' and maintained that it implies pursuant to an authority such as where an agent or servant acts under or pursuant to the authority of his principal or master. It established in light of the situation that albeit the entire share capital was vested in the name of President of India, and its nominees and extensive control were vested in the Central Government, it did not make the organization in question an industry carried on under the authority of Central Government.

The above ratio was upheld in the decisions of ***Hindustan Aeronautics Ltd. v. Their Workmen*** and ***Rashtriya Mill Mazdoor Sangh v. Model Mill****, Nagpur* and this position of law continued to be valid till December 6, 1996. The Supreme Court expressed its contrary view in ***Air India Statutory Corporation v. United Labour Union and Ors.***, wherein it was held that 'appropriate government' in respect of all PSUs will be the Central Government and not the State Government which is under the control and regulation of the Central Government. After this verdict, the Central Government delegated its power as Appropriate Government under section 39 of Industrial Disputes Act, 1947 to the concerned State Governments in which the Central PSUs were situated.

The above decision was reversed and the position in *Heavy Engineering case* was restored by the Apex Court in ***Steel Authority of India Limited and Ors. v. National Union Water Front Workers and Ors***, asserting that 'appropriate government' in relation to an establishment would be the Central Government if (i) the concerned Central Government company or undertaking is included by name in clause (a) of Section 2 of the Industrial Disputes Act, or (ii) any industry carried on by or under the authority of Central Government or by a railway company, or (iii) any such controlled industry as may be specified in this behalf by the Central Government, otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

10. The central and state advisory boards under the contract labour act 1970.

Under Sections 3 and 4 of the Act, there is a provision for the constitution of Central and State Advisory Contract Labour Boards to advise the Central/State Government on matters arising out of the administration of the Act.

In matters relating to the abolition of contract labour system, the Board normally constitutes a 3 member Tripartite Committee from amongst members of the Central Advisory Contract Labour Board representing the employers and workers and a Government official as Member Convener to study the issue in detail. The report submitted by the Committee is placed before the Central Advisory Contract Labour Board and keeping in view the recommendations of the Board, the Central Government takes a decision on the matter. At present, 12 such Committees are functioning either to study abolition of contract labour system or to consider the requests for exemption from prohibitory notifications in various establishments.

11. Does the act provide the workers under it the right to be absorbed into the mainstream workforce of the establishment after the abolition of contract labour?

Although the Act aims at the regulation of contract labour, at the end its goal is the abolition of the same. This poses several questions as to

the employment status and opportunities of those who are currently enjoying benefits under the Act. An abolition of contract labour would result in loss of employment which would be a far worse scenario than that of working as a contract worker.

This concern has, however, been addressed in almost every case that relates to contract labour. It has been clearly held that upon abolishment of contract labour, workers who were working in such capacity will directly get absorbed into the mainstream workforce of the establishment. It was further stated that loss of jobs would not be a possibility as this would be against the very aim of this Act i.e. to provide secure employment to the workers.

However in the case of ***RK Panda v. Steel Authority of India*** where the same issue was brought before the Supreme Court of India, it was held that the primary objective of the Act was to protect contract workers from exploitation. However the decision to absorb them in the workforce or terminate their employment is the sole discretion of the employer. Over time there have been several cases that have given varying opinions. However, most of them have maintained that the decision to absorb or terminate should be that of the employer alone.

12. Licensing of contractors under the contract labour act 1970

Sec 11 to 14 deals with the contracting of licences of the contractors under the act . Appointment of licensing officers.-- The appropriate Government may, by an order notified in the Official Gazette, (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and

(b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

According to sec 12 Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer. (2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions

including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

Sec 13. Grant of licences.- (1) Every application for the grant of a licence under sub-section (1) of section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed. (2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed. (3) A licence granted under this provision shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

Sec 14 deals with the, Revocation, suspension and amendment of licences (a) licence granted under section 12 has been obtained by misrepresentation or suppression of any material fact, or

(b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made

There under, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

Under sub-sec (2) of this section, the licensing officer may vary or amend a licence granted under section 12.

13.Payment of minimum and maximum bonus

Payment of Minimum Bonus

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

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

Payment of Maximum Bonus

Section 11 provides, where, in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of 20% of such salary or wage. In computing the allocable surplus under the above-mentioned provision, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provision of that section.

Calculation of Bonus with respect to certain Employees

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

scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem.

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

Solve any two of the following problems:

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

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

In People's Union for Democratic Rights v. Union of India (AIR 1982 SC 1473) popularly known as Asiad Workers case, where non-payment of minimum wages to construction workers was successfully challenged, among others, for the violation of Article 23, the Supreme Court, after an elaborate discussion on the background, philosophy and scope of that article, held that the prohibition against "traffic in human beings and begar and other similar forms of forced labour" is "a general prohibition, total in its effect and all pervasive in its range". It is a charter of recognition of human dignity, the Court said, against all-State as well as private person. Rejecting the argument of the Union that it prohibit only begar or other unpaid labour the Court held that all unwilling labour is forced labour whether paid or not and is, therefore, prohibited. On the specific question of minimum wages the Court held that where someone works for less than minimum wages the presumption is that he is working under some compulsion. The compulsion may be either the result of physical force or of legal provisions or of want, hunger and poverty. Emphasizing on the last factor and declaring the non-payment of wages a forced labour the Court concluded:

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

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

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

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

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

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

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

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

C) .Two persons aged about 13yrs & 15yrs were appointed by the employer of CBZX establishment run by the family which manufactured handicrafts. Decide whether the employment of the two children is child labour.

Ans: In this case the employment of two children is not called as child labour**.** Cause the appointment of children in the family business is not termed to be as child labour**.**
Under sec 5 of the Child Labour Act 2016 , as according to sction 3 of the principal Act ie the act of 1986 , the following section shall be substituted, namely:—(1) No child shall be employed or permitted to work in any occupation or process. But under clause (2) of sec 5 Nothing in sub-section (1) shall apply where the child,— (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations; (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed: Provided that no such work under this clause shall effect the school education of the child.
As per this provision the purposes of this section, the expression, (a) ‘‘family’’ in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother; (b) ‘‘family enterprise’’ means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons.

d) **A, an** employee **of x, establishment died within two years of employment during work, his widow claims gratuity from the employer advise her.**

Ans: In his case the widow is entitled to claim gratuity as the provision of sec 4 apply in these cases. Usually the eligibility for claiming gratuity by the employee is when an employee on the termination of his employment after he has rendered continuous service of not less than 5 years i.e. on superannuation, retirement, resignation, death or disablement due to accident or disease, under **Sec 4**. The period of 5 years is not necessary if the termination of the employee is because of death or disablement. In the case of death the amount is paid to the legal heirs “Continuous Service” means uninterrupted service which may be

interrupted on account of sickness, accident, leave, absence from duty without (not being treated as break in service), lay-off, strike, lock-out or cessation of work not due to the fault of the employee.